



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

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

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INHOUD

IZIQUATHO

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

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

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

Provincial Notice

Provinsiale Kennisgewing

ISaziso sePhondo

The following draft Bill is published for comment:

Die volgende Konsepwetsontwerp word vir kommentaar gepubliseer:

Olu Qulunqo loMthetho osaYilwayo lupapashelwa ukufumana izimvo zoluntu:

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33 Konsep- Eerste Wysigingswetsontwerp op die Grondwet van die Wes-Kaap, 2018 9

33 UMthetho osaYilwayo weZilungiso zokuQala zoQulunqo loMgaqo-siseko weNtshona Koloni, 201817

Any person or organisation wishing to comment on the draft Bill is requested to submit the comments in writing before or on 6 April 2018—

Enige persoon of organisasie wat kommentaar op die Konsepwetsontwerp wil lewer, word versoek om die kommentaar skriftelik in te dien voor of op 6 April 2018—

Nabani na okanye nawuphi na umbutho onqwenela ukuvakalisa izimvo ngolu Qulunqo loMthetho osaYilwayo uyacelwa ukuba afake izimvo zakhe ezibhaliweyo phambi okanye ngomhla wesi-6 kwekaTshazimpuzi 2018—

- (a) by posting the comments to:
Ms Thembisa Blom
Department of the Premier
PO Box 659
Cape Town 8000;
- (b) by delivering the comments to:
Ms Thembisa Blom
Department of the Premier
6th Floor
4 Dorp Street
Cape Town 8001;
- (c) by e-mailing the comments to:
Tembisa.Blom@westerncape.gov.za; or
- (d) by faxing the comments to:
Fax no. 021 483 3827
(Attention: Ms Thembisa Blom).

- (a) deur die kommentaar te pos aan:
Me Thembisa Blom
Departement van die Premier
Posbus 659
Kaapstad 8000;
- (b) deur die kommentaar af te lewer by:
Me Thembisa Blom
Departement van die Premier
6de Verdieping
Dorpstraat 4
Kaapstad 8001;
- (c) deur die kommentaar te e-pos na:
Tembisa.Blom@westerncape.gov.za; of
- (d) deur die kommentaar te faks na:
Faksnr. 021 483 3827
(Aandag: Me Thembisa Blom).

- (a) ngokuposela izimvo zakhe ku-:
Nks Thembisa Blom
Department of the Premier
PO Box 659
Cape Town 8000;
- (b) ngokuthumela izimvo ku-:
Nks Thembisa Blom
6th Floor
4 Dorp Street
Cape Town 8001;
- (c) ngokuthumela izimvo nge-imeyili ku-:
Tembisa.Blom@westerncape.gov.za;
okanye
- (d) ngokufeksela izimvo ku-:
021 483 3827
(Ingqale kuNks Thembisa Blom).

Queries can be made to Ms Thembisa Blom, tel.: 021 483 4451.

Navrae kan gerig word aan me Thembisa Blom, tel.: 021 483 4451.

Imibuzo ingathunyelwa ngqo kuNks Thembisa Blom, umnxeba: 021 483 4451.

PROVINCIAL NOTICE

The following Provincial Notice is published for comment.

ADV. B. GERBER,
DIRECTOR-GENERAL

Provincial Legislature Building,
Wale Street,
Cape Town.

PROVINSIALE KENNISGEWING

Die volgende Provinsiale Kennisgewing word vir kommentaar gepubliseer.

ADV. B. GERBER,
DIREKTEUR-GENERAAL

Provinsiale Wetgewer-gebou,
Waalstraat,
Kaapstad.

ISAZISO SEPHONDO

Esi saziso silandelayo sipapashelwe ukunika izimvo.

ADV. B. GERBER,
UMLAWULI-JIKELELE

iSakhiwo sePhondo,
Wale Street,
eKapa.

PROVINCIAL NOTICE

P.N. 33/2018

6 March 2018

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

CONSTITUTION OF THE WESTERN CAPE DRAFT FIRST AMENDMENT BILL, 2018

To amend the Constitution of the Western Cape, 1997, so as to align it with the Constitution of the Republic of South Africa, 1996, with regard to the loss of membership of the Provincial Parliament, the calling and setting of dates for an election of the Provincial Parliament, the definition of a money Bill, provincial intervention in local government, the imposition of surcharges by the Provincial Parliament and the raising of loans by the Western Cape government; to repeal the provisions regarding the Commissioner for the Environment; to substitute references to the President of the Constitutional Court; to effect certain textual changes and to provide for matters connected therewith.

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

Amendment of section 15 of Act 1 of 1998

1. Section 15 of the Constitution of the Western Cape, 1997 (the Provincial Constitution), is amended by the substitution for subsection (3) of the following subsection:

- “(3) A person loses membership of the Provincial Parliament if that person—
- (a) ceases to be eligible;
 - (b) resigns as a member; **[or]**
 - (c) is absent from the Provincial Parliament without permission in circumstances for which the rules and orders of the Provincial Parliament prescribe loss of membership; or
 - (d) ceases to be a member of the party that nominated that person as a member of the Provincial Parliament.”.

Amendment of section 17 of Act 1 of 1998

2. Section 17 of the Provincial Constitution is amended by the insertion of the following subsection after subsection (2):

“(2A) A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of the Provincial Parliament.”.

Substitution of section 30 of Act 1 of 1998

3. The following section is substituted for section 30 of the Provincial Constitution:

“Money Bills

30. (1) A Bill **[that]** is a money Bill if it—

- (a) appropriates money; **[or]**
- (b) imposes provincial taxes, levies, **[or]** duties or surcharges **[is a money Bill]**;
- (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
- (d) authorises direct charges against the Provincial Revenue Fund.

(2) A money Bill may not deal with any other matter except—

- (a) a subordinate matter incidental to the appropriation of money; **[or]**
- (b) the imposition, abolition or reduction of provincial taxes, levies, **[or]** duties or surcharges;
- (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or
- (d) the authorisation of direct charges against the Provincial Revenue Fund.

[(2)](3) A provincial Act must provide for a procedure by which the Provincial Parliament may amend a money Bill.”.

Substitution of section 49 of Act 1 of 1998

4. The following section is substituted for section 49 of the Provincial Constitution:

“**[Supervision of] Intervention in local government**

49. (1) When a municipality in the Western Cape cannot or does not fulfil an executive obligation in terms of the national Constitution, this Constitution or legislation, the Provincial Cabinet may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—

- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; **[and]**
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to—
 - (i) **[to]** maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) **[to]** prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the Western Cape as a whole; or
 - (iii) **[to]** maintain economic unity; or
- (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

(2) If the Provincial Cabinet intervenes in a municipality under subsection (1)(b)—

[(a) the intervention must end unless it is approved by the national Cabinet member responsible for local government affairs within 14 days of the intervention;

(b)](a) it must submit a written notice of the intervention [must be tabled in] to—

(i) the national Cabinet member responsible for local government affairs;

(ii) the Provincial Parliament; and

(iii) [in] the National Council of Provinces,

within 14 days [of their respective first sittings] after the intervention began; and

[(c)](b) the intervention must end [unless it is approved by the National Council of Provinces within 30 days of its first sitting after the intervention began] if—

(i) the national Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or

(ii) the National Council of Provinces disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention.

