



THE PROVINCE OF PWV
DIE PROVINSIE PWV

Provincial Gazette Extraordinary
Buitengewone Provinsiale Koerant

Selling price: **R1,50** ◇ Other countries: **R1,95**
Verkoopprys: **R1,50** ◇ Buitelands: **R1,95**

Vol. 237

PRETORIA, 11 OCTOBER 1994
OKTOBER

No. 5039

GENERAL NOTICE

NOTICE 3089 OF 1994

PROVINCIAL SERVICE COMMISSION BILL, 1994

In terms of rule 127 (1) (a) of the Standing Rules of the Provincial Legislature, the Provincial Service Commission Bill, 1994, is hereby published for general information.

Any person or organisation wishing to comment on the said Bill may lodge his, her or its written comment with me before **25 October 1994**—

(a) *by posting it to the following address:*

The Secretary
PWV Legislature
Private Bag X52
JOHANNESBURG
2000; or

(b) *by handing it in at:*

Reception (Entrance: Gate No. 1)
PWV Legislature
NASREC
JOHANNESBURG
(Ask for the Secretary of the Legislature)

S. NKOSI,
Secretary: PWV Legislature.

BILL

To establish a Provincial Service Commission, and to provide for the appointment, tenure of office, remuneration and other conditions of service of members of the Commission, the powers and functions of the Commission, and matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of Pretoria–Witwatersrand–Vereeniging, as follows:—

PREAMBLE

The Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), based on the recognition of human rights, democracy and the need for social and economic development, has created the opportunity for South Africans to build appropriate public institutions for nation building and good governance.

The PWV Provincial Government, in the establishment and functioning of its administration, is committed to the creation of a new ethos of equity, openness and accountability. The Provincial Service Commission shall advocate and ensure the realisation of these values within the public service environment, thereby enabling public servants employed by the Province to be ethical, responsive, productive and developmental.

In the exercise of its powers and functions, the Provincial Service Commission shall likewise encourage practices that enable citizens and communities to be informed about and shape public service delivery.

The building of a representative public service, development public management practices, strategic focus, goal orientation and productivity are required for effective implementation of reconstruction and development. The Provincial Service Commission shall design and monitor the human resource development policy framework required to achieve these aims.

CHAPTER 1

PRELIMINARY PROVISIONS

Definitions

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

“calendar month” means a period extending from a particular day in any month up to and including the day immediately preceding the day which corresponds numerically to the first-mentioned day in the next month, and where there is no day in the next month which corresponds numerically to the first-mentioned day because the period starts at the end of a month which contains more days than the next month, the period shall extend up to and including the last day of the next month;

“Commission” means the Provincial Service Commission for the Province established by section 2, and in relation to any power or function of the Commission, includes the member or officer to whom such function has been delegated, or who has been authorised to perform such function, under section 213(1)(c) of the Constitution.

“Constitution” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

“employee” means a person referred to in section 8(1)(c) of the Public Service Act;

“head of department” means a head of department mentioned in column 11 of Schedule 1 to the Public Service Act;

“Minister” means the Minister for the Public Service and Administration designated by the President in terms of section 88 of the Constitution;

“month” means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of the year;

“officer” means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post referred to in section 8(1)(a) of the Public Service Act, and includes a person referred to in section 8(1)(b) or 8(3)(c) of that Act;

“Premier” means the Premier of the Province acting in accordance with section 147(2) of the Constitution;

“prescribed” means prescribed by regulation under section 15;

“Province” means the Province of Pretoria–Witwatersrand–Vereeniging contemplated in section 124(1)(h) of the Constitution;

“Provincial Legislature” means the Provincial Legislature contemplated in section 125 of the Constitution, of the Province;

“Public Service Act” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“public service” means the public service contemplated in section 8 of the Public Service Act;

“Public Service Commission” means the Public Service Commission contemplated in section 209(1) of the Constitution.

CHAPTER 11

PROVINCIAL SERVICE COMMISSION AND STAFF

Establishment of Commission

2. There shall be a Provincial Service Commission for the Province, which shall have the powers and functions entrusted to it by the Constitution, this Act or any other law, and which shall in respect of the exercise and performance of its powers and functions be accountable to the Provincial Legislature.

