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Kaapstad,

THE PRESIDENCY

No. 519 14 June 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 9 of 2011: Community Schemes Ombud Service Act, 2011

IHHOVISI LIKAMONGAMELI

Ino. 519 14 June 2011

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMetho nosewuzoshicilelelwa umphakathi:—

Ino. 9 Ka 2011: Umthetho Wophiko Oluphenya Ngezikhazazo Zezinhlelo Zomphakathi - 2011

*(English text signed by the President)
(Assented to 11 June 2011)*

ACT

To provide for the establishment of the Community Schemes Ombud Service; to provide for its mandate and functions; and to provide for a dispute resolution mechanism in community schemes; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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(English text signed by the President)
(Assented to 11 June 2011)

UMTHETHO

Ukuhlinzekela ngokusungula uPhiko Oluphenya Ngezikhhalazo Zomphakathi; ukuhlinzekela ngegunya lalo kanye nemisebenzi; kanye nokuhlinzekela ngekhambi lesinqumo sezingxabano ezinhlelweni zomphakathi; kanye nokuhlinzekela ngezindaba ezixhumene nawo.

MAWUMISWE iPhalamende laseRiphabhuliki yaseNingizimu Afrika, ngale ndlela elandelayo:—

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Chapter 1

Interpretation

Definitions

1. In this Act, unless the context indicates otherwise—
- “**adjudicator**” means a person contemplated in section 21(2)(b); 5
 - “**association**” means any structure that is responsible for the administration of a community scheme;
 - “**Board**” means the Board of Service established by section 6;
 - “**chief financial officer**” means the person appointed as the chief financial officer in terms of section 14; 10
 - “**chief ombud**” means the person appointed as the chief ombud in terms of section 14;
 - “**common area**” means any part of land or building in a community scheme which is intended for common use by occupiers;
 - “**community scheme**” means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner’s association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co-operative as contemplated in the South African Co-operatives Act, 2005 (Act No. 14 of 2005) and “**scheme**” has the same meaning; 15
 - “**Department**” means the Department of Human Settlements;
 - “**Director-General**” means the Director-General of the Department of Human Settlements;
 - “**dispute**” means a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly; 25
 - “**executive committee**” means the executive body of a community scheme, including but not limited to the trustees of a sectional title body corporate, the board of directors of a share block company and the management association of any housing scheme for retired persons; 30
 - “**levies**” means the levies contemplated in section 59;
 - “**managing agent**” means any person who provides management services to a community scheme for reward;
 - “**mandate**” means the mandate of the Service as contemplated in section 5; 35
 - “**Minister**” means the Minister of Human Settlements;
 - “**occupier**” means a person who legally occupies a private area;
 - “**ombud**” means a person contemplated in section 21(2)(a);
 - “**owner**” means a person who has a legally secured right to possession and occupation of a private area, including but not limited to the owner of a sectional title unit, the holder of shares in a share block company and the holder of an occupation right in a housing scheme for retired persons; 40
 - “**person**” includes an association, partnership, trust, corporation, private or public entity and such person’s representatives, successors and assignees;
 - “**practice directive**” means a practice directive issued in terms of section 36; 45
 - “**private area**” means any area in a community scheme set aside for private occupation or ownership, excluding any common area;
 - “**prescribe**” means prescribe by regulation made under this Act;
 - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 50

Isahluko 1**Ukutolikwa****Izincazelo**

1. Kulo Mthetho, ngaphandle uma ingqikithi ibeka ngenye indlela -
- “**umahluleli**” uchaza umuntu ovezwe esigatsheni sama-21(2)(b); 5
- “**inhlango**” ichaza noma esiphi isakhiwo esibhekele ukuphatha uhlelo lomphakathi;
- “**iBhodi**” lichaza iBhodi loPhiko elisungulwe ngesigaba sesi-6;
- “**umphathi omkhulu wezezimali**” uchaza umuntu oqokwe njengomphathi omkhulu wezezimali ngokwemigomo yesigaba se-14; 10
- “**umphenyi omkhulu wezikhhalazo**” uchaza umuntu oqokwe njengomphenyi omkhulu wezikhhalazo ngokwemigomo yesigaba se-14;
- “**indawo yomphakathi**” ichaza ingxenye yomhlaba noma yesakhiwo ohlelweni lomphakathi okuhloswe ukuba isetshenziswe izakhamuzi;
- “**uhlelo lomphakathi**” lichaza noma oluphi uhlelo noma amalungiselelo lapho kusetshenziswa ngokuhlanganyela izingxenye zomhlaba kanye nezakhiwo, kubandakanya futhi kungacini ngohlelo lokuthuthukisa izigceme, inkampani edayisa amasheya enobunikazi bomhlaba, umuzi noma inhlango yomnikazi wempahla, futhi eyakhiwe, yasungulwa ukuze iphathe ezokuthuthukiswa kwempahla, kanye nohlelo lwezezindlu lwabantu asebethatha umhlala phansi kanye nomkhakha osebenzisanayo kwezezindlu njengoba kuveziwe i-*South African Co-operatives Act, 2005 (Act No. 14 of 2005)* futhi “**uhlelo**” nalo lunencazelo efanayo; 15
- “**uMnyango**” uchaza uMnyango Wezindawo Zokuhlala Abantu ;
- “**uMqondisi-Jikelele**” uchaza uMqondisi-Jikelele woMnyango Wezindawo Zokuhlala Abantu; 25
- “**ingxabano**” mayelana nokuphatha uhlelo lomphakathi ichaza ingxabano ephakathi kwabantu abanoto abaluzuzayo kulelo hlelo, futhi lapho unhlangothi olulodwa engxabanweni kuyinhlango, umhlali noma umnikazi, ngokwakhe yedwa noma ehlangene nabanye; 30
- “**ikomidi leziphathimandla**” lichaza igatsha leziphathimandla zohlelo lomphakathi, kubandakanya futhi kungacini ngabangamele impahla yegatsha elilawula uhlelo lwesigceme, ibhodi labaqondisi benkampani edayisa amasheya enobunikazi bomhlaba kanye nenhlango esingethe uhlelo lwezezindlu lwabantu asebethatha umhlala phansi; 35
- “**inhlawulo**” ichaza inhlawulo evezwe esigatsheni sama-59;
- “**igatsha elisingethe**” lichaza noma ubani ohlinzekela ngomsebenzi wezokusingatha ohlelweni lomphakathi ozuzayo;
- “**igunya**” lichaza igunya loPhiko njengoba livezwe esigatsheni sesi-5 ;
- “**uNgqongqoshe**” uchaza uNgqongqoshe Wezindawo Zokuhlala Abantu; 40
- “**umhlali**” uchaza umuntu ngokomthetho ohlala endaweni ekhethekile;
- “**umphenyi wezikhhalazo**” uchaza umuntu ovezwe esigatsheni sama-21(2)(a);
- “**umnikazi**” uchaza umuntu ngokomthetho onelungelo lokuba nendawo ekhethekile futhi ohlala kuyona, kubandakanya kodwa kungacini ngomnikazi weyunithi esesigcemeni, umnikazi wamasheya enkampanini edayisa amasheya enobunikazi bomhlaba kanye nonelungelo lokuhlala ohlelweni lwezezindlu lwabantu asebethatha umhlala phansi ; 45
- “**umuntu**” ubandakanya inhlango, umhlanganyeli, umfelandawonye, inkampani, igatsha elizimele noma likahulumeni kanye nabamele lowo muntu, abalandela esikhundleni kanye nokudluliselwe kobona; 50
- “**ukulandela isiyalelo**” kuchaza isiyalelo esilandelwayo esikhishwe ngokwemigomo yesigaba sama-36;
- “**indawo ekhethekile**” ichaza indawo ohlelweni lomphakathi ekhishelwe eceleni ukuze kuhlalwe kuyona noma ibe nobunikazi ngokukhethekile, ayibandakanyi indawo yomphakathi 55
- “**okunqunywe**” kuchaza okunqunywe ngesimiso somthetho esenziwe ngaphansi kwalo Mthetho;
- “**i-Public Finance Management Act**” ichaza i-*Public Finance Management Act, 1999 (Act No. 1 of 1999)*;

“**regulation**” means a regulation made in terms of section 29;
“**scheme governance documentation**” means any rules, regulations, articles, constitution, terms, conditions or other provisions that control the administration or occupation of private areas and common areas in a community scheme, and
“**scheme governance provision**” has a corresponding meaning; 5
“**Service**” means the Community Schemes Ombud Service established by section 3; and
“**this Act**” includes the regulations.

Chapter 2

Community Schemes Ombud Service 10

Purpose of Act

2. The purpose of this Act is to provide for—
- (a) the establishment of the Service;
 - (b) the functions, operations and governance of the Service; and
 - (c) a dispute resolution mechanism in community schemes. 15

Establishment of Service

3. (1) There is hereby established a juristic person to be known as the Community Schemes Ombud Service.
- (2) The Service operates as a national public entity listed in terms of the Public Finance Management Act with its executive authority vested in the Minister. 20
- (3) The Service must establish a national head office and, where necessary, regional offices.
- (4) The provisions of the Public Finance Management Act apply to the Service.

Functions of Service

4. (1) The Service must— 25
- (a) develop and provide a dispute resolution service in terms of this Act;
 - (b) provide training for conciliators, adjudicators and other employees of the Service;
 - (c) regulate, monitor and control the quality of all sectional titles scheme governance documentation and such other scheme governance documentation as may be determined by the Minister by notice in the *Gazette*; and 30
 - (d) take custody of, preserve and provide public access electronically or by other means to sectional title scheme governance documentation and such other scheme governance documents as may be determined by the Minister by notice in the *Gazette*. 35
- (2) In performing its functions the Service—
- (a) must promote good governance of community schemes;
 - (b) must provide education, information, documentation and such services as may be required to raise awareness to owners, occupiers, executive committees and other persons or entities who have rights and obligations in community schemes, as regards those rights and obligations; 40
 - (c) must monitor community scheme governance; and
 - (d) may generally, deal with any such matters as may be necessary to give effect to the objectives of this Act.
- (3) The Service acts through its Board. 45

- “**isimiso somthetho**” sichaza isimiso somthetho esenziwe ngokwemigomo yesigaba sama-29;
- “**imiqulu yokungamela uhlelo**” ichaza imithetho, izimiso zomthetho, izigaba zomthetho, umthethosisekelo, imigomo, imibandela noma eminye imibandela elawula ezokuphatha noma ukuhlala ezindaweni ezikhethekile kanye nasezindaweni zomphakathi ohlelweni lomphakathi futhi 5
- “**umbandela wokungamele uhlelo**” unencazelo efanayo; futhi
- “**uPhiko**” luchaza uPhiko Oluphenya Ngezikhhalazo Zezinhlelo Zomphakathi olusungulwe ngesigaba sesi-3;
- “**lo Mthetho**” ubandakanya izimiso zomthetho. 10

Isahluko 2

UPhiko Oluphenya Ngezikhhalazo Zezinhlelo Zomphakathi

Injongo yoMthetho

2. Injongo yalo Mthetho ukuhlinzekela—
- (a) ngokusungula uPhiko; 15
- (b) ngemisebenzi eqhutshwayo nokusingatha; kanye
- (c) nekhambi lokuxazulula izingxabano ezinhlelweni zomphakathi.

Ukusungulwa koPhiko

3. (1) Ngakho-ke kuzosungulwa uphiko olungamangalelwa futhi lumangalele oluzobizwa ngokuthi UPhiko Oluphenya Ngezikhhalazo Zezinhlelo Zomphakathi. 20
- (2) UPhiko lusebenza njengohlaka lukahulumeni kazwelonke olusohlwini lwemigomo ye-*Public Finance Management Act* negunya lalo leziphathimandla elithweswe uNgqongqoshe.
- (3) UPhiko kufanele lusungule ikomkhulu likazwelonke futhi, uma kunesidingo, lamahhovisi ezifundazwe 25
- (4) Imibandela ye-*Public Finance Management Act* iyasebenza oPhikweni.

Imisebenzi yoPhiko

4. (1) UPhiko kufanele—
- (a) luthuthukise futhi luhlinzekele ngosizo lwesinqumo sengxabano ngokwemigomo yalo Mthetho; 30
- (b) luhlinzekele ngokuqeqesha abahluleli ababhekele ukubuyisana kanye nabanye abasebenzi boPhiko;
- (c) luqaphe futhi lulawule izinga layo yonke imiqulu yokungamela uhlelo kanye neminye imiqulu yokungamela uhlelo enganqunywa uNgqongqoshe ngesaziso kuSomqulu; futhi 35
- (d) lunakekele, lugcine futhi luhlinzekele ngokufinyelela komphakathi ngeleletronikhi noma ngezinye izindlela emiqulwini yokusingatha izigceme ezigcemeni kanye nakweminye imiqulu yokungamela uhlelo enganqunywa uNgqongqoshe ngesaziso kuSomqulu. 40
- (2) Uma lenza imisebenzi yalo uPhiko—
- (a) kufanele lukhuthaze ukungamela izinhlelo zomphakathi ngendlela efanele;
- (b) kufanele lihlinzekele ngezemfundo, ulwazi, imiqulu nolunye usizo alungadingeka ukuze kuqwashiswe abanikazi, abahlali, amakomidi eziphathimandla kanye nabanye abantu noma izinhlelo ezinamalungelo nezibophezelo ezinhlelweni zomphakathi, mayelana nalawo malungelo nezibophezelo; — 45
- (c) kufanele liqaphe ukunganyelwa kohlelo lomphakathi; futhi
- (d) ngokujwayelekile, lingadingida izindaba ezifana nalezi ngendlela efanele ukuze kwenziwe izinjongo zalo Mthetho.
- (3) UPhiko lusebenza ngeBhodi lalo. 50

Mandate

5. (1) The Minister must conclude a written mandate with the Service as soon as possible, but not later than six months after the appointment of the Board.
- (2) The mandate must—
- (a) contain the operational and performance indicators against which the performance of the Service is measured; 5
 - (b) contain specific service delivery targets that the Service must attain; and
 - (c) contain directions regarding the utilisation of any surplus revenue.
- (3) The mandate must deal with any other matter that the Minister and the Service may agree on. 10
- (4) The mandate must be reviewed every five years or such shorter period as the Minister may determine.
- (5) The mandate must be consistent with this Act and other relevant legislation.