(3) If a Municipal Council is dissolved in terms of subsection (1)(c)—

(a) the Provincial Cabinet must immediately submit a written notice of the dissolution to—

(i) the national Cabinet member responsible for local government affairs;

(ii) the Provincial Parliament; and

(iii) the National Council of Provinces; and

(b) the dissolution takes effect 14 days from the date of receipt of the notice by the National Council of Provinces unless set aside by that national Cabinet member or the National Council of Provinces before the expiry of those 14 days.

(4) If a municipality cannot or does not fulfil an obligation in terms of the national Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the Provincial Cabinet must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and—

(a) appointing an administrator until a newly elected Municipal Council has been declared elected; and

(b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

(5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the Provincial Cabinet must—

(a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which—

(i) is to be prepared in accordance with national legislation; and

(ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and

(b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and—

- (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
- (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality.

(6) If the Provincial Cabinet imposes a recovery plan in terms of subsection (5)(a) and the Municipal Council is not dissolved in terms of subsection (5)(b), the Provincial Cabinet must assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.

(7) If the Provincial Cabinet intervenes in a municipality in terms of subsection (4), (5) or (6), it must submit a written notice of the intervention to—

- (a) the national Cabinet member responsible for local government affairs;
 - (b) the Provincial Parliament; and
 - (c) the National Council of Provinces,
- within seven days after the intervention began.”.

Amendment of section 59 of Act 1 of 1998

5. Section 59 of the Provincial Constitution is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) flat-rate surcharges on [the tax bases of] any tax, levy or duty that is imposed by national legislation, other than [the tax bases of] on corporate income tax, value-added tax, rates on property or customs duties.”.

Substitution of section 63 of Act 1 of 1998

6. The following section is substituted for section 63 of the Provincial Constitution:

“Loans

63. The Western Cape government may raise loans for capital or current expenditure, in accordance with [conditions determined by] national legislation, but loans for current expenditure[—

- (a) may be raised only when necessary for bridging purposes during a fiscal year[; and
- (b) must be repaid within 12 months].”.

Repeal of sections 71, 72, 73, 74, 75, 76 and 77 of Act 1 of 1998

7. Sections 71, 72, 73, 74, 75, 76 and 77 of the Provincial Constitution are repealed.

Substitution of expressions in Act 1 of 1998

8. The Provincial Constitution is amended—

- (a) by the substitution for the expression “President of the Constitutional Court”, wherever it appears, of the expression “Chief Justice”; and
- (b) by the substitution in the Xhosa text for the expressions “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” and “isiBhulu”, wherever it appears, of the expressions “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” and “isiAfrikansi”, respectively.

Short title and commencement

9. This Act is called the Constitution of the Western Cape First Amendment Act, 2018.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE WESTERN CAPE DRAFT FIRST AMENDMENT BILL, 2018

1. BACKGROUND

Alignment with the Constitution

Various amendments have been effected to the Constitution of the Republic of South Africa, 1996 (the Constitution). These amendments have not been incorporated in the Constitution of the Western Cape, 1997 (Act 1 of 1998) (the Provincial Constitution).

Section 143(1) of the Constitution provides that a provincial constitution must be consistent with the Constitution. Section 3(3) of the Provincial Constitution, in line with the Constitution, provides that it should not be interpreted as conferring any legislative or executive authority on the Western Cape Provincial Government that is inconsistent with the Constitution. It is proposed that the Provincial Constitution be amended to align it with the Constitution in order to avoid any inconsistencies and difficulties with interpretation.

Commissioner for the Environment

Section 71 of the Provincial Constitution establishes the position of Commissioner for the Environment. The appointment of the Commissioner for the Environment is an obligation imposed by the Provincial Constitution, which is binding on the provincial legislature and executive in terms of sections 104(3) and 125(6)(b) of the Constitution and sections 9(2) and 35(3) of the Provincial Constitution.

The position of Commissioner for the Environment is vacant and has never been filled.

Since the commencement of the Provincial Constitution, various pieces of national legislation that establish authorities and structures for the protection of the environment have been passed. The national legislation includes the National Environmental Management Act, 1998 (Act 107 of 1998), the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004), the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003), the National Environmental Management: Waste Act, 2008 (Act 59 of 2008) and the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008).

The Western Cape Government is of the view that the filling of the vacancy of the Commissioner for the Environment is not desirable, because it would involve an overlap and duplication of roles and functions provided for in national legislation, and will consume scarce state resources. The Western Cape Government is also of the view that national legislation and international conventions provide the necessary protection of the environment.

Unless the provisions relating to the establishment of the Commissioner for the Environment are repealed, the Western Cape Government is failing to fulfil a constitutional obligation. It is accordingly proposed that the Provincial Constitution be amended to repeal the provisions relating to the Commissioner for the Environment. Effect could then be given to the establishment of the Commissioner when it is thought desirable to do so through provincial legislation.

2. OBJECTS OF THE BILL

The purpose of the Bill is to—

- (a) amend the Provincial Constitution to align it with the amendments that have been effected to the Constitution; and
- (b) repeal the provisions relating to the Commissioner for the Environment.

3. CONTENTS OF THE BILL

Clause 1

Clause 1 amends section 15 of the Provincial Constitution by the substitution for subsection (3) to reflect the amended section 106(3) of the Constitution to provide for the loss of membership in the legislature, if a member ceases to be a member of the party that nominated him or her. (The Constitution Tenth Amendment Act of 2003 and the Constitution Fourteenth Amendment Act of 2008.)

Clause 2

Clause 2 amends section 17 of the Provincial Constitution, by the insertion of the subsection (2A) after subsection (2), to reflect the amended section 108 of the Constitution, which provides for the proclamation of election dates before or after the expiry of the term of a provincial legislature in the event that a provincial legislature is dissolved in terms of section 109 of the Constitution or when its term expires. (The Constitution Fourth Amendment Act of 1999.)

Clause 3

Clause 3 amends section 30 of the Provincial Constitution to reflect the amended definition of “Money Bill” in accordance with section 120 of the Constitution. (The Constitution Seventh Amendment Act of 2001.)

Clause 4

Clause 4 amends section 49 of the Provincial Constitution to reflect the amended section 139 of the Constitution relating to provincial intervention in local government. (The Constitution Eleventh Amendment Act of 2003.)

Clause 5

Clause 5 amends section 59(1)(b) of the Provincial Constitution to reflect the amended section 228 of the Constitution in respect of the imposition of taxes by provinces. (The Constitution Seventh Amendment Act of 2001.)

Clause 6

Clause 6 amends section 63 of the Provincial Constitution to reflect the amended section 230 of the Constitution in respect of the raising of loans by provinces. (The Constitution Seventh Amendment Act of 2001.)