Objects of Commission

3. The objects of the Commission shall, with due consideration to the policy of the government of the day, be—

- (a) to establish and maintain an effective, competent and developmental public service;
- (b) to foster an ethos of equity, administrative accountability, openness and public participation in public policy making and implementation thereof;
- (c) to establish a human resource development policy framework and related training programmes;
- (d) to promote an equitable labour relations environment;
- (e) to build a representative public service through appropriate affirmative programmes and procedures;
- (f) to ensure consultation with a wide range of groups, agencies and employee bodies on significant policy issues;
- (g) to ensure a culture of continuous improvement of the administration through regular strategic reviews, productivity and performance audits and the promotion of employee participation in decision making;
- (h) to ensure high ethical standards, including full observance of a public service code of conduct and anti-corruption measures;
- (i) to ensure efficient, economical and sustainable management of public resources; and
- (j) to ensure systematic liaison with professional management and policy agencies at local, national and international levels and with relevant educational and training institutions.

Interpretation

4. In the interpretation of this Act, the courts shall have regard to the Preamble.

Constitution and appointment of members of Commission

5. (1) The Commission shall subject to section 211, read with section 213(2), of the Constitution consist of three members.

(2) Members of the Commission shall be appointed by the Premier after a public hearing in accordance with the prescribed procedure.

(3) A person shall be qualified to be appointed to the Commission if he or she, in addition to the qualifications set out in section 211(2), read with section 213(2), of the Constitution is a person who is familiar with and appreciative of the issues involved in achieving the objects of the Commission set out in section 3.

(4) In making appointments as contemplated in subsection (2), the Premier shall give due regard to the spirit, purpose and objects of section 8 of the Constitution.

(5) The Premier shall designate a member of the Commission to act as chairperson of the Commission during the absence, for any reason, of the Chairperson designated in terms of section 211(1)(a) read with section 213(2), of the Constitution.

Tenure of office of members

6. (1) Subject to the provisions of subsection (2), and of section 7(3) and (4) and section 8, a member of the Commission shall, at his or her first appointment as such a member, hold office for a period of five years, but he or she shall on the expiry of his or her period of office, with his or her consent, be eligible for reappointment.

(2) The Premier may, if it is in the public interest, retain a member of the Commission, with his or her consent, in his or her office beyond the age at which the member shall, in accordance with section 7(3) vacate his or her office or retire, for the unexpired portion of his or her period of office or for such period or periods, which shall not exceed in the aggregate two years after such age, as the Premier may determine.

Conditions of service of members

7. (1) Subject to the provisions of section 211, read with section 213(2), of the Constitution and this Act, the Premier shall, after consultation with the Minister determine the remuneration and other conditions of service of the Chairperson and other members of the Commission.

(2) A member of the Commission shall be appointed on a full-time basis and shall not without the consent of the Premier perform or engage himself or herself to perform any remunerative work outside the duties of his or her office.

(3) Subject to the provisions of section 6(2), a member of the Commission shall vacate his or her office, and if he or she is a member referred to in subsection (4), he or she shall retire on attaining the age of 65 years, but if he or she attains that age after the first day of any month, he or she shall be deemed to have attained that age on the first day of the following month.

(4) If an officer or employee is appointed to the Commission—

(a) the period of his or her service as such member shall be reckoned as part of and continuous with his or her employment in the public service for the purposes of leave, pension and any other condition of service, and the provisions of any pension law applicable to him or her as such officer or employee or, after his or her death, to his or her dependants, and which are not in conflict with the provisions of this Act, shall *mutatis mutandis* continue to apply; and

- (b) such member shall retain the same right to vacate his or her office and to retire as he or she would have had on the attainment of an age prescribed by the Public Service Act or any other law, or on the later date on which he or she desires to do so, had he or she remained in the public service.