Board of Service

6. (1) There is hereby established a Board to be known as the Board of the Service. 15
- (2) The Board is responsible for the management and governance of the Service.
- (3) The Board consists of—
- (a) two executive members; and
 - (b) seven non-executive members.
- (4) The Minister must appoint the chairperson and deputy chairperson of the Board from the non-executive members of the Board. 20
- (5) The Board may designate any other non-executive member of the Board to act as chairperson if both the chairperson and the deputy chairperson are absent or unable to perform their functions.

Appointment of members of Board

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7. (1) The Minister must by notice in the *Gazette* and two national newspapers circulating in the Republic invite all interested persons to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as non-executive members of the Board.
- (2) The Minister must appoint a nomination committee consisting of not more than seven persons, two of whom must be chairpersons of the relevant parliamentary committees in each house or their delegates, to make recommendations to the Minister for the appointment of the non-executive members of the Board. 30
- (3) In establishing a nomination committee, the Minister must ensure that the committee is broadly representative. 35
- (4) The nomination committee, in making a recommendation to the Minister, must consider—
- (a) the skills, knowledge and experience of a candidate in areas of—
 - (i) risk management;
 - (ii) financial management; 40
 - (iii) dispute resolution in community schemes;
 - (iv) public education and training;
 - (v) management of community schemes;
 - (vi) community scheme governance documentation; or
 - (vii) development of community schemes; and 45
 - (b) the need for representation of historically disadvantaged persons.
- (5) If the recommendation of the nomination committee does not contain a suitable person or the required number of suitable persons, the Minister may call for further nominations in the manner set out in subsection (1).
- (6) The Minister must, within 30 days after such appointment, publish the names of the members so appointed and the date of commencement of their terms of office in the *Gazette*. 50

Igunya

5. (1) UNgqongqoshe kufanele aphothule igunya elibhalwe phansi noPhiko ngokushesha, kodwa zingakapheli izinyanga eziyisithupha ngemuva kokuqoka iBhodi.
- (2) Igunya kufanele—
- (a) libe nezinkomba zokusebenza nezindlela yokuhubha umsebenzi lapho kuzokalwa khona indlela uPhiko oluqhuba ngayo umsebenzi; 5
- (b) libe nokuphokophelwe ekunikezeleni ngezidingo okufanele kufezwe uPhiko; futhi
- (c) libe nemiyalelo emayelana nokusebenzisa imali eyinsalela.
- (3) Igunya kufanele libheke noma oluphi udaba uNgqongqoshe kanye noPhiko abangavumelana ngalo. 10
- (4) Igunya kufanele libuyekwe njalo emva kweminyaka emihlanu noma esikhathini esifishane esinganqunywa uNgqongqoshe.
- (5) Igunya kufanele lihambisane nalo Mthetho kanye neminye imithetho eshayiwwe eqondene. 15

IBhodi loPhiko

6. (1) Ngakho-ke kuzosungulwa iBhodi elizobizwa ngokuthi iBhodi loPhiko.
- (2) IBhodi libhekele ukusingatha kanye nokungamela uPhiko.
- (3) IBhodi lakhiwe—
- (a) amalungu amabili eziphathimandla; kanye 20
- (b) namalungu ayisikhombisa okungewona eziphathimandla.
- (4) UNgqongqoshe kufanele aqoke usihlalo weBhodi kanye nephini likasihlalo kumalungu angezona iziphathimandla zeBhodi.
- (5) IBhodi lingakhethe noma eliphi ilungu okungelona neziphathimandla zeBhodi ukuba lisebenze njengosihlalo uma bobabili usihlalo kanye nephini likasihlalo ukuba bengakwazi ukwenza imisebenzi yabo. 25

Ukuqoka amalungu eBhodi

7. (1) UNgqongqoshe ngesaziso kuSomqulu kanye nasemaphandabeni amabili kazwelonke afinyelele eRiphabhuliki kufanele ameme abantu abanentshisekelo, esikhathini futhi nangendlela evezwe isaziso, ukuba bahambise amagama abantu okufanele baqokwe njengamalungu okungewona eziphathimandla zeBhodi. 30
- (2) UNgqongqoshe kufanele aqoke ikomidi elizophakamisa amagama abantu elakhiwe abantu abangadlulile kwabayisikhombisa, ababili kubona kufanele babe ngosihlalo bamakomidi aqondene ephalamende endlini ngayinye noma labo ababanikeze amandla ukuba lenze izincomo kuNgqongqoshe zokuqoka amalungu okungewona eziphathimandla zeBhodi. 35
- (3) Ngesikhathi esungula ikomidi elizophakamisa amagama abantu, uNgqongqoshe kufanele aqikelele ukuthi leli komidi limele abantu ngokubanzi.
- (4) Ikomidi eliphakamisa amagama abantu, uma lenza izincomo kuNgqongqoshe kufanele libheke— 40
- (a) amakhono, ulwazi kanye nolwazi lomsebenzi kulabo abakhethiwe emikhakheni-
- (i) wokusingatha okungaholela ukuba umsebenzi ungaqhutshwa ngendlela efanele;
- (ii) ukusingatha ezezimali; 45
- (iii) ukunquma ngengxabano ezinhlelweni zomphakathi;
- (iv) ezemfundo emphakathini kanye nezokuqeqesha;
- (v) ukusingatha izinhlelo zomphakathi;
- (vi) imiqulu yokungamela uhlelo lomphakathi; noma
- (vii) ukuthuthukisa izinhlelo zomphakathi; kanye 50
- (b) nesidingo sokumela abantu ababencishwe amathuba phambilini.
- (5) Uma isincomo sekomidi eliphakamisa amagama abantu singenalo igama lomuntu ofanele noma inani labantu abafanele, uNgqongqoshe angaphinda acele ukuba kuphakanyiswe amanye amagama abantu ngendlela ebekwe esigatshaneni soku-(1).
- (6) UNgqongqoshe, zingakapheli izinsuku ezingama-30 ngemuva kokuwaqoka, kufanele ashicilele amagama amalungu aqokiwe kanye nosuku azoqala ngalo umsebenzi, ngesaziso kuSomqulu. 55

- (7) A non-executive member of the Board—
- (a) holds office for a period not exceeding three years and may be reappointed on expiry of his or her term;
 - (b) may not serve for more than two consecutive terms of office;
 - (c) is appointed according to the terms and conditions determined by the Minister; 5
 - (d) must be paid from the revenue of the Service such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance, taking into consideration regulations and guidelines issued by the Minister for the Public Service and Administration and the National Treasury; and 10
 - (e) is appointed on a part-time basis.
- (8) The Minister must appoint at least five non-executive members of the first Board for a period not exceeding three years.
- (9) Any vacancy occurring in the Board must be filled in the same manner as the vacating member was appointed. 15
- (10) The executive members of the Board are appointed in terms of section 14.

Functions of Board

8. The Board must—
- (a) implement the mandate contemplated in section 5 and any strategic plan of the Service in order to achieve the objectives of the Service; 20
 - (b) make decisions on behalf of the Service and ensure that these decisions are carried out;
 - (c) provide guidance to the chief ombud in the performance of his or her functions in terms of this Act; 25
 - (d) notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Service; and
 - (e) refer to the Minister any matter concerning the adverse functioning of the Service.

Disqualification from membership of Board 30

9. A person may not be appointed as or remain as a member of the Board, as the case may be, if that person—
- (a) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
 - (b) has been declared by a competent court to be mentally ill; 35
 - (c) has been convicted, in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
 - (d) has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993, took effect, and sentenced to imprisonment without the option of a fine; 40
 - (e) has been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
 - (f) is otherwise disqualified from serving as a member of a board in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
 - (g) has or acquires an interest in a business or enterprise which may conflict or interfere with the proper performance of his or her functions as a member of the Board. 45

Resignation and removal from office

10. (1) A member of the Board may resign by giving to the Minister—
- (a) one month's written notice; or 50
 - (b) less than one month's written notice, with the approval of the Minister.
- (2) The Minister may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the Board from office—

- (7) Ongelona ilungu leziphathimandla zeBhodi—
- (a) ubamba isikhundla isikhathi esingadlulile eminyakeni emithathu futhi angaphinde aqokwe uma sekuphele isikhathi sesikhundla sakhe;
 - (b) ngeke asebenze izikhawu ezidlulile kwezimbili zilandelana;
 - (c) uqokwa ngokulandela imigomo kanye nemibandela enqunywe uNgqongqoshe; 5
 - (d) kufanele akhokhelwe ngemali yoPhiko umholo kanye nezibonelelo ezinganqunywa uNgqongqoshe ngokuxoxisana noNgqongqoshe Wezezimali, ngokubheka izimiso zomthetho kanye nemihlahlandlela ekhishwe uNgqongqoshe Wezemisebenzi Kahulumeni Nokuphathwa Kwayo kanye Nomnyango Wezimali Zikahulumeni Zikazwelonke; futhi 10
 - (e) uqokwa ngokungagcwele.
- (8) UNgqongqoshe kufanele aqoke okungenani amalungu ayisihlanu angezona iziphathimandla zeBhodi awaqokele isikhathi esingadlulile eminyakeni emithathu.
- (9) Isikhala esivelayo eBhodini kufanele sigcwaliswe ngendlela efanayo naleyo yokuqokwa kwelungu eselishiyayo. 15
- (10) Amalungu eziphathimandla zeBhodi aqokwa ngokwemigomo yesigaba se-14.

Imisebenzi yeBhodi

8. IBhodi kufanele—

- (a) lisebenzise igunya elivezwe esigatsheni sesi-5 kanye nohlu lwamasu oPhiko ukuze lufeze izinjongo zoPhiko; 20
- (b) lithathe izinqumo zoPhiko futhi liqikelele ukuthi lezi zinqumo ziyalandelwa.
- (c) lihlinzekele ngomhlahlandlela kumphenyi omkhulu wezikalazo ozimele ngendlela aqhuba ngayo imisebenzi yakhe ngokwemigomo yalo Mthetho;
- (d) lazise uNgqongqoshe ngokushesha mayelana nodaba olungavimba noma lube nomthelela ekuzuzeni izinjongo noma okuphokophelwe ngemali yoPhiko; futhi 25
- (e) lidlulisele kuNgqongqoshe noma oluphi udaba oluthinta kakhulu ukusebenza koPhiko.

Abangakulungele ukuba amalungu eBhodi

30

9. Umuntu angeke aqokwe noma aqhubeke njengelungu leBhodi, noma okunye kwalokhu, uma lowo muntu—

- (a) emenyazelwe inkantolo njengosehlulekile ukukhokha izikweletu zakhe noma ehluleka ukukhokha izikweletu futhi lokhu kuhluleka kwakhe ukukhokha izikweletu kuholele ukuba impahla yakhe idliwe; 35
- (b) emenyazelwe inkantolo ukuthi akaphilile ngokwengqondo;
- (c) elahlwe icala, eRiphabhuliki noma kwenye indawo, lokweba, ukukhwabanisa, ukwenza imifanekiso yokukhohlisa, ukuqamba amanga efungile noma elinye icala eliphathelene nokungathembeki;
- (d) walahlwa elinye icala, eRiphabhuliki noma kwenye indawo, elenziwa ngemuva kokuqala ukusebenza koMthethosisekelo waseRiphabhuliki yaseNingizimu Afrika, we-1993, wagwetshwa ngokuboshwa wanganikezwa ithuba lokuba akhokhe inhlawulo; 40
- (e) wasuswa noma esuswa esikhundleni ngesizathu sokungaziphathi ngendlela efanele okuphathelene nokukhwabanisa noma ukuphatha budedengu izimali; 45
- (f) engafanele ukusebenza njengelungu leBhodi ngokwemigomo ye-*Companies Act, 2008 (Act No. 71 of 2008)*; noma
- (g) ethole noma ethola inzuzo ebhizinisini noma embonini, engashayisana noma igxambukele ekuqhubeni ngendlela efanele imisebenzi yakhe njengelungu leBhodi. 50

Ukusula kanye nokukhishwa esikhundleni

10. (1) Ilungu leBhodi lingasula ngokunikeza uNgqongqoshe—

- (a) isaziso esibhaliwe senyanga eyodwa; noma
- (b) isaziso esibhaliwe esingaphansi kwenyanga eyodwa, esigunyazwe uNgqongqoshe. 55

(2) UNgqongqoshe, ngokwe-*Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)*, angakhipha ilungu leBhodi esikhundleni—

- (a) if such member becomes disqualified in terms of section 9;
- (b) if such member acted contrary to this Act;
- (c) if such member failed to disclose an interest or withdraw from a meeting as required;
- (d) if such member has failed to perform the functions of his or her office efficiently and effectively; 5
- (e) on the ground of misconduct, incapacity or incompetence; or
- (f) if such member is absent from three consecutive meetings without leave of the chairperson.

Fiduciary duty and disclosure 10

11. (1) A member of the Board must, upon appointment, submit to the Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest in community schemes and all other financial interests.

(2) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest. 15

(3) If a member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he or she must immediately, but not later than three months after acquiring that interest in writing declare that fact to the Minister and the Board. 20

(4) If an organisation or enterprise in which a member of the Board has an interest contemplated in this section is requested to offer its services to the Service, or is in the process of concluding any agreement with the Service, including an agreement in respect of the alienation of land to the Service, the organisation or enterprise must immediately, in writing, declare the interest of such member to the Minister and the Board. 25

(5) A member of the Board must at all times exercise the utmost good faith, honesty and integrity, care and diligence in performing his or her functions as a member of the Board, unless excused in writing by the chairperson or deputy chairperson of the Board, and, in furtherance of these functions and without limiting their scope, must— 30

- (a) take reasonable steps to inform himself or herself about the Service, its business and activities and the circumstances in which it operates;
- (b) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions; 35
- (c) attend all meetings of the Board, unless excused in writing by the chairperson or deputy chairperson of the Board;
- (d) exercise an active and independent opinion with respect to all matters to be decided by the Board; 40
- (e) exercise due diligence in relation to any business of, and necessary preparation for and attendance at meetings of, the Board or any committee to which such member of the Board is appointed;
- (f) comply with any internal code of conduct that the Service may establish for members of the Board; 45
- (g) not engage in any activity that may undermine the integrity of the Service;
- (h) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member of the Board; and
- (i) treat any confidential matters relating to the Service, that is obtained in his or her capacity as a member of the Board, as strictly confidential and not divulge them to anyone without the authority of the Service or as required as part of that member's official functions as a member of the Board. 50

(6) This section must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body, and criminal or civil proceedings that may be instituted in respect of such a liability. 55

(7) A member who contravenes or fails to comply with subsection (5) may be charged with misconduct.