Clause 7

Clause 7 repeals sections 71 to 77 of the Provincial Constitution.

Clause 8

Clause 8 replaces the expression “President of the Constitutional Court” with the expression “Chief Justice” wherever it appears in the Provincial Constitution (the Constitution Sixth Amendment Act of 2001) and certain expressions in the Xhosa text of the Provincial Constitution.

4. CONSULTATION

Department of the Premier: Legal Services
Department of the Premier: Policy and Strategy
Department of Environmental Affairs and Development Planning

5. FINANCIAL IMPLICATIONS

Publication costs will be covered within current budgets.

Administrative costs pertaining to the implementation of this legislation once enacted are envisaged to be minimal, and will be covered within current budgets.

6. LEGISLATIVE COMPETENCE

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

PROVINSIALE KENNISGEWING

P.K. 33/2018

6 Maart 2018

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vetdruk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

KONSEP- EERSTE WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN DIE WES-KAAP, 2018

Tot wysiging van die Grondwet van die Wes-Kaap, 1997, ten einde dit in ooreenstemming te bring met die Grondwet van die Republiek van Suid-Afrika, 1996, met betrekking tot die verlies van lidmaatskap van die Provinsiale Parlement, die uitskryf van en die bepaling van datums vir 'n verkiesing van die Provinsiale Parlement, die omskrywing van 'n Geldwetsontwerp, provinsiale ingryping in plaaslike regering, die oplê van bobelastings deur die Provinsiale Parlement en die aangaan van lenings deur die Wes-Kaapse regering; om die bepalings betreffende die Omgewingskommissaris te herroep; om verwysings na die President van die Konstitusionele Hof te vervang; om bepaalde tekstuele veranderinge aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 15 van Wet 1 van 1998

1. Artikel 15 van die Grondwet van die Wes-Kaap, 1997 (die Provinsiale Grondwet), word gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) 'n Persoon verloor lidmaatskap van die Provinsiale Parlement indien [so 'n] daardie persoon—

- (a) ophou om bevoeg te wees om 'n lid te wees;
- (b) as lid bedank; [of]
- (c) sonder toestemming van die Provinsiale Parlement afwesig is in omstandighede waarvoor die reëls en orders van die Provinsiale Parlement verlies van lidmaatskap voorskryf; of
- (d) ophou om 'n lid van die party te wees wat daardie persoon as 'n lid van die Provinsiale Parlement benoem het.”.

Wysiging van artikel 17 van Wet 1 van 1998

2. Artikel 17 van die Provinsiale Grondwet word gewysig deur die volgende subartikel ná subartikel (2) in te voeg:

“(2A) ’n Proklamasie wat ’n verkiesing uitskryf en datums daarvoor bepaal, kan voor of ná die verstryking van die termyn van die Provinsiale Parlement uitgereik word.”.

Vervanging van artikel 30 van Wet 1 van 1998

3. Artikel 30 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“Geldwetsontwerpe

30. (1) ’n Wetsontwerp [wat] is ’n Geldwetsontwerp indien dit—

(a) geld bewillig; [of]

(b) provinsiale belastings, heffings, [of] regte of bobelastings oplê, is ’n Geldwetsontwerp];

(c) provinsiale belastings, heffings, regte of bobelastings afskaf of verminder of vrystellings daarvan verleen; of

(d) ’n regstreekse las teen die Provinsiale Inkomstefonds magtig.

(2) ’n Geldwetsontwerp mag oor geen ander aangeleentheid handel nie, behalwe—

(a) ’n ondergeskikte aangeleentheid wat verband hou met die bewilliging van geld; [of]

(b) die [oplegging] oplê, afskaffing of vermindering van provinsiale belastings, heffings, [of] regte of bobelastings;

(c) die verlening van vrystelling van provinsiale belastings, heffings, regte of bobelastings; of

(d) die magtiging van ’n regstreekse las teen die Provinsiale Inkomstefonds.

[(2)](3) ’n Provinsiale Wet moet voorsiening maak vir ’n prosedure waarvolgens die Provinsiale Parlement ’n Geldwetsontwerp kan wysig.”.

Vervanging van artikel 49 van Wet 1 van 1998

4. Artikel 49 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“[Toesig oor] Ingryping in plaaslike regering

49. (1) Wanneer ’n munisipaliteit in die Wes-Kaap ’n uitvoerende verpligting ingevolge die nasionale Grondwet, hierdie Grondwet of wetgewing nie nakom of nie kan nakom nie, kan die Provinsiale Kabinet ingryp deur enige gepaste stappe te doen om te verseker dat daardie verpligting nagekom word, insluitende—

(a) die uitreiking van ’n lasgewing aan die Munisipale Raad waarin die mate van die versuim om sy [verpligting] verpligtinge na te kom, beskryf word en stappe wat nodig is om sy verpligtinge na te kom, vermeld word; [en]

(b) die aanvaarding van verantwoordelikheid vir die betrokke verpligting in daardie munisipaliteit in die mate wat nodig is om—

(i) noodsaaklike nasionale standaarde te handhaaf of aan gevestigde minimum standaarde vir die lewering van ’n diens te voldoen;

(ii) te voorkom dat daardie Munisipale Raad onredelike stappe doen wat nadelig is vir die belange van ’n ander munisipaliteit of van die Wes-Kaap as geheel; of

(iii) ekonomiese eenheid te handhaaf; of

(c) die ontbinding van die Munisipale Raad en aanstelling van ’n administrateur totdat ’n pas verkose Munisipale Raad verkose

verklar is, indien buitengewone omstandighede so 'n stap regverdig.

(2) Indien die Provinsiale Kabinet kragtens subartikel (1)(b) in 'n munisipaliteit ingryp, moet—

[(a) die ingryping beëindig word, tensy die lid van die Nasionale Kabinet wat vir plaaslikeregeringsake verantwoordelik is, dit binne 14 dae vanaf die ingryping goedkeur;

(b)](a) die Provinsiale Kabinet 'n skriftelike kennisgewing van die ingryping voorlê aan—

(i) die lid van die nasionale Kabinet verantwoordelik vir plaaslikeregeringsake;

(ii) **[in]** die Provinsiale Parlement; en

(iii) **[in]** die Nasionale Raad van Provinsies **[ter tafel gelê word],**

binne 14 dae **[vanaf hul onderskeie eerste sittings]** nadat die ingryping 'n aanvang geneem het; en

[(c)](b) die ingryping beëindig word[, tensy die Nasionale Raad van Provinsies dit binne 30 dae vanaf sy eerste sitting nadat die ingryping begin het, goedkeur] indien—

(i) die nasionale Kabinetslid wat vir plaaslikeregeringsake verantwoordelik is die ingryping afkeur binne 28 dae nadat die ingryping 'n aanvang geneem het of by die einde van daardie tydperk die ingryping nie goedgekeur het nie; of

(ii) die Nasionale Raad van Provinsies die ingryping afkeur binne 180 dae nadat die ingryping 'n aanvang geneem het of by die einde van daardie tydperk die ingryping nie goedgekeur het nie.