Discharge and vacation of office of members

8. (1) (a) The Premier may require a member of the Commission to absent himself or herself temporarily from the duties of his or her office in order to afford the Premier the opportunity to consider the possible removal of such member from office under section 211(1)(e), read with section 213(2), of the Constitution.

(b) A member of the Commission shall, prior to his removal from office as contemplated in paragraph (a), be given a fair hearing in accordance with the prescribed procedure.

(2) (a) The Premier may allow a member of the Commission at his or her request to vacate his or her office—

- (i) on account of continued ill-health; or
- (ii) for any other sufficient reason.

(b) If a member referred to in section 7(4)—

- (i) is allowed to vacate his or her office in terms of paragraph (a)(i), it shall be deemed that his or her services have been terminated on the ground of ill-health, and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if his or her services had been terminated on the ground of ill-health without the member being instrumental in causing his or her own ill-health; or
- (ii) is allowed to vacate his or her office in terms of paragraph (a)(ii), he or she shall be deemed to have been retired in terms of section 16(4), or to have been discharged under section 17(2)(c), of the Public Service Act, as the Premier may direct, and he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to if he or she had been so retired or discharged.

(3) A member of the Commission who—

- (a) immediately prior to his or her appointment as such member was an officer;
- (b) at the expiry of his or her period of office as a member of the commission, is not reappointed thereto; and
- (c) at such expiry date has not reached the age at which he or she would under the Public Service Act have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission,

shall have the right to retire, or may be requested by the Premier to retire, and if he or she so retires or is so requested to retire, he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to, if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

Powers and functions of Commission

9. (1) In addition to the powers and functions of the Commission set out in section 213(1) of the Constitution, and subject to norms and standards applying nationally, the Commission shall, in respect of public servants' employed by the Province, be competent—

(a) subject to section 11, to make recommendations, give directions, give advice and conduct inquiries with regard to the achieving of any of its objects set out in section 3; and

(b) to consult and liaise as contemplated in section 3(6) and (10).

(2) If any matter has been referred to the Commission under section 213(1)(b) of the Constitution, the Commission may inspect all such official documents and records and obtain all such information from the functionary or the head of department concerned or from the chief executive officer of the institution or body concerned as may be necessary in order to advise the Premier or the member of the Executive Council in question.

(3) A recommendation made or a direction given by the Commission under section 213(1)(a) of the Constitution in respect of public servants employed by the Province shall for the purposes of the Public Service Act, excluding section 14(2)(d) of that Act, be deemed to be a recommendation made or a direction given by the Public Service Commission.

Exercising and delegation of powers

10. (1) Subject to the provisions of subsection (2) and section 11(4), a recommendation or direction by the Commission as contemplated in section 213(1)(a) of the Constitution, this Act or any other law shall be made or issued by at least two members of the Commission.

(2) In addition to any other limitation imposed by a law, any delegation or authorization by the Commission under section 213(1)(c) of the Constitution—

(a) shall be in writing;

(b) shall not be made in respect of the power contemplated in that section or section 11(4), or in respect of the function contemplated in section 14 and section 210(7), read with section 213(2), of the Constitution; and

(c) shall be made to one or more of its members only, except that the power referred to in section 213(1)(a)(ii) of the Constitution may also be delegated to an officer or officers.

(3) Any delegation or authorization made by the Commission under section 213(1)(c) of the Constitution, may at any time be amended or revoked by the Commission.

Recommendations or directions to achieve objects of Commission

11. (1) Before the Commission under section 9(1)(a) makes a recommendation or issues a direction in order to achieve any of its objects, it shall publish a notice in the *Provincial Gazette* which shall contain—

(a) the text of the proposed recommendation or direction;

- (b) a reasoned explanation of the proposed recommendation or direction;
- (c) a request to the public for comments on the proposed recommendation or direction within the period stated in the notice, which period shall not be shorter than 45 days from the date of publication of the notice; and
- (d) the address to which such comments shall be submitted.

(2) All comments received in pursuance of a notice published in terms of subsection (1) shall be kept by the Commission on a file which shall be open for inspection by the public, unless the person who made the comments specifically requested that his or her comments may not be made public.