- (a) uma lelo lungu lingasafanele ngokwemigomo yesigaba sesi-9;
- (b) uma lelo lungu lenze okushayisana nalo Mthetho;
- (c) uma lelo lungu lihlulekile ukudalula inzuzo noma lihoxa emhlanganweni njengoba kufanele;
- (d) uma lelo lungu lihlulekile ukwenza imisebenzi ngokwesikhundla salo ngendlela ebonakalayo futhi eyimpumelelo; noma 5
- (e) ngesizathu sokungaziphathi kahle, ukuhluleka noma ukushodelwa ulwazi lomsebenzi.
- (f) uma lelo lungu lingekho emhlanganweni emithathu kulandelana ngaphandle kwemvume kasihlalo. 10

Ukuthembana kanye nokudalula

11. (1) Ilungu leBhodi, ngemuva kokuqokwa, kufanele lihambise kuNgqongqoshe naseBhodini isitatimende esibhaliwe lapho liveza khona uma noma ngabe lelo lungu linenzuzo eliyithola ngqo noma ngenye indlela ezinhlelweni zomphakathi kanye nazo zonke izinzuzo elizitholayo. 15

(2) Ilungu leBhodi akufanele libe khona, noma libe ingxenye, ezingxoxweni noma uma kuthathwa isinqumo odabeni olusezithebeni zeBhodi uma lelo lungu noma umndeni walo, elisebenzisana nawo kwezamabhizinisi noma elibambisene naye kunemali ayitholayo noma ayithola ngenye indlela.

(3) Uma ilungu leBhodi lithola inzuzo okungenzeka kube ile nzuzo evezwe kulesi sigaba, ngokushesha, kodwa zingakapheli izinyanga ezintathu ngemuva kokuthola leyo nzuzo kufanele libhale incwadi eveza lokho kuNgqongqoshe naseBhodini. 20

(4) Uma inhlangano noma imboni ilungu elithola khona inzuzo evezwe kulesi sigaba iceliwe ukuba inikezele ngosizo oPhikweni, noma isohlelweni lokwenza isivumelwano noPhiko, kubandakanya isivumelwano esimayelana nokudlulisela ubunikazi bomhlaba oPhikweni, enhlanganweni noma embonini ngokushesha kufanele, ibhale, iveze inzuzo etholwa ilungu kuNgqongqoshe kanye naseBhodini. 25

(5) Ilungu leBhodi kufanele ngaso sonke isikhathi lisebenze ngokukhulu ukuthembeka, ngeqiniso futhi ngobuqotho, ngokucophelela futhi likhuthale ekwenzeni imisebenzi yalo njengelungu leBhodi, futhi ukwengeza kulo msebenzi ngaphandle kokukhawula izinga lalo lokusebenza, kufanele— 30

- (a) lithathe izinyathelo ezifanele ukuthola ulwazi ngoPhiko, imisebenzi yalo kanye nelikwenzayo futhi nangezimo elisebenza ngaphansi kwazo;
- (b) lithathe izinyathelo ezifanele, ezinhlelweni zalo zeBhodi, ukuze lithole imininingwane eyanele kanye nezeluleko mayelana nazo zonke izindaba okufanele iBhodi linqume ngazo ukuze lithathe izinqumo eziphusile futhi ezizwakalayo; 35
- (c) lithamele imihlangano yeBhodi njalo ngaphandle uma likhishiwe ngencwadi usihlalo noma iphini likasihlalo weBhodi;
- (d) lisebenzise umbono ophusile futhi ozimele mayelana nezindaba ezinqunywa iBhodi; 40
- (e) lisebenze ngenkuthalo efanele odabeni kanye nakumalungiselelo okuthamela imihlangano yeBhodi noma yamanye amakomidi lelo lungu leBhodi eliqokelwe wona;
- (f) lilandele inqubo yangaphakathi yokuziphatha yamalungu eBhodi engasungulwa uPhiko; 45
- (g) lingazihlanganisi nezenzo ezingadicilela phansi ubuqotho boPhiko;
- (h) lingasebenzisi ngokungafanele isikhundla salo njengelungu noma imininingwane eliyitholile ngokwesikhundla salo njengelungu leBhodi; futhi
- (i) ligcine izindaba eziyimfihlo zoPhiko, elizithole ngegunya lalo njengelungu leBhodi, zibe imfihlo futhi zingadalulwa kunoma ubani ngaphandle kwegunya loPhiko noma ngokudingekayo njengengxenye yomsebenzi osemthethweni welungu njengelungu leBhodi. 50

(6) Lesi sigaba kufanele sichazwe njengesengezayo, hhayi njengesishayisana nomthetho ophathelene nobulelesi noma icala eliphakathi kwabantu lelungu lomkhandlu ongamele, kanye nezinyathelo zomthetho zezobulelesi noma zecala eliphakathi kwabantu ezingathathelwa lelo cala. 55

(7) Ilungu elaphula noma elihluleka ukulandela isigatshana sesi- (5) lingase libekwe icala lokungaziphathi kahle.

Committees

12. (1) The Board may establish one or more committees to perform such functions as the Board may determine.
- (2) The Board must—
- (a) assign members of the Board to serve on a committee, based on their knowledge and skills; and 5
 - (b) determine the—
 - (i) terms of reference of a committee;
 - (ii) composition of a committee;
 - (iii) tenure of members on a committee; 10
 - (iv) reporting mechanisms of a committee; and
 - (v) methods and reasons for removal of a member from a committee.
- (3) Non-executive members of the Board must make up the majority of the members of a committee.
- (4) The Board may appoint specialists to a committee for their technical support. 15
- (5) Unless specially delegated by the Board, a committee has no decision-making powers and can only make recommendations to the Board.
- (6) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures.
- (7) Each committee must be chaired by a non-executive member of the Board. 20

Delegation and assignment of functions by Board

13. (1) The Board may, by a resolution passed by 75 per cent of its members—
- (a) delegate any of its powers and assign any of its functions to—
 - (i) any member of the Board;
 - (ii) any committee established in terms of section 12; 25
 - (iii) the chief ombud;
 - (iv) the chief financial officer; or
 - (v) any employee of the Service; and
 - (b) amend or revoke such delegation or assignment.
- (2) Notwithstanding a delegation or assignment contemplated in subsection (1), 30 nothing prevents the Board from exercising or performing any power or duty so delegated or assigned.
- (3) (a) Any delegation or assignment contemplated in subsection (1)—
 - (i) may be made subject to such conditions as the Board may determine; and
 - (ii) must be communicated to the delegatee or assignee in writing. 35
- (b) The written communication contemplated in paragraph (a)(ii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the function must be performed.
- (4) The Board may not delegate—
- (a) the power to appoint the chief ombud; and 40
 - (b) its role on—
 - (i) the appointment of the chief financial officer;
 - (ii) the implementation of the mandate; and
 - (iii) the implementation of any strategic plan of the Service.

Appointment of chief ombud and chief financial officer 45

14. (1) The Board must, with the approval of the Minister, appoint a chief ombud and a chief financial officer to assist the Service in meeting its objectives.
- (2) The Board must invite applications for the posts of chief ombud and chief financial officer by publishing advertisements in the media.
- (3) The appointment must be made after following a transparent and competitive 50 process.

Amakomidi

12. (1) IBhodi lingasungula ikomidi elilodwa noma angaphezulu ukuze enze imisebenzi enganqunywa iBhodi.
- (2) IBhodi kufanele—
- (a) liqoke amalungu eBhodi azosebenza ekomidini, ngokolwazi nangamakhono 5
alo;
- (b) linqume—
- (i) imikhawulo enqunyelwe ukusebenza kwekomidi;
- (ii) ukwakheka kwekomidi;
- (iii) ukuphela kwesikhathi esinqunyiwe sokuba amalungu ekomidini; 10
- (iv) izindlela zokubika ekomidini; kanye
- (v) nezindlela nezizathu zokukhipha ilungu ekomidini.
- (3) Amalungu okungewona eziphathimandla zeBhodi kufanele kube iwona amaningi kumalungu ekomidini.
- (4) IBhodi lingaqoka ongoti ekomidini ukuze baseke ngezobuchwepheshe. 15
- (5) Ngaphandle uma kugunyazwe ngokukhethekile iBhodi, ikomidi alinawo amandla okwenza izinqumo futhi lingenza izincomo kuphela eBhodini.
- (6) Ikomidi kufanele lihlalane njalo uma kunesidingo ukuze liqhube imisebenzi yalo futhi lingazinqumela izinqubo zalo.
- (7) Ikomidi ngalinye kufanele libe nosihlalo ongelona ilungu leziphathimandla 20 zeBhodi.

Ukunikezela kanye nokudlulisela ngemisebenzi yeBhodi

13. (1) IBhodi ngesinqumo esigunyazwe ngamaphesenti angama-75 amalungu alo, linga—
- (a) nikezela ngamandla alo futhi lidlulisele neminye imisebenzi yalo ku— 25
- (i) noma eliphi ilungu leBhodi;
- (ii) noma eliphi ikomidi elisungulwe ngokwemigomo yesigaba-12;
- (iii) mphenyi omkhulu wezikhazelo ozimele;
- (iv) mphathi omkhulu wezezimali; noma
- (v) noma omuphi umsebenzi woPhiko; futhi 30
- (b) chibiyela noma lichithe okunikezelwe noma okudluliselwe.
- (2) Nakuba kunokunikezela noma ukudlulisela okuvezwe esigatshaneni soku-(1), akukho okuvimbela iBhodi ukuba lisebenzise noma lenze amandla noma umsebenzi eliwunikezele noma eliwudlulisele.
- (3) (a) Ukunikezela noma ukudlulisela okuvezwe esigatshaneni soku-(1)— 35
- (i) kungenziwa ngokulandela imibandela enganqunywa iBhodi; futhi
- (ii) kufanele kuxoxwe kubhalwe phansi nonikezelwe noma okudluliselwe kuyena.
- (b) Okubhalwe phansi okuvezwe endimeni (a)(ii) kufanele kube neminingwane egcwele yezindaba ezinikezelwe noma ezidluliselwe kanye nemibandela oku- 40 ngasetshenziswa ngayo amandla noma okufanele kwenziwe ngayo imisebenzi.
- (4) IBhodi ngeke linikezele—
- (a) ngamandla okuqoka umphenyi omkhulu wezikhazelo ozimele; futhi
- (b) ngomsebenzi walo woku- 45
- (i) qoka umphathi omkhulu wezezimali;
- (ii) sebenzisa igunya; kanye
- (iii) nokusebenzisa uhlelo lwamasu oPhiko.

Ukuqoka umphenyi omkhulu wezikhazelo ozimele kanye nomphathi omkhulu wezezimali

14. (1) IBhodi ngokugunyazwa uNgqongqoshe, kufanele liqoke umphenyi omkhulu 50 wezikhazelo ozimele kanye nomphathi omkhulu wezezimali ukuze basize uPhiko ukuhlangabezana nezinjongo zalo.
- (2) IBhodi kufanele linxenxe izicelo zezikhazelo zomsebenzi womphenyi omkhulu wezikhazelo ozimele kanye nomphathi omkhulu wezezimali ngokuba lishicilele izikhangiso kwabezindaba. 55
- (3) Kufanele kuqashwe ngemuva kokulandela uhlelo oluvulelekile futhi olungumqhudlwano.

- (4) A person appointed as chief ombud or chief financial officer must—
- (a) have suitable qualifications and experience relevant to the functions of the Service;
 - (b) have suitable expertise in and understanding of community scheme governance; and
 - (c) not be disqualified as contemplated in section 9.
- 5

Conditions of appointment of chief ombud and chief financial officer

15. (1) The appointment of the chief ombud and the chief financial officer is subject to the conclusion of an annual performance contract with the Board and in accordance with applicable legislation. 10
- (2) The chief ombud and the chief financial officer are appointed for a term of five years and may be reappointed for one or more additional terms of five years, subject to the approval of the Minister.
- (3) (a) The chief ombud holds office on such terms and conditions as the Board may determine, in consultation with the Minister, the Minister of Finance and the Minister for the Public Service and Administration. 15
- (b) The chief financial officer holds office on terms and conditions determined by the chief ombud within the limits determined by the Board and in accordance with applicable legislation.
- (4) The chief ombud and the chief financial officer are executive members of the Board. 20
- (5) The chief ombud and the chief financial officer are entitled to a remuneration package determined by the Board.
- (6) The chief ombud and the chief financial officer are accountable to the Board.

Removal of chief ombud and chief financial officer from office 25

16. (1) The Board must, in consultation with the Minister and subject to applicable labour legislation, remove the chief ombud and chief financial officer from office—
- (a) on account of misconduct;
 - (b) for failing to perform the duties connected with that office diligently; or
 - (c) if the chief ombud or the chief financial officer becomes subject to any disqualification contemplated in section 9. 30
- (2) The chief ombud and the chief financial officer may resign on written notice of at least 30 days to the chairperson.
- (3) The Board may suspend the chief ombud or the chief financial officer during misconduct proceedings against him or her. 35

Acting chief ombud and chief financial officer

17. (1) The Board may in writing appoint any senior employee of the Service to act as chief ombud or chief financial officer if the chief ombud or chief financial officer—
- (a) is temporarily unable to perform his or her duties in terms of this Act; or
 - (b) has vacated or been removed from office and a new chief ombud or chief financial officer, as the case may be, has not yet been appointed. 40
- (2) An acting chief ombud or acting chief financial officer may exercise all the powers and must perform all the duties of the chief ombud or chief financial officer, as the case may be.