(3) Indien 'n Munisipale Raad ingevolge subartikel (1)(c) ontbind word—

(a) moet die Provinsiale Kabinet onmiddellik 'n skriftelike kennisgewing van die ontbinding voorlê aan—

(i) die nasionale Kabinetslid wat vir plaaslikeregeringsake verantwoordelik is;

(ii) die Provinsiale Parlement; en

(iii) die Nasionale Raad van Provinsies; en

(b) neem die ontbinding 'n aanvang 14 dae vanaf die datum van ontvangs van die kennisgewing deur die Nasionale Raad van Provinsies tensy tersyde gestel deur die nasionale Kabinetslid of die Nasionale Raad van Provinsies voor die verstryking van daardie 14 dae.

(4) Indien 'n munisipaliteit 'n verpligting ingevolge die nasionale Grondwet of wetgewing om 'n begroting of inkomste-genererende maatreëls goed te keur wat nodig is om aan die begroting gevolg te gee nie kan nakom nie of dit nie nakom nie, moet die Provinsiale Kabinet ingryp deur enige gepaste stappe te doen om te verseker dat die begroting of daardie inkomste-genererende maatreëls goedgekeur word, met inbegrip van die ontbinding van die Munisipale Raad en—

(a) die aanstelling van 'n administrateur totdat 'n pas verkose Munisipale Raad verkose verklaar is; en

(b) die goedkeuring van 'n voorlopige begroting of inkomste-genererende maatreëls om vir die voortgesette funksionering van die munisipaliteit voorsiening te maak.

(5) Indien 'n munisipaliteit, as gevolg van 'n krisis in sy finansiële sake, in ernstige of volgehoue wesenlike versuim is van sy verpligtinge om basiese dienste te verskaf of om sy finansiële ondernemings na te kom, of erken dat hy nie in staat is om sy verpligtinge of finansiële ondernemings na te kom nie, moet die Provinsiale Kabinet—

- (a) 'n herstelplan voorskryf wat daarop gerig is om die munisipaliteit se vermoë om sy verpligtinge om basiese dienste te verskaf of sy finansiële ondernemings na te kom, te verseker, wat—
- (i) voorberei moet word ooreenkomstig nasionale wetgewing; en
 - (ii) die munisipaliteit in die uitoefening van sy wetgewende en uitvoerende gesag bind, maar slegs in die mate wat nodig is om die krisis in sy finansiële sake op te los; en
- (b) die Munisipale Raad ontbind, indien die munisipaliteit wetgewende maatreëls, met inbegrip van 'n begroting of enige inkomste-genererende maatreëls wat nodig is om aan die herstelplan gevolg te gee, nie kan goedkeur nie of dit nie goedkeur nie, en—
- (i) 'n administrateur aanstel totdat 'n pas verkose Munisipale Raad verkose verklaar is; en
 - (ii) 'n voorlopige begroting of inkomste-genererende maatreëls of enige ander maatreëls wat aan die herstelplan gevolg gee, goedkeur om vir die voortgesette funksionering van die munisipaliteit voorsiening te maak.
- (6) Indien die Provinsiale Kabinet 'n herstelplan voorskryf ingevolge subartikel (5)(a) en die Munisipale Raad nie ingevolge subartikel (5)(b) ontbind word nie, moet die Provinsiale Kabinet verantwoordelikheid aanvaar vir die uitvoer van die herstelplan in die mate wat die munisipaliteit die herstelplan nie andersins kan uitvoer of dit nie uitvoer nie.
- (7) Indien die Provinsiale Kabinet ingevolge subartikel (4), (5) of (6) in 'n munisipaliteit ingryp, moet hy 'n skriftelike kennisgewing van die ingryping voorlê aan—
- (a) die nasionale Kabinetslid wat vir plaaslikeregeringsake verantwoordelik is;
 - (b) die Provinsiale Parlement; en
 - (c) die Nasionale Raad van Provinsies,
- binne sewe dae nadat die ingryping 'n aanvang geneem het.”.

Wysiging van artikel 59 van Wet 1 van 1998

5. Artikel 59 van die Provinsiale Grondwet word gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

“(b) uniforme bobelasting hef op [**die belastingbasisse van**] enige belasting, heffing of reg wat deur nasionale wetgewing opgelê word, uitgesonderd [**die belastingbasisse van**] op korporatiewe inkomstebelasting, belasting op toegevoegde waarde, eiendomsbelasting of doeaneregte.”.

Vervanging van artikel 63 van Wet 1 van 1998

6. Artikel 63 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“Lenings

63. Die Wes-Kaapse regering kan lenings vir kapitaaluitgawes of lopende uitgawes ooreenkomstig [**voorwaardes wat deur**] nasionale wetgewing [**bepaal word,**] aangaan, maar lenings vir lopende uitgawes[—

- (a) kan slegs aangegaan word wanneer dit gedurende 'n belastingjaar vir oorbruggingsdoeleindes nodig is; en
- (b) **moet binne 12 maande terugbetaal word.**”.

Herroeping van artikels 71, 72, 73, 74, 75, 76 en 77 van Wet 1 van 1998

7. Artikels 71, 72, 73, 74, 75, 76 en 77 van die Provinsiale Grondwet word herroep.

Vervanging van uitdrukkinge in Wet 1 van 1998

8. Die Provinsiale Grondwet word gewysig—

- (a) deur die uitdrukking “President van die Konstitusionele Hof”, waar dit ook al voorkom, deur die uitdrukking “Hoofregter” te vervang; en
- (b) deur in die Xhosateks die uitdrukkinge “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” en “isiBhulu”, waar dit ook al voorkom, deur die uitdrukkinge “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” en “isiAfrikansi” onderskeidelik te vervang.

Kort titel en inwerkingtreding

9. Hierdie Wet heet die Eerste Wysigingswet op die Grondwet van die Wes-Kaap, 2018.

MEMORANDUM OOR DIE OOGMERKE VAN DIE KONSEP- EERSTE WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN DIE WES-KAAP, 2018

1. AGTERGROND

Ooreenstemming met die Grondwet

Daar is reeds verskeie wysigings in die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet), aangebring. Dié wysigings is nog nie opgeneem in die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998) (die Provinsiale Grondwet), nie.

Artikel 143(1) van die Grondwet bepaal dat 'n provinsiale grondwet nie met die Grondwet onbestaanbaar mag wees nie. Artikel 3(3) van die Provinsiale Grondwet, in ooreenstemming met die Grondwet, bepaal dat dit nie uitgelê moet word as sou dit enige wetgewende of uitvoerende gesag aan die Wes-Kaapse Provinsiale Regering opdra wat met die Grondwet onbestaanbaar is nie. Daar word voorgestel dat die Provinsiale Grondwet gewysig word om dit in ooreenstemming met die Grondwet te bring ten einde enige teenstrydighede en uitlegprobleme te vermy.