(3) In its final recommendation or direction, the Commission shall give due consideration to all comments referred to in subsection (2), and shall briefly explain why it has rejected any material comment and why it has adopted any material alteration to its proposed recommendation or direction.

(4) The Commission may upon reasonable grounds, including the lack of resources, the urgency of the recommendation or direction concerned and the effectiveness of the Commission's work, by unanimous vote decide not to comply with the provisions of subsection (1).

Commission's power of inquiry

12. (1) For the purposes of conducting an inquiry as contemplated in section 213(1)(a) of the Constitution or section 9(1)(a) the Commission may—

- (a) direct any person to submit an affidavit or affirmed declaration, or summon any person who may be able to give material information concerning the subject of the inquiry, or who has in his or her possession or under his or her control any document or object which may have a bearing upon the subject of the inquiry, to appear before it at the time and place specified in the summons; and
- (b) call upon and administer an oath to, or accept an affirmation from, any person present at the inquiry or who has or might have been summoned in terms of paragraph (a), and may examine him or her and require him or her to produce any document or object in his or her possession or under his or her control which may have a bearing upon the subject of the inquiry.

(2) A summons contemplated in subsection (1)(a) shall be signed by the Chairperson of the Commission or by the person or one of the persons who hold an inquiry in accordance with a delegation under section 213(1)(c) of the Constitution, and shall be served in the manner determined by the Commission from time to time.

(3) (a) Any person who—

- (i) after having been duly summoned under this section, fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until excused by the Commission from further attendance;

- (ii) after having been called upon under subsection (1)(b), refuses to be sworn or to affirm as a witness; or
- (iii) fails without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge all questions put to him or her, or to produce any document or object in his or her possession or under his or her control which he or she has been required to produce under subsection (1)(b),

shall, subject to paragraph (b), be guilty of an offence and liable upon conviction to a fine not exceeding R2 000.

(b) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce any document or object before a court of law, shall apply in connection with the examination of any such person by, or the production of such document or object before, the Commission.

(4) Any person who hinders or prevents any other person from obeying any summons served in terms of subsection (2), or from giving any evidence of producing any document or object which that other person may be required to give a produce, shall be guilty of an offence and liable upon conviction to a fine not exceeding R2 000.

Staff of Commission

13. (1) The persons which the Commission may appoint under section 210(4), read with section 213(2), of the Constitution may include a chief official, and shall be appointed in accordance with the Public Service Act.

(2) Any person appointed in terms of subsection (1) shall observe such directions and carry out such duties as may from time to time be given to or imposed upon him or her by the Commission.

CHAPTER III

GENERAL

Reports of Commission

14. (1) The annual report of the Commission contemplated in section 210(7), read with section 213(2), of the Constitution shall contain the prescribed information and shall be framed as soon as may be practicable after 31 December of each year, but the Commission may also from time to time frame such special reports as may be desirable.

(2) The Commission shall submit every report framed in terms of subsection (1), as soon as may be practicable through the agency of the Premier to the Provincial Legislature.

Regulations

15. The Premier may make regulations relating to—

- (a) the procedure for public hearings to be held before the appointment of members of the Commission as contemplated in section 5(2);

- (b) the procedure for hearings to be given to members of the Commission before their removal from office in terms of section 8(1)(b); and
- (c) the information to be contained in the Commission's report in terms of section 14.

Limitation of legal proceedings

16. (1) Unless a court directs otherwise, no legal proceedings shall be instituted against the State, the Provincial Legislature or any body or person in respect of any alleged act in terms of this Act, or any alleged omission to do anything which should in terms of this Act have been done, unless those proceedings are instituted before the expiry of a period of 36 calendar months after the date upon which the claimant had knowledge, or after the date on which the claimant might reasonably have been expected to have knowledge, of the alleged act or omission, whichever is the earlier date.

(2) (a) Unless a court directs otherwise, no such legal proceedings shall be commenced before the expiry of at least one calendar month after a written notice of the intention to bring those proceedings has been served on the defendant.

(b) A notice referred to in paragraph (a) shall contain full particulars of the alleged act of omission.