- (4) Umuntu oqokwe njengomphenyi omkhulu wezikhhalazo ozimele noma umphathi omkhulu wezezimali kufanele—
- (a) abe neziqo ezifanele kanye nolwazi lomsebenzi oluhambisana nemisebenzi yoPhiko;
 - (b) abe nekhono elifanele futhi abe nokuqonda ukungamela uhlelo lomphakathi; futhi
 - (c) kungabi ongafanele njengoba kuvezwe esigatsheni sesi-9.

Imibandela yokuqoka umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali

15. (1) Ukuqoka umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali kunqike ekuphuthuleni isivumelwano sonyaka sendlela yokuqhuba umsebenzi weBhodi.

(2) Umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali baqokwa isikhathi esiyiminyaka emihlanu futhi bangaphinde baqokwe esinye isikhathi esengeziwe esiyithemu elilodwa noma engaphezulu eminyaka emihlanu, ngokugunyazwa uNgqongqoshe.

(3) (a) Umphenyi omkhulu wezikhhalazo ozimele ubamba lesi sikhundla ngokwemigomo kanye nemibandela enganqunywa iBhodi, ngokuxoxisana noNgqongqoshe, uNgqongqoshe Wezezimali kanye noNgqongqoshe Wezemisebenzi Kahulumeni Nokuphathwa Kwayo.

(b) Umphathi omkhulu wezezimali ubamba lesi sikhundla ngokwemigomo kanye nemibandela enqunywa umphenyi omkhulu wezikhhalazo ngokwemikhawulo enqunywe iBhodi kanye nangokulandela imithetho eshayiwe esebenzayo.

(4) Umphenyi omkhulu wezikhhalazo kanye nomphathi omkhulu wezezimali bangamalungu eziphathimandla zeBhodi.

(5) Umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali banelungelo lokuthola umholo onqunywe iBhodi ngokuxoxisana noNgqongqoshe.

(6) Umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali babhekele iBhodi.

Ukukhipha esikhundleni umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali

16. (1) IBhodi, ngokuxoxisana noNgqongqoshe futhi ngokwemithetho yezabasebenzi esebenzayo, kufanele likhiphe umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali esikhundleni—

- (a) uma bengaziphethe kahle;
- (b) uma behluleka ukwenza imisebenzi ehambisana nesikhundla ngenkuthalo; noma
- (c) uma umphenyi omkhulu wezikhhalazo ozimele noma umphathi omkhulu wezezimali beba abangafanele ukuqokwa ngokuvezwe esigatsheni sesi-9.

(2) Umphenyi omkhulu wezikhhalazo ozimele kanye nomphathi omkhulu wezezimali bangasula esikhundleni ngokubhalela uSihlalo isaziso ezinsukwini ezingama-30.

(3) IBhodi lingamisa umphenyi omkhulu wezikhhalazo noma umphathi omkhulu wezezimali ngesikhathi kuqhutshwa izinyathelo zokungaziphathi kahle.

Ibamba lomphenyi omkhulu wezikhhalazo ozimele kanye nelikamphathi omkhulu wezezimali

17. (1) IBhodi lingabhala phansi liqoke noma omuphi umsebenzi osesikhundleni esiphezulu oPhikweni ukuba asebenze njengomphenyi omkhulu wezikhhalazo noma njengomphathi omkhulu wezezimali uma umphenyi omkhulu wezikhhalazo ozimele noma umphathi omkhulu wezezimali—

- (a) engeke akwazi ukwenza imisebenzi yakhe okwesikhashana ngokwemigomo yalo Mthetho; noma
- (b) eshiye phansi noma ekhishiwe esikhundleni futhi umphenyi omkhulu wezikhhalazo omusha noma umphathi wezezimali, noma omunye wabo, engakaqokwa.

(2) Ibamba lomphenyi omkhulu wezikhhalazo ozimele noma lomphathi omkhulu wezezimali lingasebenzisa wonke amandla futhi kufanele liqhube yonke imisebenzi

Functions of chief ombud

- 18.** (1) The chief ombud is the head of the administration of the Service.
(2) Subject to directives from the Board, the functions of the chief ombud are to—
- (a) manage the affairs of the Service;
 - (b) implement the policies and decisions of the Board; 5
 - (c) manage and recruit employees; and
 - (d) develop efficient, transparent and cost-effective administrative systems.

Functions of chief financial officer

- 19.** The functions of the chief financial officer are to—
- (a) manage risk of the Service's projects; 10
 - (b) assist the Board with regard to compliance with its duties in terms of the Public Finance Management Act;
 - (c) ensure that the Service has adequate income and liquidity to perform its functions;
 - (d) ensure that money payable to the Service is properly collected; 15
 - (e) ensure that there is adequate control over the assets acquired, managed or controlled by the Service;
 - (f) ensure that the liabilities incurred on behalf of the Service are properly authorised;
 - (g) ensure efficiency and economy of operations and avoidance of fruitless and wasteful expenditure; 20
 - (h) ensure that the financial system is in line with generally accepted accounting practices and procedures;
 - (i) ensure an adequate budgeting and financial system; and
 - (j) provide sound financial control systems for the Service. 25

Delegation by chief ombud and chief financial officer

- 20.** (1) The chief ombud and the chief financial officer may delegate to an employee of the Service any of their powers and assign any of their duties.
(2) Any delegation contemplated in subsection (1)—
- (a) may be made subject to such conditions as the Board may determine; 30
 - (b) must be communicated to the delegatee in writing;
 - (c) may be amended or withdrawn in writing by the chief ombud or the chief financial officer, as the case may be.
- (3) Notwithstanding a delegation or assignment contemplated in subsection (1), the chief ombud or the chief financial officer, as the case may be, is not divested of any power or duty so delegated or assigned. 35

Staff of Service

- 21.** (1) The Board must determine the staff establishment necessary to enable the Service to perform its functions.
(2) The chief ombud must, for each regional office established, appoint— 40
- (a) an ombud and a deputy ombud with—
 - (i) suitable qualifications and experience necessary to administer that office under the supervision of the chief ombud; and

yomphenyi omkhulu wezikhhalazo noma yomphathi omkhulu wezezimali, noma omunye wabo.

Imisebenzi yomphenyi omkhulu wezikhhalazo

18. (1) Umphenyi omkhulu wezikhhalazo ozimele uyinhloko yezokuphathwa koPhiko.
 (2) Ngokweziyalo zeBhodi, imisebenzi yomphenyi omkhulu wezikhhalazo uku— 5
- (a) singatha izindaba zoPhiko;
 - (b) sebenzisa inqubomgomo kanye nezinqumo zeBhodi;
 - (c) singatha kanye nokuqasha abasebenzi; kanye
 - (d) nokuthuthukisa ulwazi lomsebenzi, ukuvuleleka kanye nezindlela zokuphatha ezingambi eqolo. 10

Imisebenzi yomphathi omkhulu wezezimali

19. Imisebenzi yomphathi omkhulu wezezimali uku—
- (a) singatha okungase kuholele ukuba umsebenzi woPhiko ungaqhutshwa ngendlela efanele;
 - (b) siza iBhodi ngokulandela imisebenzi yalo ngokwemigomo ye-*Public Finance Management Act*; 15
 - (c) qikelela ukuthi uPhiko lunemali engenayo eyanele kanye nokungaguqulwa kube imali ukuze lwenze imisebenzi yalo;
 - (d) qikelela ukuthi imali ekhokhelwa uPhiko iqoqwa ngokufanele;
 - (e) qikelela ukuthi zilawulwa ngokwanele izimpahla ezitholiwe, ziyasingathwa noma zilawulwa uPhiko; 20
 - (f) qikelela ukuthi izikweletu ezidalwe uPhiko zigunyazwe ngokufanele;
 - (g) qikelela ikhono kanye nokonga emisebenzini futhi nokugwema izindleko ezingenamvuzo futhi ezichitha imali;
 - (h) qikelela ukuthi uhlelo lwezezimali luhambisana nomkhuba wokubala owamukelekile futhi ojwayelekile kanye nenqubomgomo; 25
 - (i) qikelela ukwabiwa kwemali ngokwanele kanye nohlelo lwezezimali; kanye
 - (j) nokuhlinzekela ngohlelo lokulawula ezezimali oluphusile oPhikweni.

Ukunikezela ngemisebenzi yomphenyi omkhulu wezikhhalazo kanye nomphathi omkhulu wezezimali 30

20. (1) Umphenyi omkhulu wezikhhalazo kanye nomphathi omkhulu wezezimali anganikeza futhi adlulise amandla noma imisebenzi yakhe kumsebenzi woPhiko.
 (2) Ukunikezela okuvezwe esigatshaneni soku-(1)—
- (a) kufanele kwenziwe ngokulandela imibandela enganqunywa iBhodi;
 - (b) kwaziswe onikezelwe ngencwadi ebhaliwe; 35
 - (c) kungachitshiyelwa noma kuhoxiswe ngencwadi ebhaliwe umphenyi omkhulu wezikhhalazo noma umphathi omkhulu wezezimali, noma omunye wabo; futhi
- (3) Nakuba kunikezelwa ngamandla noma kudluliswa okuvezwe esigatshaneni soku-(1), umphenyi omkhulu wezikhhalazo ozimele noma umphathi omkhulu wezezimali, noma omunye wabo, akaphucwa amandla noma imisebenzi ayinikezele noma ayidlulisele. 40

Abasebenzela uPhiko

21. (1) IBhodi kufanele linqume ngabasebenzi abadingekayo ukusiza uPhiko ukuba liqhube imisebenzi yalo.
 (2) Umphenyi omkhulu wezikhhalazo i ehovisi ngalinye lesifundazwe elisunguliwe, 45 kufanele liqoke—
- (a) umphenyi wezikhhalazo kanye nephini likamphenyi wezikhhalazo one—
 - (i) ziqu ezifanele kanye nolwazi lomsebenzi oludingekayo ukuba abhekele ukubuyisana ezingxabanweni ngaphansi kukamphenyi wezikhhalazo ozimele noma kwephini lomphenyi wezikhhalazo; futhi 50

- (ii) suitable expertise in and understanding of community scheme governance and disputes; and
- (b) full-time and part-time adjudicators with—
 - (i) suitable qualifications and experience necessary to adjudicate disputes under the supervision of an ombud or deputy-ombud; and 5
 - (ii) suitable qualifications and experience in community scheme governance; and
- (c) full-time and part-time conciliators with—
 - (i) suitable qualifications and experience necessary to conciliate in disputes under the supervision of an ombud or deputy-ombud; and 10
 - (ii) suitable qualifications and experience in community scheme governance.
- (3) The employees contemplated in subsections (1) and (2) are appointed subject to the terms and conditions determined by the chief ombud within the financial limits determined in accordance with a human resource policy approved by the Minister, which policy may make provision for non-pensionable allowances for employees. 15
- (4) The chief ombud must determine and supply each employee with a copy of the code of conduct, applicable to all members of staff of the Service and justiciable for purposes of disciplinary proceedings, to ensure—
 - (a) compliance with any applicable law;
 - (b) the effective, efficient and economical use of the resources of the Service; and 20
 - (c) the promotion and maintenance of a high standard of professional ethics.
- (5) A person in the employ of the Service becomes a member of the Government Employees' Pension Fund contemplated in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service. 25
- (6) Staff from public entities reporting to the Minister may be employed by the Service subject to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the human resource policy referred to in subsection (3).
- (7) Staff may also be transferred or seconded to the Service from the public service 30 subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the human resource policy referred to in subsection (3).

Funds of Service

- 22. (1) The funds of the Service consist of—
 - (a) money appropriated by Parliament; 35
 - (b) levies collected from community schemes with the approval of the Minister;
 - (c) fees for services rendered based on cost recovery;
 - (d) interest derived from investments of the Service;
 - (e) loans raised by the Service, subject to section 23;
 - (f) donations or contributions received by the Service with the approval of the 40 Minister; and
 - (g) subsidies and grants from organs of state.
- (2) The Service must, subject to section 23, utilise the funds to defray expenses incurred by it in the performance of its functions.

Application of Public Finance Management Act 45

23. The Service is subject to the Public Finance Management Act and its financial management, preparation and submission of budgets, preparation of financial statements, audits and annual reports, and reporting must be done in accordance with the Public Finance Management Act.

Tabling in Parliament 50

- 24. The Minister must table in Parliament the annual report of the Service—
 - (a) within 14 days after receiving the report, if Parliament is in session; or
 - (b) if Parliament is not in session, within 14 days after the commencement of the next parliamentary session.