Omgewingskommissaris

Artikel 71 van die Provinsiale Grondwet stel die posisie van Omgewingskommissaris in. Die aanstelling van die Omgewingskommissaris is 'n verpligting wat deur die Provinsiale Grondwet opgelê word wat bindend is op die provinsiale wetgewer en uitvoerende gesag ingevolge artikels 104(3) en 125(6)(b) van die Grondwet en artikels 9(2) en 35(3) van die Provinsiale Grondwet.

Die posisie van Omgewingskommissaris is vakant en is nog nooit gevul nie.

Sedert die inwerkingtreding van die Provinsiale Grondwet is verskeie stukke nasionale wetgewing aangeneem wat owerhede en strukture vir die beskerming van die omgewing instel. Die nasionale wetgewing sluit in die Wet op Nasionale Omgewingsbestuur, 1998 (Wet 107 van 1998), die "National Environmental Management: Biodiversity Act, 2004" (Wet 10 van 2004), die "National Environmental Management: Protected Areas Act, 2003" (Wet 57 van 2003), die "National Environmental Management: Waste Act, 2008" (Wet 59 van 2008) en die "National Environmental Management: Integrated Coastal Management Act, 2008" (Wet 24 van 2008).

Die Wes-Kaapse Regering is van mening dat die vul van die vakature van Omgewingskommissaris nie wenslik is nie omdat dit tot 'n oorvleueling en duplikasie van rolle en funksies waarvoor daar in nasionale wetgewing voorsiening gemaak word, sal lei en tot die vermorsing van skaars staatshulpbronne sal bydra. Die Wes-Kaapse Regering is ook van mening dat nasionale wetgewing en internasionale konvensies die nodige beskerming van die omgewing verskaf.

Tensy die bepalings met betrekking tot die instelling van die Omgewingskommissaris herroep word, bly die Wes-Kaapse Regering in gebreke om 'n grondwetlike verpligting na te kom. Daar word gevolglik voorgestel dat die Provinsiale Grondwet gewysig word om die bepalings met betrekking tot die Omgewingskommissaris te herroep. Uitvoering kan dan deur provinsiale wetgewing aan die instelling van die Kommissaris gegee word wanneer dit wenslik geag word om dit te doen.

2. OOGMERKE VAN DIE WETSONTWERP

Die doel van die Wetsontwerp is om—

- (a) die Provinsiale Grondwet te wysig ten einde dit in ooreenstemming te bring met die wysigings wat aan die Grondwet aangebring is; en
- (b) die bepalings wat met die Omgewingskommissaris verband hou, te herroep.

3. INHOUD VAN DIE WETSONTWERP

Klousule 1

Klousule 1 wysig artikel 15 van die Provinsiale Grondwet deur die vervanging van subartikel (3) om die gewysigde artikel 106(3) van die Grondwet te weerspieël om vir die verlies van lidmaatskap in die wetgewer voorsiening te maak indien 'n lid ophou om lid te wees van die party wat hom of haar benoem het. (Die Tiende Wysigingswet op die Grondwet van 2003 en die Veertiende Wysigingswet op die Grondwet van 2008.)

Klousule 2

Klousule 2 wysig artikel 17 van die Provinsiale Grondwet deur die invoeging van subartikel (2A) ná subartikel (2) om die gewysigde artikel 108 van die Grondwet te weerspieël, wat voorsiening maak vir die afkondiging van verkiesingsdatums voor of ná die verstryking van 'n provinsiale wetgewer se termyn in die geval waar die provinsiale wetgewer ingevolge artikel 109 van die Grondwet ontbind word of wanneer sy termyn verstryk. (Die Vierde Wysigingswet op die Grondwet van 1999.)

Klousule 3

Klousule 3 wysig artikel 30 van die Provinsiale Grondwet om, ooreenkomstig artikel 120 van die Grondwet, die gewysigde omskrywing van “Geldwetsontwerp” te weerspieël. (Die Sewende Wysigingswet op die Grondwet van 2001.)

Klousule 4

Klousule 4 wysig artikel 49 van die Provinsiale Grondwet om die gewysigde artikel 139 van die Grondwet, wat met provinsiale ingryping in plaaslike regering verband hou, te weerspieël. (Die Elfde Wysigingswet op die Grondwet van 2003.)

Klousule 5

Klousule 5 wysig artikel 59(1)(b) van die Provinsiale Grondwet om die gewysigde artikel 228 van die Grondwet te weerspieël ten opsigte van die oplê van belastings deur provinsies. (Die Sewende Wysigingswet op die Grondwet van 2001.)

Klousule 6

Klousule 6 wysig artikel 63 van die Provinsiale Grondwet om die gewysigde artikel 230 van die Grondwet ten opsigte van die aangaan van lenings deur provinsies te weerspieël. (Die Sewende Wysigingswet op die Grondwet van 2001.)

Klousule 7

Klousule 7 herroep artikels 71 tot 77 van die Provinsiale Grondwet.

Klousule 8

Klousule 8 vervang die uitdrukking “President van die Konstitusionele Hof” deur die uitdrukking “Hoofregter” waar dit ook al in die Provinsiale Grondwet voorkom (die Sesde Wysigingswet op die Grondwet van 2001) en sekere uitdrukkings in die Xhosateks van die Provinsiale Grondwet.

4. OORLEGPLEGING

Departement van die Premier: Regsdienste

Departement van die Premier: Beleid en Strategie

Departement van Omgewingsake en Ontwikkelingsbeplanning

5. FINANSIËLE IMPLIKASIES

Publikasiekoste sal binne lopende begrotings gedek word.

Dit word beoog dat die administratiewe koste rakende die uitvoering van hierdie wetgewing sodra dit verorden is minimaal sal wees en binne lopende begrotings gedek sal word.

6. WETGEWENDE BEVOEGDHEID

Die Premier is oortuig dat al die bepalings in die Wetsontwerp onder die wetgewende bevoegdheid van die Provinsie ressorteer.

Izilungiso kwicandelo 17 loMthetho 1 ka-1998

2. Icandelo 17 loMgaqo-siseko wePhondo lenziwa izilungiso ngokufakelwa eeli candelwana (2) leli candelwana lilandelayo:

“(2A) Isibhengezo esibiza nesimisela umhla wolonyulo singakhutshwa phambi okanye emva kokuphela kwexesha lePalamente yePhondo.”.

Ukufakwa kwelinye icandelo endaweni yecandelo 30 loMthetho 1 ka-1998

3. Eli candelo lilandelayo liza kufakwa kwicandelo 30 loMgaqo-siseko wePhondo:

“iBhili zeMali

30. (1) IBhili [iyi] yiBhili yemali ukuba—

(a) ihlahla imali; [okanye]

(b) ibeka iirhafu, imirhumo neentlawulo zephondo [okanye] imisebenzi okanye iintlawulo ezongezelelweyo [iyiBhili yemali];

(c) itshitshisa okanye iphungula, okanye igunyazisa ukhululo kuyo nayiphi na irhafu okanye intlawulo yePhondo; okanye

(d) igunyazisa ukutsalwa ngqo kweentlawulo kwiNgxowa-mali yeNgeniso yePhondo.