Ensurance of independence, impartiality and efficiency of Commission

17. If a Supreme Court in any action before it finds that a member of the Commission has not acted independently, impartially or efficiently as contemplated in section 211(3), read with section 213(2), of the Constitution, the Court may after having heard the member concerned, in addition to any other competent order, order that that member be removed from his or her office.

Short title

18. This Act shall be called the Provincial Service Commission Act, 1994.

MEMORANDUM ON THE OBJECTS OF THE PROVINCIAL SERVICE COMMISSION BILL, 1994

In terms of section 213, read with sections 210 and 211, of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), a provincial legislature may provide by law for a provincial service commission in respect of public servants employed by the province.

The Bill therefore provides for the establishment of a Provincial Service Commission for the Province of Pretoria–Witwatersrand–Vereeniging, the objects of which, in terms of Clause 3, shall be—

- (1) to establish and maintain an effective, competent and developmental public service;
- (2) to foster an ethos of equity, administrative accountability, openness and public participation in public policy making and implementation;

- (3) to establish a human resource development policy framework and related training programmes;
- (4) to promote an equitable labour relations environment;
- (5) to build a representative public service through appropriate affirmative programmes and procedures;
- (6) to ensure consultation with a wide range of groups, agencies and employee bodies on significant policy issues;
- (7) to ensure a culture of continuous improvement of the administration through regular strategic reviews, productivity and performance audits and the promotion of employee participation in decision making;
- (8) to ensure high ethical standards, including full observance of a public service code of conduct and anti-corruption measures;
- (9) to ensure efficient, economical and sustainable management of public resources; and
- (10) to ensure systematic liaison with professional management and policy agencies at local, national and international levels and with relevant educational and training institutions.

The Commission shall consist of three members appointed for five years after a public hearing by the Premier, who may also determine their conditions of service and may remove them from office after a fair hearing.

In terms of section 213(1) of the Constitution (the provisions of which may not be repeated in the Bill in terms of Opinion No. 194/94 of the Chief State Law Adviser), the Commission shall, subject to norms and standards applying nationally, in respect of public servants employed by the Province, be competent—

- (a) to make recommendations, give directions and conduct inquiries with regard to—
 - (i) the establishment and organisation of departments of the Province;
 - (ii) appointments, promotions, transfers, discharge and other career incidents of such public servants; and
 - (iii) the promotion of efficiency and effectiveness in departments of the Province;
- (b) when so requested, to advise the Premier or a member of the Executive Council of the Province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by an institution or body which receives funds wholly or partly appropriated by the Provincial Legislature;
- (c) subject to any limitation imposed by a law, to delegate any of its powers to a member of the Commission or official in the public service or authorise any such member or official to perform any of its functions; and
- (d) to exercise and perform such other powers and functions of the Public Service Commission assigned to it by the President with the approval of the Premier of the Province.

In addition to these powers, the Commission may also make recommendations or issue directions in order to achieve its objects, after having obtained and considered the comments of the public at large in terms of Clause 11.

Clause 12 prescribes the Commission's powers for the purposes of conducting an investigation as contemplated in section 213(1)(a) of the Constitution, and creates certain offences.

Clause 13 deals with the staff of the Commission, and Clause 14 with its report to the Provincial Legislature.

Under Clause 15 the Premier may make certain regulations.

Clause 16 limits the institution of legal proceedings against the State or any person in respect of any alleged act in terms of the Bill.

In Clause 17 effect is given to section 211(3), read with section 213(2), of the Constitution, which requires that the Bill shall ensure the independence, impartiality and efficiency of the Commission.

The Bill originated from the Public Service Commission and was circulated to the Administration, the employee representatives and the Premier's Office, in order to consult as widely as possible.