- (ii) ziqu ezifanele kanye nolwazi lomsebenzi wokunganyelwa kohlelo lomphakathi.
- (b) abahluleli abaqashwe ngokugcwele kanye nabaqashwe nokungagcwele abane—
- (i) ziqu ezifanele kanye nolwazi oludingekayo lomsebenzi wokwahlulela ezingxabanweni ngaphansi komphenyi wezikhhalazo ozimele noma kwephini lomphenyi wezikhhalazo ; futhi 5
- (ii) ziqu ezifanele kanye nolwazi lomsebenzi wokungamela uhlelo lomphakathi.
- (c) abezokubuyisana abasebeza ngokugcwele kanye nabasebenza ngokugcwele abane— 10
- (i) ziqu ezifanele nolwazi lomsebenzi olufanele ukuze baxazulule izingxabano ngaphansi komphenyi wezikhhalazo noma ngaphansi kwephini lomphenyi wezikhhalazo; futhi
- (ii) ziqu ezifanele kanye nolwazi emsebenzini wokunganyelwa kwezinhlelo zomphakathi. 15
- (3) Abasebenzi abavezwe esigatshaneni soku-(1) nesesi-(2) baqokwa ngokwemigomo nemibandela enqunywe umphenyi omkhulu wezikhhalazo nangemikhawulo yezezimali enqunywe ngokulandela inqubomgomo yokuqashwa egunyazwe uNgqongqoshe, leyo nqubomgomo engenza umbandela wemali enqunyiwe engenayo impesheni kubasebenzi. 20
- (4) Umphenyi omkhulu wezikhhalazo ozimele kufanele anqume futhi anikeze umsebenzi ngamunye ikhophi yenqubo yokuziphatha, esebenza kumalungu abasebenzi boPhiko futhi engaxazululwa enkantolo uma kunezinyathelo zokuqondisa izigwegwe, ukuqikelela— 25
- (a) ukulandela umthetho osebenzayo;
- (b) ukusebenzisa izinsiza zoPhiko ngempumelelo, ngolwazi futhi nangokonga; kanye
- (c) nokukhuthaza nokugcina izinga eliphezulu lenkambo yokuziphatha.
- (5) Umuntu oqashwe uPhiko uba ilungu Lesikhwama Sezimpesheni Zabasebenzi Bakahulumeni esivezwe esigatsheni sesi-2 se-*Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996)*, futhi ungunya lempesheni kanye nenzuzo yomhlalaphansi njengomuntu obesebenza esikhundleni esihlukaniswe ezingxenyeni zomsebenzi kahulumeni. 30
- (6) Abasebenzi bezinhlaka zomphakathi ababika kuNgqongqoshe bangaqashwa uPhiko ngokwemibandela ye-*Labour Relations Act, 1995 (Act No. 66 of 1995)*, kanye nenqubomgomo yezokuqasha abantu eshiwo esigatshaneni sesi-(3). 35
- (7) Abasebenzi bangadluliselwa noma bafakwe oPhikweni ukuba benze umsebenzi isikhashana besuka kwahulumeni ngokwemibandela ye-*Public Service Act, 1994 (Proclamation No. 103 of 1994)*, kanye nenqubomgomo yezokuqasha abasebenzi eshiwo esigatshaneni sesi-(3). 40

Izimali zoPhiko

22. (1) Izimali zoPhiko zihlanganisa—
- (a) imali eyabiwe iPhalamende;
- (b) izinhlawulo eziqoqwe ezinhlelweni zomphakathi ezigunyazwe uNgqongqoshe; 45
- (c) imali yemisebenzi eyenziwe etholwe ngokukhokhela izindleko;
- (d) inzalo etholwe ngokutshalwa kwezimali zoPhiko;
- (e) imalimboleko etholwe uPhiko, ngokwesigaba sama-23;
- (f) iziphondo noma iminikelo etholwe uPhiko egunyazwe uNgqongqoshe kanye 50
- (g) nemali yokulekelela kanye nezibonelelo ezikhishwe izinhlaka zikahulumeni.
- (2) UPhiko ngokwesigaba sama-23, kufanele lusebenzise izimali ukukhokha izindleko oluzidalile ngokuqhuba umsebenzi walo.

Ukusebenza kwe-Public Finance Management Act

23. UPhiko ngokwe-*Public Finance Management Act* kanye nangendlela elisingatha ngayo izimali, amalungiselelo kanye nokuhambisa isabelomali, ukulungiselela izitatimende zezezimali, ukuhlolwa kwamabhuku kanye nemibiko yonyaka, kanye nokubika kufanele kwenziwe ngokulandela i-*Public Finance Management Act*. 55

Ukubeka imithetho ePhalamende

24. UNgqongqoshe kufanele abeke ePhalamende umbiko wonyaka woPhiko— 60
- (a) zingakapheli izinsuku eziyi-14 ngemuva kokuthola umbiko, uma iPhalamende lisebenza; noma
- (b) uma iPhalamende lingasebenzi, zingakapheli izinsuku eziyi-14 ngemuva kokuthola umbiko, uma iPhalamende lisebenza.

Delegation by Minister

25. (1) The Minister may delegate to the Director-General any of his or her powers or assign any of his or her functions conferred or imposed on him or her by this Act.
- (2) Any delegation contemplated in subsection (1)—
- (a) may be made subject to such conditions as the Minister may determine; 5
 - (b) must be in writing;
 - (c) may be amended or withdrawn by the Minister in writing; and
 - (d) does not prohibit the Minister from exercising that power or performing that duty.
- (3) The Minister may not delegate the power to— 10
- (a) make regulations; or
 - (b) appoint a member of the Board.
- (4) (a) The Minister may issue a directive to the Director-General regarding the delegation contemplated in subsection (1).
- (b) The Director-General must comply with the directive contemplated in paragraph (a). 15

Additional functions

26. (1) The Minister may, after consultation with the Board, authorise the Service to perform any additional function not inconsistent with this Act.
- (2) The authorisation contemplated in subsection (1) must be in writing, detailing the funding arrangements as well as the terms and conditions relating to such additional function. 20

Provision of information

27. (1) (a) The Minister may direct the Board to submit to him or her specific information. 25
- (b) The Board must comply with any directive contemplated in paragraph (a).
- (2) The Service must provide the Minister or a person authorised by the Minister with access to such books, accounts, documents and assets of the Service as the Minister may direct.
- (3) The Minister may appoint a person to investigate the affairs or financial position of the Service and compliance by the Service with this Act, and may recover from the Service the fees and disbursements incurred by that person during the investigation. 30
- (4) An individual member of the Board and an employee of the Service, must comply with any directive of the Minister contemplated in subsections (1) and (2) to the extent that they are able to do so. 35

Intervention by Minister

28. (1) The Minister may direct the Service to take any action specified by the Minister if the Service—
- (a) is in financial difficulty or is otherwise being mismanaged;
 - (b) is unable to perform its functions effectively due to dissension among Board members; 40
 - (c) has acted unfairly or in a discriminatory or inequitable manner;
 - (d) has failed to comply with any law;
 - (e) has failed to comply with any directive issued by the Minister under this Act; 45
 - or
 - (f) has obstructed the Minister, or a person authorised by the Minister, in performing a function in terms of this Act.
- (2) A directive contemplated in subsection (1) must state—
- (a) the nature of the deficiency;
 - (b) the steps which must be taken to remedy the situation; and 50
 - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken which period may not exceed six months.
- (3) If the Service fails to remedy the situation within the stated period, the Minister may, after having—
- (a) given the Service a reasonable opportunity to be heard; and 55
 - (b) afforded the Service a hearing on any submissions received,
- replace one or more members of the Board and where circumstances so require, appoint an administrator to take over the relevant function of the Service until the member or members of the Board has or have been replaced.

Ukunikezela amandla kaNgqongqoshe

25. (1) UNgqongqoshe anganikeza ngamandla akhe noma adlulise imisebenzi yakhe anikezwe yona noma athweswe yona ngalo Mthetho kuMqondisi-Jikelele.
- (2) Ukunikezela ngamandla okuvezwe esigatshaneni soku-(1)—
- (a) kufanele kwenziwe ngokulandela imibandela enganqunywa uNgqongqoshe; 5
 - (b) kubhalwe phansi;
 - (c) kungachitshiyelwa noma kuhoxiswe uNgqongqoshe ngokubhala phansi; futhi
 - (d) akuvimbeli uNgqongqoshe ukuba asebenzise lawo mandla noma aqhube lowo msebenzi.
- (3) UNgqongqoshe ngeke anikezele ngamandla— 10
- (a) okwenza izimiso zomthetho; noma
 - (b) okuqoka ilungu leBhodi.
- (4) (a) UNgqongqoshe angakhipha isiyalelo kuMqondisi-Jikelele esimayelana nokudlulisela amandla okuvezwe esigatshaneni soku-(1). 15
- (b) UMqondisi-Jikelele kufanele alandele isiyalelo esivezwe endimeni (a).

Imisebenzi eyengeziwe

26. (1) UNgqongqoshe, ngemuva kokuxoxisana neBhodi, angagunyaza uPhiko ukuba lwenze umsebenzi owengeziwe ongahambisani nalo Mthetho.
- (2) Ukugunyaza okuvezwe esigatshaneni soku-(1) kufanele kubhalwe phansi, kunikeze imininingwane yamalungiselelo okukhokha izimali kanye nemigomo 20 nemibandela ehambisana nalowo msebenzi owengeziwe.

Ukuhlinzekela ngemininingwane

27. (1) (a) UNgqongqoshe angayalela iBhodi ukuba limunikeze imininingwane ethile.
- (b) IBhodi kufanele lilandele isiyalelo esivezwe endimeni (a). 25
- (2) UPhiko kufanele lunikeze uNgqongqoshe noma umuntu ogunyazwe uNgqongqoshe ukuba athole lezi zincwadi, ama-akhawunti, imiqulu kanye nempahla yoPhiko ngokulawulwa uNgqongqoshe.
- (3) UNgqongqoshe angaqoka umuntu ukuba aphenye ngezindaba noma ngesimo sezezimali zoPhiko futhi nokulandela koPhiko lo Mthetho, futhi angathola oPhikweni imali futhi akhokhe izindleko zezimali ezibangelwe ilowo muntu ngesikhathi sopenyo. 30
- (4) Ilungu elilodwa leBhodi kanye nomsebenzi woPhiko kufanele balandele umyalelo kaNgqongqoshe ovezwe esigatshaneni soku-(1) nesesi-(2) ngendlela abangenza ngayo.

Ukungenelela kukaNgqongqoshe 35

28. (1) UNgqongqoshe angayalela uPhiko ukuba luthathe isinyathelo esithile esichazwe uNgqongqoshe uma uPhiko—
- (a) lunezinkinga kwezezimali noma lungasingethwe ngendlela efanele;
 - (b) lungakwazi ukwenza imisebenzi yalo ngendlela eyimpumelelo ngesizathu sokungezwani phakathi kwamalungu eBhodi; 40
 - (c) lusebenze ngokwenzelela noma ngokubandlulula noma ngendlela engafanele;
 - (d) luhlulekile ukulandela umthetho;
 - (e) luhlulekile ukulandela isiyalelo esikhishwe uNgqongqoshe ngaphansi kwalo Mthetho; noma
 - (f) luphazamise uNgqongqoshe noma umuntu ogunyazwe uNgqongqoshe ukwenza umsebenzi ngokwemigomo yalo Mthetho. 45
- (2) Isiyalelo esivezwe esigatshaneni soku-(1) kufanele siveze—
- (a) umsuka wokuntulekayo;
 - (b) izinyathelo okufanele zithathwe ukulungisa isimo; kanye
 - (c) nesikhathi esizwakalayo okufanele kuthathwe ngaso izinyathelo ezivezwe endimeni (b) leso sikhathi akufanele sidlule izinyanga eziyisithupha. 50
- (3) Uma uPhiko luhluleka ukulungisa isimo singakapheli isikhathi esinikeziwe, uNgqongqoshe ngemuva koku—
- (a) nikeza uPhiko ithuba elifanele lokulalelwa; futhi
 - (b) wanikezela oPhikweni ukuba lilalele izethulo ezitholiwe, 55
- angavala ilungu elilodwa noma angaphezulu eBhodi noma, uma izimo ziphoqa, aqoke umuntu ozoba umlawuli okufanele aqhubeke athathe umsebenzi oqondene noPhiko kuze kuvalwe amalungu eBhodi.

- (4) If the Minister appoints an administrator to take over a function of the Service in terms of subsection (3)—
- (a) the administrator may do anything which the Service might otherwise be empowered or required to do in terms of this Act;
 - (b) the Board may not, while the administrator is responsible for that function, exercise any of its powers or perform any of its duties relating to that function; and
 - (c) an employee or a contractor of the Service must comply with any lawful directive issued by an administrator in terms of this Act.
- (5) The Minister must, every six months, review the performance of the Service while it is under administration.
- (6) Once the Minister is satisfied that the Service is once more able to perform its functions effectively, the Minister must terminate the appointment of the administrator.
- (7) The costs associated with the appointment of an administrator must be borne by the Service.

Regulations

29. (1) The Minister must, after consultation with the Board, make regulations regarding—
- (a) (i) meetings to be held by the Board;
 - (ii) regularity of meetings;
 - (iii) special meetings;
 - (iv) the taking of decisions at meetings;
 - (v) convening of meetings and notices of meetings;
 - (vi) meetings by telephone or video conference or other means of communication;
 - (vii) quorums at meetings;
 - (viii) adjournment of meetings;
 - (ix) the person presiding at meetings;
 - (x) minutes of meetings;
 - (xi) resolutions signed by members of the Board;
 - (xii) execution of documents; and
 - (xiii) the proceedings of the Board;
 - (b) levies payable by schemes to the Service and at what intervals such levies are payable;
 - (c) schemes which may be entitled to discounts or waivers of fees;
 - (d) application, adjudication and fees payable by persons who make use of the Service;
 - (e) persons who may be entitled to discounts or waivers of fees;
 - (f) rates of interest payable by community schemes on overdue levies and fees;
 - (g) any matter that this Act requires or permits to be prescribed; and
 - (h) generally, any ancillary or incidental, administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The minister may make regulations regarding the funding contemplated in section 22(1)(a).
- (3) Any regulations made in terms of this section must, before publication in the *Gazette*, be approved by Parliament.

Judicial management and liquidation

30. The Service may not be placed under judicial management or liquidation except on the authority of an Act of Parliament.

Security of information

31. A person may not disclose any information kept by the Service unless—
- (a) it is done in terms of and subject to any applicable law that compels or authorises the disclosure;
 - (b) it is necessary for the proper functioning of the Service; or

- (4) Uma uNgqongqoshe eqoka umlawuli ukuba athathe umsebenzi woPhiko ngokwemigomo yesigatshana sesi-(3)—
- (a) umlawuli angenza noma yini athweswe noma edingekayo oPhikweni ngokwemigomo yalo Mthetho, angabandakanyi uPhiko;
 - (b) iBhodi ngesikhathi umlawuli ebhekele lowo msebenzi, ngeke lisebenzise amandla alo noma liqhube umsebenzi walo ohambisana nolowo msebenzi; futhi 5
 - (c) umsebenzi noma usonkontileka woPhiko kufanele alandele isiyalelo esisemthethweni esikhishwe umlawuli ngokwemigomo yalo Mthetho.
- (5) UNgqongqoshe kufanele njalo ezinyangeni eziyisithupha abuyekeze indlela okuqhuba ngayo uPhiko ngesikhathi lusasingethwe. 10
- (6) Uma uNgqongqoshe anelisekile ukuthi uPhiko seluyakwazi futhi ukuqhuba imisebenzi yalo ngempumelelo, uNgqongqoshe kufanele amise ukuqokwa komlawuli.
- (7) Izindleko ezihambisana nokuqoka umlawuli kufanele zibhekane noPhiko.