(2) IBhili yezemali akufuneki ibandakanye neminye imiba ngaphandle—

(a) kwemiba ephathelele ekuhlahlweni kwemali eza kusetyenziswa; [okanye]

(b) ekubekweni kweerhafu, ukubhangisa okanye ukuphungula iirhafu neentlawulo zephondo, [okanye] imisebenzi okanye iintlawulo ezongezelelweyo;

(c) kokugunyazisa ukungahlawuli iirhafu, imirhumo, imisebenzi okanye iintlawulo ezongezelelweyo zephondo; okanye

(d) kokugunyazisa iindleko ezingqalileyo nxamnye neNgxowa-mali yeNgeniso yePhondo.

[(2)](3) UMthetho wePhondo kufuneka ube nenkqubo enokuthi ihambe ngayo iPalamente yePhondo xa isenza izilungiso kwiBhili yezemali.”.

Ukutshintshwa kwecandelo 49 loMthetho 1 ka-1998

4. Eli candelo lilandelayo lifakelwa endaweni yecandelo 49 loMgaqo-siseko wePhondo:

“[Ukubeka iliso] Ungenelelo kurhulumente wengingqi

49. (1) Xa umasipala othile apha eNtshona Koloni enganakho ukuwenza okanye engawenzi kakuhle umsebenzi wakhe wokulawula ngokoMgaqo-siseko welizwe, lo Mgaqo-siseko okanye ngokwemithetho, iKhabhinethi yePhondo isenokuthi ingenelele ngokuthatha amanyathelo afanelekileyo okuqinisekisa ukuba loo misebenzi iyenziwa, manyathelo lawo aquka la alandelayo—

(a) ukukhupha ingcaciso eya kwiBhunga likaMasipala lowo ichaza ngokupheleleyo indlela esilele ngayo ekwenzeni umsebenzi wayo, inike nezikhokelo kananjalo zokuba loo meko ingalungiswa njani na; [kwaye]

(b) ukuthathela kuyo uxanduva lokwenza loo msebenzi asilele kuwo umasipala lowo iluthwale kangangoko kuyimfuneko—

(i) ukugcina imigangatho yesizwe eyimfuneko okanye ukukhawulelana nemigangatho efunekayo ekunikweni kweenkonzo;

(ii) ukuthintela iBhunga likaMasipala lowo ukuba ingathabathi amanyathelo angafanelekanga naya kuthi abeke esichengeni izinto ezichaphazela omnye umasipala okanye iNtshona Koloni iphela; okanye

- (iii) ukugcina umanyano kwinkalo yezoqoqosho; okanye
 (c) ukuchitha iBhunga likaMasipala nokumisa umlawuli kude
 kubhengezwe ukunyulwa kweBhunga likaMasipala elintsha,
 ukuba kukho iimeko ezizodwa ezifuna elo nyathelo.
- (2) Ukuba iKhabhinethi yePhondo ingenelela kwimeko kamasipala
 othile phantsi kwecandelwana (1)(b)—
- [(a) kufuneka oko kungenelela kufikelele esiphelweni
 ngaphandle kokuba kuyavunywa nguMphathiswa
 wesizwe ojongene nemicimbi yorhulumente wengingqi
 kwi kwiintsuku ezili-14 zokungenelela;**
- (b)](a) imele yenze isaziso esibhaliweyo sokungenelela
 [sandlalwe phambi]—**
- (i) kwelungu leKhabhinethi yelizwe elinoxanduva
 lwemicimbi yorhulumente wengingqi;
- (ii) kwePalamente yePhondo;
- (iii) [kwi] nakwiBhunga lamaPhondo leSizwe,
 zingadlulanga iintsuku ezili-14 [emva kokuba ihleli
 okokuqala] emva kokuqala kolo ngenelelo; kwaye
- [(c)](b) kufuneka oko kungenelela kufikelele esiphelweni
 [ngaphandle kokuba kuyavunywa yiBhunga lama-
 Phondo leSizwe zingadlulanga iintsuku ezingama-30
 emva kokuhlala kwayo okokuqala emva kolo
 ngenelelo] ukuba—**
- (i) ilungu leKhabhinethi kazwelonke elinoxanduva
 lwemicimbi yorhulumente wengingqi alivumelani
 nongenelelo kwisithuba seentsuku ezingama-28
 emva kokuba ungenelelo luqalisile okanye
 ngasekupheleni kwelo xesha alikagunyazisi ukuba
 kungenelelwe; okanye
- (ii) iBhunga lamaPhondo leSizwe alivumelani
 nongenelelo zingaphelanga iintsuku ezili-180 emva
 kokuba luqalisile okanye ngasekupheleni kwelo
 xesha ayikagunyazisi ukuba kungenelelwe.
- (3) Ukuba iBhunga likaMasipala liyachithwa ngokwecandel-
 wana (1)(c)—
- (a) iKhabhinethi yePhondo imele ukuba ngoko nangoko ithumele
 isaziso esibhaliweyo sokuchithwa kwalo—
- (i) kwilungu leKhabhinethi kazwelonke elinoxanduva
 lolawulo lwemicimbi yeedolophu;
- (ii) kwiPalamente yePhondo;
- (iii) nakwiBhunga lamaPhondo leSizwe; kwaye
- (b) ukuchithwa kuya kusebenza kwiintsuku ezili-14 emva komhla
 wokufunyanwa kwesaziso yiBhunga lamaPhondo leSizwe
 ngaphandle kokuba ilungu leKhabhinethi yesizwe okanye
 iBhunga lamaPhondo leSizwe lithi makungabi njalo
 ngaphambi kokuphela kwezo ntsuku zili-14.
- (4) Ukuba umasipala akakwazi okanye akayenzi imisebenzi yakhe
 ngokoMgaqo-siseko okanye ngokomthetho ogunyazisa ulwabiwo-mali
 okanye nawaphi na amanyathelo okwenza ingeniso efunekayo ukuze
 lusebenze ulwabiwo-mali, iKhabhinethi yePhondo imele ingenelele
 ngokuthatha nawaphi na amanyathelo afanelekileyo ukuze iqinisekise
 ukuba ulwabiwo-mali okanye loo manyathelo okwenza ingeniso aya-
 gunyaziswa, kuquka nokuchitha iBhunga likaMasipala kunye—
- (a) nokubeka umlawuli kude kubhengezwe ukonyulwa
 kweBhunga likaMasipala elitsha;
- (b) nokugunyazisa ulwabiwo-mali lwexeshana okanye
 amanyathelo okwenza ingeniso ukuze umasipala aqhubeke
 esebenza.
- (5) Ukuba umasipala, ngenxa yeengxaki zemali, uyaqhubeka enga-
 yiphumezi imisebenzi yakhe yokunikela ngeenkonziso ezisisiseko okanye
 akayifezi imisebenzi yakhe yemali, okanye uyavuma ukuba akakwazi
 kuphumeza imisebenzi yakhe okanye ukuhlawula, iKhabhinethi
 yePhondo kufuneka—