Save a drop — and save a million

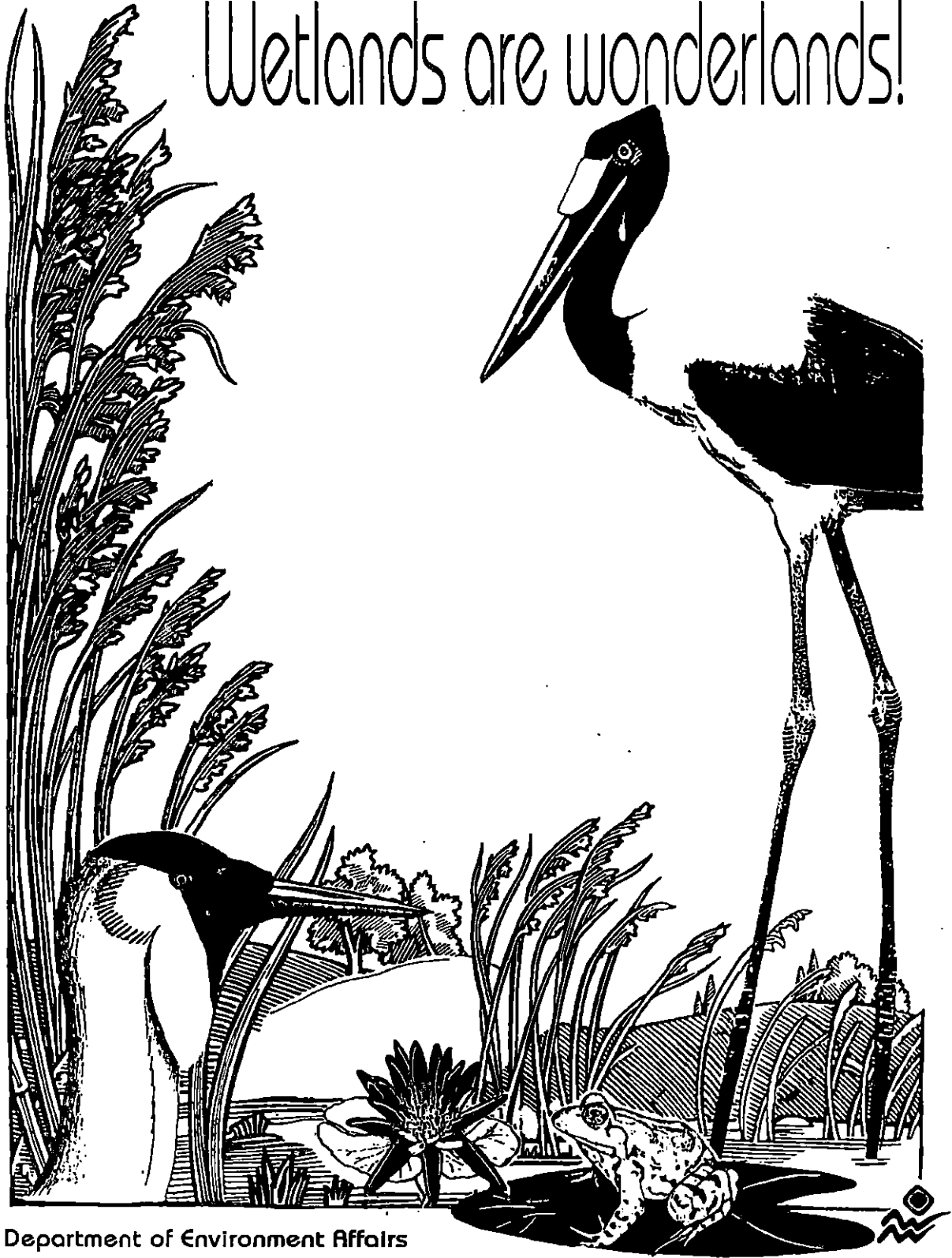
Water conservation is very important to the community and industry to ensure their survival. So save water!