Izimiso zomthetho

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29. (1) UNgqongqoshe, ngemuva kokuxoxisana neBhodi kufanele enze izimiso zomthetho ezimayelana—

- (a) (i) nemihlangano ezobanjwa iBhodi;
 - (ii) isikhathi semihlangano;
 - (iii) imihlangano ekhethekile; 20
 - (iv) ukuthatha izinqumo emihlanganweni;
 - (v) ukubamba umhlangano kanye nezaziso zemihlangano;
 - (vi) imihlangano ebanjwa ngezincingo noma izinkomfa ezibanjwa ngamavidiyo noma ngezinye izindlela zokuxhumana;
 - (vii) inani lamalungu eligunyaza umhlangano; 25
 - (viii) ukuguqa kwemihlangano;
 - (ix) umuntu owengamele imihlangano;
 - (x) amaminithi emihlangano;
 - (xi) izinqumo ezisayindwe amalungu eBhodi;
 - (xii) ukukhishwa kwemiqule; kanye 30
 - (xiii) nezinyathelo zomthetho zeBhodi.
- (b) Izinhlawulo ezikhokhwa izinhlelo oPhikweni futhi nokushiyana kwezikhawu zokukhokha izinhlawulo;
- (c) izinhlelo ezifanelwe izaphulelo noma izimali ezikhishelwe eceleni;
- (d) isicelo, ukwahlulela kanye nenye imali ekhokhwa abantu abasebenzisa uPhiko; 35
- (e) abantu okungafanele bathole isaphulelo noma izimali ezikhishelwe eceleni, kanye
- (f) nenzalo yentela ekhokhelwa izinhlelo zomphakatho yezinhlawulo esezidlulelwe isikhathi kanye nezimali. 40
- (g) noma oluphi udaba lo Mthetho odinga noma ovumela ukuba lunqunywe; futhi
- (h) ngokujwayelekile, noma okuphi okuseka noma okuhambisana, nokuphatha noma nodaba lwenqubo okufanele lunqunywe ukuze kusetshenziswe ngokufanele noma kusingathwe lo Mthetho.
- (2) UNgqongqoshe angenza azimiso zomthetho ezimayelana nezimali ezivezwe esigastsheni sama-22(1)(a) 45
- (3) Izimiso zomthetho ezenziwe ngokwemigomo yalesi sigaba kufanele ngaphambi kokuba zishicilelwe kuSomqulu, zigunyazwe ePhalamende.

Ukusingathwa kwezobulungiswa kanye nokudliwa kwempahla ngomyalelo wenkantolo

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30. UPhiko ngeke lusingathwe ezobulungiswa noma kudliwe ngomyalelo wenkantolo ngaphandle kwegunya loMthetho wePhalamende.

Ukuvikeleka kwemininingwane

31. Umuntu akufanele adalule imininingwane egcinwe uPhiko ngaphandle uma—
- (a) ngokwemigomo futhi ngomthetho osebenzayo uphoqa noma ugunyaza ukuba ayidalule; 55
 - (b) kufanele ukuze uPhiko lukwazi ukusebenza kahle; noma

- (c) it is legally required for the purpose of monitoring, evaluating, investigating or considering any activity relating to the Service.

Documents relating to litigation

32. The Service must on request provide the Minister with copies of all pleadings, affidavits and other documents in its possession relating to any legal proceedings brought by or against the Service. 5

Limitation of liability

33. Neither the Service nor any employee of the Service is liable for any damage or loss caused by—

- (a) the exercise of a power or the performance of a duty under this Act; or 10
(b) the failure to exercise a power, or perform a duty under this Act,
unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, grossly negligent or in bad faith.

Offences and penalties

34. (1) Any person who— 15
(a) fails to provide access to any books, accounts, documents or assets when required to do so under this Act;
(b) fails to comply with a directive issued under this Act;
(c) fails or refuses to give data or information, or gives false or misleading data or information when required to give information under this Act; 20
(d) intentionally refuses to perform a duty or obstructs any person in the exercise of a power or performance of a duty in terms of this Act;
(e) accepts any unauthorised fees or reward, either directly or indirectly as a result of a person's position with the Service;
(f) uses the name, logo or design of the Service without authority; 25
(g) contravenes or fails to comply with section 31; or
(h) fails to comply with section 11(1), (2) and (3),
is guilty of an offence, and is liable, on conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
(2) Where a person is convicted for a second or subsequent conviction for an offence 30 contemplated in subsection (1), he or she is liable to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

Independence of Service

35. (1) All Service employees must act independently and impartially in making decisions with regard to the resolution of disputes. 35
(2) Once an application is referred to an adjudicator, an ombud plays no role in relation to the substance of the dispute or the outcome sought by the applicant.

Practice directives

36. (1) The chief ombud must issue practice directives with regard to any matter pertaining to the operation of the Service. 40
(2) Practice directives must, subject to this Act and the regulations, direct the performance of any act in the operation of the Service.

Privileges, immunities and non-waiver

37. (1) In performing their functions in terms of this Act, the chief ombud, an ombud, a deputy ombud and an adjudicator have the same privileges and immunities from liability as a judge of the High Court. 45

- (c) kudingeka ngokomthetho ngenjongo yokuqapha, ukuhlola, ukuphenya noma ukubheka okunye okwenziwayo okuhambisana noPhiko.

Imiqulu ehlobene namacala emibango

32. UPhiko kufanele uma luceliwe lunikeze uNgqongqoshe amakhophi ezikhalo, imibhalo efungelwe kanye neminye imiqulu elinayo ehambisana nezinyathelo zomthetho ezenziwe noma ezenzelwe uPhiko. 5

Umkhawulo wokubeka icala

33. UPhiko noma osebenzela uPhiko akabhekene nomonakalo noma okulahlekile kubangelwa—

- (a) ukusebenzisa amandla noma ukuqhuba umsebenzi ngaphansi kwalo Mthetho; noma 10
 (b) ukuhluleka ukusebenzisa amandla, noma ukuqhuba umsebenzi ngaphansi kwalo Mthetho, ngaphandle uma ukusebenzisa noma ukuhluleka ukusebenzisa amandla, noma ukuqhuba noma ukuhluleka ukuqhuba umsebenzi kwakungekho emthethweni, 15
 kwaba nobudedengu obukhulu noma kwenziwa kwaziwa ukuthi akulungile.

Amacala kanye nezigwebo

34. (1) Noma ubani—

- (a) ohluleka ukunikezela ngezincwadi, ama-akhawunti, imiqulu noma ngempahla uma kufanele enze njalo ngaphansi kwalo Mthetho; 20
 (b) ohluleka ukulandela isiyalelo esikhishwe ngaphansi kwalo Mthetho;
 (c) ohluleka noma onqaba ukunikezela ngemininingwane noma ngolwazi, noma onikeza imininingwane noma ulwazi okungesilo noma oludukisayo uma kufanele anikeze ulwazi ngaphansi kwalo Mthetho;
 (d) onqaba ngenhloso ukwenza umsebenzi noma ophazamisa umuntu osebenzisa amandla noma ukuqhutshwa komsebenzi ngaphansi kwalo Mthetho; 25
 (e) owamukela imali engagunyaziwe noma umvuzo, awuthola ngqo noma ngenye indlela okubangelwa isikhundla salowo muntu oPhikweni;
 (f) osebenzisa igama loPhiko, uphawu noma isakhiwo ngaphandle kwegunya; noma 30
 (g) ophula noma ohluleka ukulandela isigaba sama-31;
 (h) ohluleka ukulandela isigaba 11(1), (2) neses-3),

unecala futhi uzolahlwa icala abhekane nenhlawulo noma aboshwe isikhathi esingadlulile eminyakeni emihlanu noma kokubili inhlawulo futhi aboshwe.

(2) Uma umuntu elahlwa icala okwesibili noma ngokulandelayo elivezwe esigatshaneni soku-(1), uzobhekana nenhlawulo noma aboshwe isikhathi esingadlulile eminyakeni elishumi noma kokubili inhlawulo futhi aphinde aboshwe. 35

Ukuzimela koPhiko

35. (1) Bonke abasebenzi boPhiko kufanele basebenze ngokuzimela futhi ngokungakhethi uma bethatha izinqumo mayelana nezinqumo zezingxabano. 40

(2) Uma isicelo sesidluliselwe kumahluleli, umphenyi wezikhazelo ozimele ayikho indima ayidlalayo mayelana nomongo wengxabano noma nomphumela olindelwe ofake isicelo.

Iziyalelo ezizolandelwa

36. (1) Umphenyi omkhulu wezikhazelo ozimele kufanele akhiphe iziyalelo ezizolandelwa mayelana nodaba oluhambisana nokusebenza koPhiko. 45

(2) Isiyalo esizolandelwa, ngokwalo Mthetho kanye nezimiso zomthetho, kufanele siyalele ngokuqhuba umsebenzi owenziwa uPhiko.

Amalungelo, ukuvikeleka kanye nokukhishelwa eceleni

37. (1) Uma enza imisebenzi yakhe ngokwemigomo yalo Mthetho, umphathi omkhulu, umphenyi wezikhazelo ozimele, iphini likamphenyi wezikhazelo 50

(2) The privilege in respect of defamation that applies to any proceeding before the High Court and to the documents and statements in such proceedings, must apply to adjudication in terms of this Act.

(3) A person may not waive or limit the exercise of rights in terms of this Act or act contrary to any provision of this Act.

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Chapter 3

Applications

Applications

38. (1) Any person may make an application if such person is a party to or affected materially by a dispute. 10

(2) An application must be—

- (a) made in the prescribed manner and as may be required by practice directives;
- (b) lodged with an ombud; and
- (c) accompanied by the prescribed application fee.

(3) The application must include statements setting out— 15

- (a) the relief sought by the applicant, which relief must be within the scope of one or more of the prayers for the relief contemplated in section 39;
- (b) the name and address of each person the applicant considers to be affected materially by the application; and
- (c) the grounds on which the relief is sought. 20

(4) If the applicant considers that the application qualifies for a discount or a waiver of adjudication fees, the application must include a request for such discount or waiver.

Prayers for relief

39. An application made in terms of section 38 must include one or more of the following orders: 25

(1) In respect of financial issues—

- (a) an order requiring the association to take out insurance or to increase the amount of insurance;
- (b) an order requiring the association to take action under an insurance policy to recover an amount; 30
- (c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way;
- (d) an order requiring the association to have its accounts, or accounts for a specified period, audited by an auditor specified in the order; 35
- (e) an order for the payment or re-payment of a contribution or any other amount; or
- (f) an order requiring a specified tenant in a community scheme to pay to the association and not to his or her landlord, all or part of the rentals payable under a lease agreement, from a specified date and until a specified amount due by the landlord to the association has been paid: Provided that in terms of such an order— 40
 - (i) the tenant must make the payments specified and may not rely on any right of deduction, set-off or counterclaim that he or she has against the landlord to reduce the amount to be paid to the association; 45
 - (ii) payments made by the tenant to the association discharge the tenant's liability to the landlord in terms of the lease; and
 - (iii) the association must credit amounts received from the tenant to the account of the landlord. 50

noma umahluleli unamalungelo kanye nokuvikeleka emacaleni akhe ngendlela efanayo neyejaji leNkantolo Ephakeme.

(2) Ilungelo ekuhlambalazeni elisebenza kunoma esiphi isinyathelo somthetho esisezithebeni zeNkantolo Ephakeme nasemiqulwini nezitatimende kulezo zinyathelo zomthetho kufanele lisebenze ekwahluleni ngokwemigomo yalo Mthetho. 5

(3) Umuntu ngeke akhiphele ecaleni noma akhawule ukusebenzisa amalungelo ngokwemigomo yalo Mthetho noma enze okushayisana nombandela walo Mthetho.

Isahluko 3

Izicelo

Izicelo 10

38. (1) Noma ubani angenza isicelo uma lowo muntu eyingxenywe noma echaphazeleka engxabanweni.

(2) Isicelo kufanele—

- (a) senziwe ngendlela enqunyiwe futhi edingekayo yokulandela iziyalo; 15
- (b) sifakwe kumphenyi wezikhazelo; futhi
- (c) sihambe nemali yesicelo enqunyiwe.

(3) Isicelo kufanele sibandakanye izitatimende eziveza—

- (a) isisombululo esifunwa ofake isicelo, leso sisombululo kufanele sibe kulokho okukodwa noma ngaphezulu kokukodwa okuphokophelwe ngesisombululo esivezwe esigatsheni sama-40; 20
- (b) igama kanye nekheli lomuntu ngamunye ofake isicelo abona ukuthi uyachaphazeleka ezicelweni; kanye
- (c) nomsuka wembangela yesisombululo esilindelekile.