- (a) inyanzelise isicwangciso sokulungisa loo ngxaki ngenjongo yokunceda loo masipala ukuba aphinde enze imisebenzi yakhe yokunikela ngeenkondo ezisisiseko okanye yokwenza imisebenzi yakhe yemali, nekufuneka—
- (i) ilungiselelwe ngokungqamanayo nomthetho kazwelonke; yaye
 - (ii) inyanzele umasipala ekusebenziseni igunya layo lomthetho nelesigqeba, ngokomlinganiselo olungele ukusombulula ingxaki leyo kunyaka-mali wayo; kwaye
- (b) ichthe iBhunga likaMasipala, ukuba umasipala akakwazi okanye akayilandeli imithetho, equka ulwabiwo-mali okanye nawaphi na amanyathelo okwenza ingeniso, afunekayo ukuze isicwangciso sokulungisa sisebenze, kwaye—
- (i) ibeke umlawuli de iBhunga likaMasipala elonyulwe ngokutsha libhengezwe;
 - (ii) kwaye igunyazise ulwabiwo-mali lwexeshana okanye amanyathelo okwenza ingeniso okanye nawaphi na amanyathelo awenza isicwangciso sokulungisa sisebenze ukuze umasipala aqhubeke esebenza.
- (6) Ukuba iKhabhinethi yePhondo inyanzelisa isicwangciso sokulungisa ngokwecandelwana (5)(a) kwaye iBhunga likaMasipala alichithwanga ngokwecandelwana (5)(b), iKhabhinethi yePhondo kufuneka ithathele kuyo umsebenzi wokuqulunqa isicwangciso sokulungisa ngokwemeko embangela ukuba umasipala lowo angakwazi ukusebenzisa eso sicwangciso sokulungisa.
- (7) Ukuba iKhabhinethi yePhondo iyangenelela kumasipala ngokwecandelwana (4), (5) okanye (6), kufuneka ithumele isaziso esibhaliweyo sokungenelela kwayo—
- (a) kwilungu leKhabhinethi yesizwe elinoxanduva lokulawulwa kwemicimbi yeedolophu;
 - (b) kwiPalamente yePhondo;
 - (c) nakwiBhunga lamaPhondo leSizwe, kwiintsuku ezisixhenxe emva kokuba ungenelelo luqalisile.”.

Izilungiso kwicandelo 59 loMthetho 1 ka-1998

5. Icandelo 59 loMgaqo-siseko wePhondo lenziwa izilungiso ngokufakelwa kwalo mhlathi (b) wecandelwana (1):

- “(b) iintlawulo ezilinganayo [isiseko serhafu] ezithiwa chatha kuyo nayiphi na irhafu okanye umrhumo okanye intlawulo ezibekwe yimithetho karhulumente wesizwe, ezingaphandle [siseko serhafu] kweerhafu zengeniso ezibizwa abemveliso noshishino, nevethi neentlawulo ezihlawulelwa imihlaba okanye izinto ezingena zivela kwamanye amazwe.”.

Izilungiso kwicandelo 63 loMthetho 1 ka-1998

6. Eli candelo lilandelayo lifakwa endaweni yecandelo 63 loMgaqo-siseko wePhondo:

“Imali-mboleko

63. Urhulumente weNtshona Koloni usenokuthi ehamba [ngokwe-miqathango] yemithetho karhulumente kazwelonke afune imali-mboleko yokujongana neendleko zokuthenga izinto nokwenza izakhiwo kwakunye nezomhla nezolo, kodwa ke iimboleko ezenzelwa ukujongana neendleko zomhla nezolo[—

- (a) kufuneka zenziwe kuphela xa kukho imfuneko yokuba kuvalwe izikhewu kuloo nyaka-mali; kwaye
- (b) kufuneka zihlawulwe zingaphelanga iinyanga ezilishumi elinesibini].”.

Ukubhangiswa kwamacandelo 71, 72, 73, 74, 75, 76 nelama-77 loMthetho 1 ka-1998

7. La macandelo alandelayo 71, 72, 73, 74, 75, 76, nelama-77 oMgaqo-siseko wePhondo ayabhangiswa.

Ukukhutshwa kwamabinzana kuMthetho 1 ka-1998

8. UMgaqo-siseko wePhondo wenziwa izilungiso—

- (a) ngokufakelwa kwebinzana elithi “iJaji eyiNtloko” endaweni yebinzana elithi “uMongameli weNkundla yoMgaqo-siseko”, naphi na apho livela khona;
- (b) ngokufakelwa kwegama elithi “kwisiAfrikansi”, “sisiAfrikansi”, “kwesi-Afrikansi” nelithi “isiAfrikansi endaweni yelithi “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” nelithi “isiBhulu” naphi na apho livela khona kwinguqulelo yesiXhosa, ngokwahlukahlukeneyo.

Isihloko esifutshane nokuqalisa ukusebenza

9. Lo Mthetho ubizwa ngokuba nguMthetho weZilungiso zokuQala zoQulunqo loMgaqo-siseko weNtsona Koloni, 2018.

IMEMORANDAM YEENJONGO ZOMTHETHO OSAYILWAYO WEZILUNGISO ZOKUQALA ZOQULUNQO LOMGAQO-SISEKO WENTSHONA KOLONI, 2018

1. INTSUKAPI

Ungqanyaniso noMgaqo-siseko

UMgaqo-siseko weRiphabliki yoMzantsi Afrika, ka-1996, (uMgaqo-siseko) uye wahlaziywa ngeendlela ngeendlela. Olu hlaziyo alukafakwa kuMgaqo-siseko weNtshona Koloni, ka-1997 (uMthetho 1 ka-1998) (uMgaqo-siseko wePhondo).

ICandelo 143(1) loMgaqosiseko lithi umgaqosiseko wephondo umele ungqinelane noMgaqosiseko kazwelonke. ICandelo 3(3) loMgaqosiseko wePhondo, ngokuhambelana noMgaqosiseko kazwelonke, uthi awufanele ugqalwe njengomela naliphi na igunya lowiso-mthetho okanye lesigqeba kuRhulumente wePhondo leNtshona Koloni elingqinelani noMgaqo-siseko. Kwenziwa isiphakamiso sokuba uMgaqo-siseko wePhondo uhlaziywe ukuze ungqamane noMgaqo-siseko ukuze kuphetshwe nakuphi na ukungangqinelani kunye nobunzima bokuwutolika.

Umkhomishinala wezokuSingqongileyo

ICandelo lama-71 loMgaqo-siseko wePhondo lithetha ngokusekwa kwesikhundla soMkhomishinala wezokuSingqongileyo. Ukuqeshwa koMkhomishinala wezokuSingqongileyo yimbopheleleko ebekwe nguMgaqo-siseko wePhondo, esisinyanzelo kwipalamente yephondo nakwisigqeba ngokwecandelo le-104(3) nele-125(6)(b) loMgaqo-siseko, necandelo le-9(2) nelama-35(3) loMgaqo-siseko wePhondo.