Spaar 'n druppel — en vul die dam

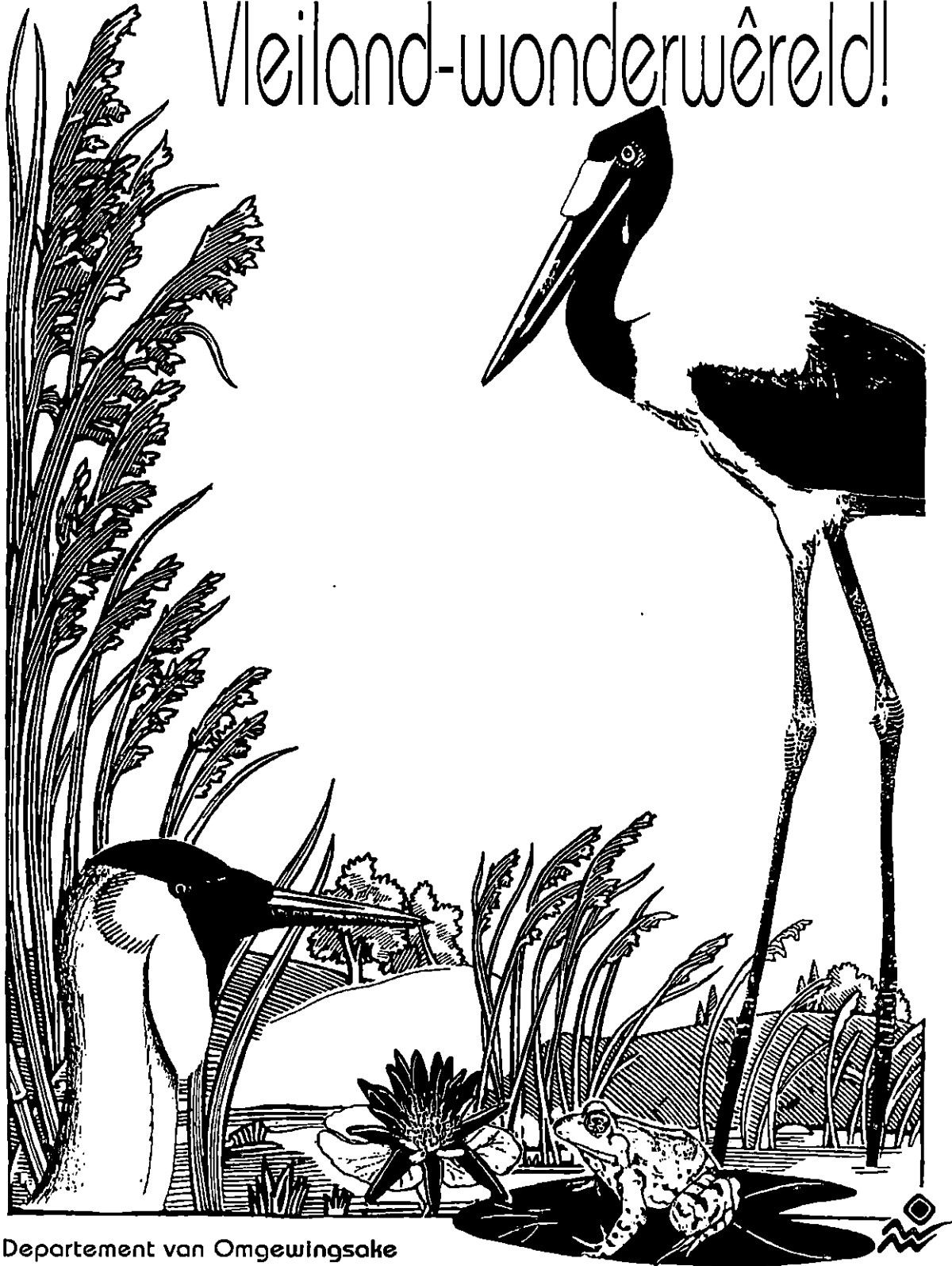
Indien almal van ons besparingsbewus optree, besnoei ons nie slegs uitgawes nie maar wen ook ten opsigte van ons kosbare water- en elektrisiteitsvoorraad

Wetlands are wonderlands!



Department of Environment Affairs

Vleiland-wonderwêreld!



Departement van Omgewingsake

CONTENTS

<i>No.</i>	GENERAL NOTICE	<i>Page No.</i>	<i>Gazette No.</i>
3089 Provincial Service Commission Bill, 1994.....		1	5039