(4) Uma ofake isicelo ebona ukuthi leso sicelo sifanelwe isaphulelo noma ukukhishelwa ecaleni izimali zokwahlulela, isicelo kufanele sihambisane nesicelo saleso saphulelo noma sokukhiphela ecaleni izimali. 25

Izisombululo eziphokophelwe

39. Isicelo esenziwe ngokwemigomo yesigaba sama-38 kufanele sibandakanye le miyalelo elandelayo owodwa noma ngaphezulu:

(1) Mayelana nezindaba zezezimali— 30

- (a) umyalelo ocela inhlango ukuba ikhiphe umshwalense noma ikhuphule isamba somshwalense;
- (b) umyalelo ocela inhlango ukuba ithathe isinyathelo sokuba umshwalense ukhiphe isamba;
- (c) umyalelo obeka ukuthi iminikelo ethweswe abanikazi noma abahlali, noma indlela ozokhokha ngayo, inqunywe ngokungalingile noma ngokungafanele, kanye nomyalelo wokulungisa umnikelo ukuba ube isamba esilungile noma esizwakalayo noma umyalelo wokusikhokha ngendlela ehluke; noma 35
- (d) umyalelo ocela inhlango ukuba ibe nama-akhawunti ayo, noma ama-akhawunti esikhathi esithile, ahlolwe umhloli wamabhuku ovezwe emyalelweni. 40
- (e) umyalelo wokukhokha noma wokukhokha kabusha umnikelo noma ezinye izamba; noma
- (f) umyalelo wokuba umqashi othile ohlelweni lomphakathi akhokhe enhlango ukuba angakhokhi kumninindlu, yonke noma ingxenywe yemali yokuqasha engaphansi kwesivumelwano sokuqasha, kusukela ngosuku oluthile kuze kukhokhe isamba okufanele sikhokhe umninindlu enhlango ukuba: Inqobo nje uma ngokwemigomo yalowo myalelo— 45
 - (i) umqashi kufanele akhokhe lokho okucacisiwe futhi akufanele athemebele elungelweni lokuthathwa kwemali, ukukhokha isikweletu ngenye into, isicelo sokukhokha esinqunywe inkantolo anakho nomninindlu sokunciphisa isamba esizokhokha enhlango ukuba; 50
 - (ii) uma umqashi ekhokhela inhlango siyahoxiswa isikweletu somninimuzi ngokwemigomo yesivumelwano sokuqasha; futhi 55
 - (iii) imali ekhokhwa umqashi kufanele inhlango ikhokhe ngayo i-akhawunti yomninimuzi.

- (2) In respect of behavioural issues—
- (a) an order that particular behaviour or default constitutes a nuisance and requiring the relevant person to act, or refrain from acting, in a specified way;
 - (b) if satisfied that an animal kept in a private area or on common areas is causing a nuisance or a hazard or is unduly interfering with someone else's peaceful use and enjoyment of his or her private area or common area, an order requiring the owner or occupier in charge of the animal—
 - (i) to take specified action to remedy the nuisance, hazard or interference; or
 - (ii) to remove the animal;
 - (c) an order declaring that an animal is being kept in a community scheme contrary to the scheme governance documentation, and requiring the owner or occupier in charge of the animal to remove it; or
 - (d) an order for the removal of all articles placed on or attached illegally to parts of a common area or a private area.
- (3) In respect of scheme governance issues—
- (a) an order requiring the association to record a new scheme governance provision consistent with a provision approved by the association;
 - (b) an order requiring the association to approve and record a new scheme governance provision;
 - (c) an order declaring that a scheme governance provision is invalid and requiring the association to approve and record a new scheme governance provision to remove the invalid provision; or
 - (d) an order declaring that a scheme governance provision, having regard to the interests of all owners and occupiers in the community scheme, is unreasonable, and requiring the association to approve and record a new scheme governance provision—
 - (i) to remove the provision;
 - (ii) if appropriate, to restore an earlier provision;
 - (iii) to amend the provision; or
 - (iv) to substitute a new provision.
- (4) In respect of meetings—
- (a) an order requiring the association to call a general meeting of its members to deal with specified business;
 - (b) an order declaring that a purported meeting of the executive committee, or a purported general meeting of the association, was not validly convened;
 - (c) an order declaring that a resolution purportedly passed at a meeting of the executive committee, or at a general meeting of the association—
 - (i) was void; or
 - (ii) is invalid;
 - (d) an order declaring that a motion for resolution considered by a general meeting of the association was not passed because the opposition to the motion was unreasonable under the circumstances, and giving effect to the motion as was originally proposed, or a variation of the motion proposed; or
 - (e) an order declaring that a particular resolution passed at a meeting is void on the ground that it unreasonably interferes with the rights of an individual owner or occupier or the rights of a group of owners or occupiers.
- (5) In respect of management services—
- (a) an order requiring a managing agent to comply with the terms of a person's contract of appointment and any applicable code of conduct or authorisation; or
 - (b) an order declaring that the association does or does not have the right to terminate the appointment of a managing agent, and that the appointment is or is not terminated.

- (2) Mayelana nezindaba zokuziphatha—
- (a) umyalelo wendlela yokuziphatha ethile noma iphutha elihambisana nokuhlupha futhi odinga lowo muntu ukuba aziphathe, noma agweme ukuziphatha ngendlela ethile;
- (b) uma ekholelwa ukuthi isilwane esigcinwe endaweni ekhethekile noma endaweni yomphakathi siwuhlupho noma siyingozi noma siphazamisa ukusebenzisa ngokuthula komunye umuntu kanye nokuthokozela enye indawo ekhethekile noma izindawo zomphakathi, umyalelo ocela umnikazi noma umhlali obhekele lesi silwane—
- (i) ukuba athathe izinyathelo ezithile ukulungisa okuwuhlupho, ingozi noma okuphazamisayo, noma
- (ii) ukuba asuse isilwane;
- (c) umyalelo obeka ukuthi ukugcinwa kwesilwane ohlelweni lomphakathi akuhambisani nemiqulu yokungamela uhlelo, futhi kudingeka umnikazi noma umhlali obhekele lesi silwane ukuba asisuse; noma
- (d) umyalelo wokususa zonke izinto ezibekiwe noma ezixhunywe ngokungekho emthethweni ezingxenyeni zendawo yomphakathi noma endaweni ekhethekile.
- (3) Mayelana nezindaba zokungamela uhlelo—
- (a) umyalelo ocela inhlango ukuba igcine njengobufakazi umbandela omusha wokungamela uhlelo ohambisana nombandela ogunyazwe inhlango;
- (b) umyalelo ocela inhlango ukuba igunyaze futhi igcine njengobufakazi umbandela omusha wokungamela uhlelo;
- (c) umyalelo obeka ukuthi umbandela wokungamela uhlelo awusebenzi futhi udinga inhlango ukuba igunyaze futhi igcine njengobufakazi umbandela omusha wokungamela uhlelo ukuze kususwe umbandela ongasebenzi; noma
- (d) umbandela obeka ukuthi umbandela wokungamela uhlelo, sekubhekwe nenzuzo yabo bonke abanikazi kanye nabahlali ohlelweni lomphakathi, awunaso isidingo, futhi kudingeka ukuba inhlango igunyaze futhi igcine njengobufakazi umbandela omusha wokungamela uhlelo—
- (i) ukuba kususwe umbandela;
- (ii) uma kufanele, kugcinwe umbandela waphambilini;
- (iii) kuchitshiyelwe umbandela; noma
- (iv) kushintshwe umbandela omusha.
- (4) Mayelana nemihlango:
- (a) umbandela ocela inhlango ukuba ibize umhlango ojwayelekile wamalungu ayo ukuba adingide udaba oluthile;
- (b) umbandela obeka ukuthi umhlango obuhlosiwe wekomidi leziphathimandla, noma umhlango obuhlosiwe wenhlango ojwayelekile, awubanjwanga;
- (c) umbandela obeka ukuthi isinqumo obekuhloswe ukuba sigunyazwe emhlanganweni wekomidi leziphathimandla, noma emhlanganweni ojwayelekile wenhlango—
- (i) sahoxiswa, noma
- (ii) asisebenzi;
- (d) umyalelo obeka ukuthi isiphakamiso sesinqumo ebesicatshangwa inhlango emhlanganweni ojwayelekile asigunyazwanga ngoba kwaba nokungaboni ngaso linye ngesiphakamiso ngaphansi kwezimo ezithile, futhi ukusebenzisa isiphakamiso esasiphakanyisiwe, noma kunokwahlukana ngesiphakamiso esiphakanyisiwe; noma
- (e) umyalelo obeka ukuthi isinqumo esithile esigunyaziwe emhlanganweni sihoxisiwe ngesizathu sokuthi sigxambukela ngokungafanele kumalungelo omnikazi ngamunye noma kumhlali noma kumalungelo eqembu labanikazi noma labahlali.
- (5) Mayelana nemisebenzi yokusingatha—
- (a) umyalelo ocela igatsha elisingethe ukuba lilandele imigomo yesivumelwano sokuqokwa komuntu kanye nenqubo yokuziphatha esebenzayo noma ukugunyaza; noma
- (b) umyalelo obeka ukuthi inhlango inelungelo noma ayinalo lokumisa ukuqokwa kwegatsha elisingethe, futhi ukuliqoka kumisiwe noma akumisiswe.

- (6) In respect of works pertaining to private areas and common areas—
- (a) an order requiring the association to have repairs and maintenance carried out;
 - (b) an order requiring the relevant person—
 - (i) to carry out specified repairs, or have specified repairs made; or
 - (ii) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out or to be carried out in respect of the property by the applicant;
 - (c) an order requiring the association—
 - (i) to carry out, within a specified time, specified works to or on the common areas for the use, convenience or safety of owners or occupiers; or
 - (ii) not to carry out specified works;
 - (d) an order declaring that the association's decision to reject a proposal to make improvements on or alterations to common areas is unreasonable, and requiring the association—
 - (i) to agree to the proposal; or
 - (ii) to ratify the proposal on specified terms;
 - (e) an order requiring the association—
 - (i) to acquire, within a specified time, specified property for the use, convenience or safety of owners or occupiers;
 - (ii) not to acquire specified property; or
 - (iii) to dispose of specified property, within a specified time;
 - (f) an order declaring that an owner or occupier reasonably requires exclusive use rights over a certain part of a common area, that the association has unreasonably refused to grant such rights and requiring the association to give exclusive use rights to the owner or occupier, on terms that may require a payment or periodic payments to the association, over a specified part of a common area; or
 - (g) an order obliging an owner or occupier to accept obligations in respect of a defined part of a common area.
- (7) In respect of general and other issues—
- (a) an order declaring that the applicant has been wrongfully denied access to information or documents, and requiring the association to make such information or documents available within a specified time; or
 - (b) any other order proposed by the chief ombud.

Further information or material for applications 35

40. After receiving an application, an ombud may require—
- (a) the applicant to submit further information or documentation in regard to the application;
 - (b) information to be verified; and
 - (c) the applicant to provide evidence that an internal dispute resolution mechanism has been unsuccessful.

Time limit on certain applications

41. (1) An application for an order declaring any decision of an association or an executive committee to be void, may not be made later than 60 days after such a decision has been taken.
- (2) An ombud may, on good cause shown, condone the late submission of an application contemplated in subsection (1).

Rejection of applications

42. An ombud must reject an application by written notice to the applicant if—
- (a) the relief sought is not within the jurisdiction of the Service;
 - (b) the applicant fails to comply with a requirement of the ombud in terms of section 40;

- (6) Mayelana nemisebenzi ehambisna nezindawo ezikhethekile kanye nezindawo zomphakathi—
- (a) umyalelo ocela inhlango ukuba ilungise futhi inakekele.
- (b) umyalelo ocela umuntu oqondene—
- (i) ukuba alungise okuthile, noma enze kulungiswe okuthile; noma 5
- (ii) ukuba akhokhele ofake isicelo isamba esinqunywe umahluleli njengokokhelo yokulungisa okwenziwayo noma okuzokwenziwa empahleni ofake isicelo;
- (c) umyalelo ocela inhlango—
- (i) yenze, ngesikhathi esithile, imisebenzi ethile ezindaweni zomphakathi 10 ukuze zisetshenziswe, zenze lula noma zivikele abanikazi noma abahlali; noma
- (ii) ukuba ingenzi imisebenzi ethile;
- (d) umyalelo obeke ukuthi isinqumo senhlango sokunqaba isiphakamiso sokwenza ngcono noma sokulungisa izindawo zomphakathi asifanele, futhi 15 kudingeka inhlango ukuba—
- (i) ivumelane nesiphakamiso; noma
- (ii) ilungise isiphakamiso ngemigomo ethile;
- (e) umyalelo ocela inhlango—
- (i) ukuba esikhathini esithile, ithole, impahla ethile ezosetshenziswa, yenze 20 lula noma ivikele abanikazi noma abahlali;
- (ii) ukuba ingayitholi impahla ethile, noma
- (iii) ihlele impahla ethile, esikhathini esithile;
- (f) umyalelo oveza ukuthi umnikazi noma umhlali udinga amalungelo 25 okusebenzisa ngokukhethekile ingxenye ethile yezindawo zomphakathi, inhlango enqabe ngokungafanele ukunikeza lawo malungelo futhi odinga ukuba inhlango inikezele ngamalungelo okusebenzisa ngokukhethekile kumnikazi noma kumhlali ngemigomo engadinga ukuba kukhokhwe noma kukhokhelwe inhlango ngesikhathi esithile, ingxenye ethile yezindawo zomphakathi; noma 30
- (g) umyalelo obophezela umnikazi noma umhlali ukuba amukele izibophezelo mayelana nengxenye yendawo yomphakathi echaziwe;
- (7) Mayelana nezindaba ezijwayelekile kanye nezinye—
- (a) umyalelo obeka ukuthi ofake isicelo unqatshelwe ngokungafanele ukuthola imininingwane noma imiqulu, futhi kudingeka ukuba inhlango yenze 35 kutholakale le mininingwane noma imiqulu esikhathini esithile;
- (b) noma omunye umyalelo ophakanyiswe umphenyi omkhulu wezikhhalazo.

Eminye imininingwane noma kokufaka izicelo

40. Ngemuva kokuthola isicelo, umphenyi wezikhhalazo ozimele angacela—
- (a) ofake isicelo ukuba ahambise eminye imininingwane noma imiqulu 40 emayelana nesicelo;
- (b) imininingwane ukuba icutshungulwe; futhi
- (c) ofake isicelo ukuba anikeze ubufakazi bokuthi ikhambi langaphakathi lokusombulula izingxabano alibanga yimpumelelo.

Umkhawulo wesikhathi ezicelweni ezithile

45

41. (1) Isicelo somyalelo esibeka ukuthi isinqumo senhlango noma sekomidi leziphathimandla okufanele sihoxiswe akufanele senziwe sekudlule izinsuku ezingama-60 ngemuva kwalesi sinqumo.