Isikhundla soMkhomishinala wezokuSingqongileyo asinamntu kwaye akukaze kuqeshwe mntu kuso.

Ukususela ekuqalisweni koMgaqo-siseko wePhondo iinxenye ezahlukeneyo zomthetho welizwe eziseka igunya namasebe okukhusela okusingqongileyo ziye zapasiswa. Umthetho welizwe uquka uMthetho woLawulo lokuSingqongileyo kaZwelonke, ka-1998 (uMthetho 107 ka-1998) (*National Environmental Management Act, 1998* (uMthetho 107 ka-1998), uMthetho woLawulo lokuSingqongileyo kaZwelonke: ukuNgafani kobomi (*National Environmental Management: Biodiversity Act, 2004* (uMthetho 10 ka-2004), uMthetho woLawulo lokuSingqongileyo: iiNgingqi eziKhuselekileyo (*National Environmental Management: Protected Areas Act, 2003* (uMthetho 57 ka-2003), uMthetho woLawulo lokuSingqongileyo: iNkunkuma (*National Environmental Management: Waste Act, 2008* (uMthetho 59 ka-2008), kunye noMthetho woLawulo lokuSingqongileyo: uLawulo lwaManxweme aHlanganisiweyo (*National Environmental Management: Integrated Coastal Management Act, 2008* (uMthetho 24 ka-2008).

URhulumente weNtshona Koloni unoluvo lokuba ukuqeshwa koMkhomishinala wezokuSingqongileyo akufuneki, kuba kuya kubandakanya ukungqubana kweembopheleleko nokwenza imisebenzi efanayo echazwe kumthetho welizwe, kwaye kuya kudla imali karhulumente esele ishukuxekile kakade. Kwakhona uRhulumente weNtshona Koloni ukwavakalelwa ukuba umthetho welizwe nezi-vumelwano zamazwe ngamazwe ziyikhusela ngokufanelekileyo okusingqongileyo.

Ngaphandle kokuba imiba ephathelele nokubekwa koMkhomishinala wezokuSingqongileyo iyarhoxiswa, uRhulumente weNtshona Koloni uyasilela ekufezekiseni imbopheleleko yakhe efunwa ngumgaqo-siseko. Ngoko senza isiphakamiso sokuba uMgaqo-siseko wePhondo uhlaziywe ukuze ubhangise izibonelelo ezinxulumene noMkhomishinala wezokuSingqongileyo xa kucingwa ukuba kuyafuneka ukwenjenjalo ngokusebenzisa umthetho wephondo.

2. IINJONGO ZALO MTHETHO USAYILWAYO

Injongo yeBhili—

- (a) kukulungisa uMgaqo-siseko wePhondo ukuze ungqamane nohlaziyo olwenziwe kuMgaqo-siseko; kunye
- (b) nokubhangiswa kwezibonelelo zoMkhomishinala WezokuSingqongileyo.

3. IZIQULATHO ZALO MTHETHO USAYILWAYO

Isoloty 1

Isoloty 1 lilungisa icandelo 15 loMgaqo-siseko wePhondo ngokufakela icandela-lwana (3) ukuze libonise icandelo 106(3) elilungisiweyo loMgaqo-siseko ukuze licacise ngokulahlekelwa lilungu lepalamente, ukuba ilungu liyayeka ukuba lilungu lombutho olikhethileyo ukuba liwumele. (uMthetho weZilungiso weShumi woMgaqo-siseko, ka-2003 noMthetho weZilungiso weShumi elineSine woMgaqo-siseko, ka-2008.)

Isoloty 2

Isoloty 2 lilungisa icandelo 17 loMgaqo-siseko wePhondo, ngokufakela icandela-lwana (2A) emva kwecandela-lwana (2), ukuze libonise icandelo 108 elilungisiweyo loMgaqo-siseko, elithi kufanele kuchazwe imihla yonyulo ngaphambi okanye ngemva kokuphelelwa kwepalamente yephondo kwimeko apho amalungu endlu yowisomthetho yephondo sibhangisiwe ngokwecandelo 109 loMgaqosiseko xa liphelelwa lixesha. (uMthetho weZilungiso weSine woMgaqo-siseko, ka-1999.)

Isoloty 3

Isoloty 3 lilungisa icandelo 30 loMgaqo-siseko wePhondo ukuze libonise ingcaciso elungisiweyo “yeBhili zeMali” ngokwecandelo 120 loMgaqo-siseko. (uMthetho weZilungiso weSixhenxe woMgaqo-siseko, ka-2001.)

Isoloty 4

Isoloty 4 lilungisa icandelo 49 loMgaqo-siseko wePhondo ukuze libonise icandelo 139 elilungisiweyo loMgaqo-siseko eliphathelele ukungenelela kwe-phondo kurhulumente wengingqi. (uMthetho weZilungiso weShumi eliNanye woMgaqo-siseko, ka-2003.)

Isoloty 5

Isoloty 5 lilungisa icandelo 59(1)(b) loMgaqo-siseko wePhondo ukuze libonise icandelo 228 elilungisiweyo loMgaqo-siseko ngokuphathelele ukufakwa kwe-erhafu ngamaphondo. (uMthetho weZilungiso weSixhenxe woMgaqo-siseko, ka-2001.)

Isoloty 6

Isoloty 6 lilungisa icandelo 63 loMgaqo-siseko wePhondo ukubonisa icandelo elilungisiweyo 230 loMgaqo-siseko eliphathelele nokukhulisa iimali-mboleko. (uMthetho weZilungiso weSixhenxe woMgaqo-siseko, ka-2001.)

Isoloty 7

Isoloty 7 ubhangisa icandelo 71 ukuya kwelama-77 loMgaqo-siseko wePhondo.

Isoloty 8

Isoloty 8 lifakelwa kwindawo yebinzana elithi “uMongameli weNkundla yoMgaqo-siseko” kuze endaweni yalo kufakelwe elithi “iJaji eyiNtloko” naphina na apho livela khona kuMgaqo-siseko wePhondo (uMthetho weZilungiso weSithandathu woMgaqo-siseko ka-2001) namanye amabinzana athile kuMgaqo-siseko wePhondo obhalwe ngesiXhosa.

4. UKUCEBISANA

ISebe leNkulumbuso: Iinkonzo zoMthetho
ISebe leNkulumbuso: UMgaqo-nkqubo neQhinga lokusebenza
ISebe leMicimbi yokuSingqongileyo neSicwangciso soPhuhliso

5. IMALI EDINGEKAYO

Iindleko zokupapasha ziza kuhlawulwa ngemali yohlahlo-mali lwangoku.
Iindleko zolawulo eziphathelele ekuzalisekiseni kwalo mthetho wakuba umiselwe zibonakala ziza kuba ncinane, kwaye ziya kuhlawulwa kolu hlahlo-mali lwangoku.

6. AMAGUNYA OKWENZA UMTHETHO

INkulumbuso yanelisekile ukukuba kulungiselelwe loMthetho uSayilwayo ophantsi kwesakhono somthetho wePhondo.