(2) Umphenyi wezikhhalazo ozimele uma kunezizathu ezizwakalayo angavuma ukuhanjiswa kwesicelo sekudlule isikhathi njengoba kuveziwe esigatshaneni soku-(1) 50

Ukunqatshwa kwezicelo

42. Umphenyi wezikhhalazo ozimele kufanele anqabe isicelo ngokubhalela ofake isicelo isaziso uma—

- (a) isisombululo esidingekayo singahambisani negunya loPhiko;
- (b) ofake isicelo ehluleka ukulandela izimfuno zomphenyi wezikhhalazo 55 ngokwemigomo yesigaba sama-41;

- (c) within 14 days after delivery of a notice contemplated in section 44, the ombud does not receive written confirmation from the applicant that the applicant wishes to proceed with the application;
- (d) the ombud is satisfied that the dispute should be dealt with in a court of law or other tribunal of competent jurisdiction; or
- (e) the application does not, in the opinion of the ombud, qualify for the discount or waiver of adjudication fees applied for.

Notice to affected persons and association

43. (1) Unless an application is rejected, the ombud must serve notice on—
- (a) the association; and
 - (b) each person the ombud considers to be affected materially by the application.
- (2) The notice contemplated in subsection (1) must—
- (a) include details of the parties to the dispute and the relief sought in terms of the application;
 - (b) include details of the place and times where the documentation relating to the application can be inspected;
 - (c) confirm whether or not the application qualifies for a discount or waiver of adjudication fees;
 - (d) invite written submissions with regard to the application; and
 - (e) draw attention in the prescribed form to the right to legal representation as contemplated in section 52.
- (3) If the application affects owners or occupiers generally, or a particular category of owners or occupiers, the ombud need not serve a copy of the notice on each affected person individually, but may instead serve notice in a way that ensures, as far as is reasonably practicable, that the notice comes to the attention of all owners or occupiers or all members of that particular category.

Notice to applicant

44. The ombud must give an applicant notice of any submissions received and give the applicant an opportunity to—
- (a) inspect the submissions;
 - (b) make a written response relating only to issues raised in the submissions; and
 - (c) confirm whether he or she wishes to proceed with the application.

Amendment or withdrawal of application

45. (1) The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator.
- (2) The applicant may withdraw the application at any time before the ombud refers the application to an adjudicator.

Inspection of documentation

46. (1) The ombud must, on application by an affected person, allow such person to inspect and obtain copies of—
- (a) the application;
 - (b) submissions made in regard to the application;
 - (c) the applicant's response to the submissions; and
 - (d) the ombud's current list of adjudicators.
- (2) An application in terms of this section must be accompanied by the prescribed fee.

- (c) zingakapheli izinsuku eziyi-14 ngemuva kokuthumela isaziso esivezwe esigatsheni sama-45, umphenyi wezikhazelo engasitholile isiqiniseko esibhaliwe esivela kofake isicelo ofisa ukuqhubeka nesicelo;
- (d) umphenyi wezikhazelo anelisekile ukuthi ingxabano kufanele idingidwe enkantolo yomthetho noma kwelinye ibandla elinegunya elifanele; noma 5
- (e) ngokubona komphenyi wezikhazelo ozimele, isicelo singafanelwe isaphulelo noma ukukhishelwa eceleni izimali ezahlulelwe ezifakelwe isicelo.

Isaziso esichaphazela abantu kanye nenhlangano

43. (1) Ngaphandle uma isicelo siqatshiwe, umphenyi wezikhazelo ozimele kufanele anikeze isaziso— 10
- (a) enhlanganweni; futhi
 - (b) nakumuntu ngamunye umphenyi wezikhazelo ozimele abona ukuthi uchaphazelwe isicelo.
- (2) Isicelo esivezwe esigatshani soku-(1) kufanele— 15
- (a) sihlanganise imininingwane yezinhlangothi ezinengxabano kanye nesisombululo esilindelekile ngokwemigomo yesicelo;
 - (b) sihlanganise imininingwane yendawo kanye nesikhathi lapho kungahlolwa khona imiqulu ehambisana nesicelo;
 - (c) siqinisekise ukuthi isicelo sifanelwe noma asifanelwe isaphulelo noma ukukhishelwa eceleni izimali ezahlulelwe; 20
 - (d) sicele izethulo ezibhalwe phansi mayelana nesicelo, futhi
 - (e) sigxile endleleni enqunyiwe yelungelo lokumelwa ngokomthetho njengoba kuveziwe esigatsheni sama-52.
- (3) Uma isicelo sichaphazela abanikazi noma abahlali ngokujwayelekile, noma isigaba sabanikazi noma sabahlali, umphenyi wezikhazelo ozimele akufanele anikeze ngekhophi yesaziso kumuntu ngamunye ochaphazelekayo, kodwa anganikeza isaziso ngendlela eqikelela ukuthi isaziso sifinyelele kubanikazi bonke noma kubahlali noma kumalungu onke esigaba esithile, uma kunokwenzeka. 25

Isaziso sofake isicelo

44. Umphenyi wezikhazelo ozimele kufanele anikeze ofake isicelo isaziso mayelana nezethulo ezitholiwe futhi anikeze ofake isicelo ithuba loku— 30
- (a) hlola izethulo; futhi
 - (b) abhale impendulo ehambisana nezindaba eziphakanyiswe ezethulweni.
 - (c) qinisekisa uma esafisa ukuqhubeka nesicelo.

Ukuchibiyela noma ukuhoxisa isicelo 35

45. (1) Umphenyi wezikhazelo ozimele ngendlela abona ngayo angavumela noma anqabe nemvume yokuchibiyela isicelo noma yokunikeza imvume ngokwemibandela ethile noma nini ngaphambi kokuba umphenyi wezikhazelo adlulisele isicelo kumahluleli.
- (2) Ofake isicelo angahoxisa isicelo noma nini ngaphambi kokuba umphenyi wezikhazelo ozimele adlulisele isicelo kumahluleli. 40

Ukuhlola imiqulu

46. (1) Umphenyi wezikhazelo ozimele, esicelweni esifakwe umuntu ochaphazelekile, kufanele avumele lowo muntu ukuba ahlole futhi athole amakhophi — 45
- (a) esicelo;
 - (b) ezethulo ezenziwe mayelana nesicelo;
 - (c) impendulo yofake isicelo mayelana nezethulo; kanye
 - (d) nohlu lwabahluleli olusebenzayo lomphenyi wezikhazelo.
- (2) Isicelo ngokwemigomo yalesi sigaba kufanele sihambisane nemali enqunyiwe.

Conciliation

47. On acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation. 5

Referral to adjudicator

48. (1) If the conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator. 10
- (2) The ombud must refer the application to an adjudicator chosen by the ombud if the applicant qualifies for a waiver or discount on adjudication fees. 10
- (3) If the application does not qualify for a waiver of adjudication fees, the ombud must give the applicant and the affected parties an opportunity to choose an adjudicator from the ombud's list and, if a specific adjudicator is agreed upon by the parties to the dispute, the ombud must refer the application to the agreed adjudicator: Provided that if a specific adjudicator is not agreed upon, the ombud must refer the application to an adjudicator chosen by the ombud. 15
- (4) The ombud must give the applicant and all affected parties notice of the referral, and in the case of an application to which no waiver of adjudication fees applies, such notice shall include details of the costs of the adjudicator's services and the manner in which payment may be made and secured. 20

Chapter 4

Investigation and representation

Adjudication fees

49. An adjudicator must not proceed to investigate an application until the prescribed adjudication fees have been paid or secured to the ombud's satisfaction. 25

Investigation by adjudicator

50. The adjudicator must investigate an application to decide whether it would be appropriate to make an order, and in this process the adjudicator—
- (a) must observe the principles of due process of law; and
 - (b) must act quickly, and with as little formality and technicality as is consistent with a proper consideration of the application; and 30
 - (c) must consider the relevance of all evidence, but is not obliged to apply the exclusionary rules of evidence as they are applied in civil courts.

Investigative powers of adjudicator

51. (1) When considering the application, the adjudicator may— 35
- (a) require the applicant, managing agent or relevant person—
 - (i) to give to the adjudicator further information or documentation;
 - (ii) to give information in the form of an affidavit or statement; or
 - (iii) subject to reasonable notice being given of the time and place, to come to the office of the adjudicator for an interview; 40
 - (b) invite persons, whom the adjudicator considers able to assist in the resolution of issues raised in the application, to make written submissions to the adjudicator within a specified time; and
 - (c) enter and inspect—
 - (i) an association asset, record or other document; 45
 - (ii) any private area; and

Ukubuyisana

47. Uma sekwamukelwe isicelo futhi ngemuva kokutholakala kwezethulo kulaba bantu abathintekayo noma izimpendulo zabafake izicelo, uma umphenyi wezikhaziso ozimele ebona ukuthi kunethemba lokuxoxisana ngezixhabano ezibalulwe esicelweni, umphenyi wezikhaziso kufanele adlulise lolo daba ukuba kuyobuyiswana. 5

Ukudlulisela kumahluleli

48. (1) Uma ukubuyisana okuvezwe esigatsheni sama-47 kuhluleka, umphenyi wezikhaziso ozimele kufanele adlulise isicelo nezethulo kanye nezimpendulo zaso kumahluleli.

(2) Umphenyi wezikhaziso kufanele adlulise isicelo kumahluleli okhethwe umphenyi wezikhaziso ozimele uma ofake isicelo efanelwe ukukhishelwa eceleni izimali ezahlulelwe noma isaphulelo. 10

(3) Uma isicelo singafanele ukukhishelwa eceleni izimali ezahlulelwe, umphenyi wezikhaziso kufanele anikeze ofake isicelo kanye nezinhlangothi ezichaphazelekayo ithuba lokuba bakhethe umahluleli ohlwini lomphenyi wezikhaziso ozimele futhi, uma kuvunyelwana ngomahluleli othile, umphenyi wezikhaziso kufanele adlulisele isicelo kumahluleli okuvunyelwenwe ngaye: Uma lowo mahluleli othile kungavunyelwana ngaye umphenyi wezikhaziso kufanele adlulisele isicelo kumahluleli okhethwe umphenyi wezikhaziso. 15

(4) Umphenyi wezikhaziso ozimele kufanele anikeze ofake isicelo kanye nazo zonke izinhlangothi ezichaphazelekayo isaziso sokudluliselwa futhi, uma kuyisicelo esingenazo izimali ezahlulelwe ezikhishelwe eceleni, kufanele kuleso saziso abandakanye imininingwane yezindleko zomsebenzi womahluleli kanye nendlela ongakhokhwa ngayo futhi nokuqikelela ukukhokha. 20

Isahluko 4

25

Uphenyo kanye nokumelwa Izimali ezahlulelwe

49. Umahluleli akufanele aqhubeke nokuphenya isicelo kuze kukhokhwe imali eyahlulelwe noma kuqikelelwe ukukhokha okugculisayo kumphenyi wezikhaziso.

Uphenyo olwenziwa umahluleli

50. Umahluleli kufanele aphenye isicelo ukuze anqume ukuthi ngabe kufanele 30 kwenziwe umyalelo futhi kulolu hlelo umahluleli—

- (a) kufanele abheke imigomo yalolu hlelo lomthetho; futhi
- (b) asebenze ngokushesha, ngendlela engenayo imicikilisho nezinxushunxushu eziningi ngendlela ehambisana nendlela efanele yokubheka isicelo; futhi
- (c) kufanele abheke ubumqoka bobufakazi bonke kodwa akaboshezwe ukuba asebenzise imithetho ekhiphela eceleni ubufakazi obusetshenziswa enkantolo yomphakathi. 35

Amandla omahluleli okuphenya

51. (1) Uma kubhekwa isicelo, umahluleli anga—

- (a) cela ofake isicelo, igatsha elingamele noma umuntu oqondene— 40
 - (i) ukuba anikeze umahluleli eminye imininingwane noma imiqulu;
 - (ii) ukuba anikeze imininingwane ngenchwadi efungelwe noma ngesitatimende; noma
 - (iii) ngokwesaziso esizwakalayo esinikeziwe isikhathi nendawo, afike ehhovisi likamahluleli ukuba babonane futhi baxoxisane; 45
- (b) ameme abantu umahluleli abona ukuthi bazokwazi ukusiza ekunqumeni ngezindaba eziphakanyiswe esicelweni, ukuba benze izethulo ezibhaliwe kumahluleli esikhathini esithile; futhi
- (c) ngena futhi ahlole—
 - (i) impahla yenhlangano, imininingwane egciniwe noma eminye imiqulu; 50
 - (ii) endaweni ekhethekile; kanye

(iii) any common area, including a common area subject to an exclusive use arrangement.

(2) The adjudicator must give reasonable notice to the executive committee or occupier of any private area or common area to be entered in terms of subsection (1)(c).

(3) The association or any other person who is in possession of an association's records must, if required by an adjudicator and without payment of a fee—

- (a) allow the adjudicator access to the records within 24 hours after being notified of the adjudicator's requirement; and
- (b) provide the adjudicator with copies of the records.

Legal representation 10

52. The applicant and any other relevant person are not entitled to legal representation during the adjudication process unless—

- (a) the adjudicator and all other parties consent; or
- (b) the adjudicator, after considering—
 - (i) the nature of the questions of law raised by the dispute; 15
 - (ii) the relative complexity and importance of the dispute; and
 - (iii) the comparative ability of the parties to represent themselves in the adjudication,

concludes that it would be unreasonable to expect the party to deal with the adjudication without legal representation. 20

Chapter 5

Adjudicator's orders

Order dismissing application

53. (1) The adjudicator may make an order dismissing the application if, after investigation — 25

- (a) the adjudicator considers that the application is frivolous, vexatious, misconceived or without substance; or
- (b) the applicant fails to comply with a requirement in terms of section 51.

(2) If the adjudicator makes an order in terms of subsection (1)(a), the adjudicator—

- (a) may order costs against the applicant to compensate the affected person for loss resulting from the application; and 30
- (b) in considering the costs, must have regard to any previous applications made by the applicant.

(3) The amount of costs ordered in terms of subsection (2) must not be more than the maximum amount prescribed. 35

Order dealing with application

54. (1) If the application is not dismissed, the adjudicator must make an order—

- (a) granting or refusing each part of the relief sought by the applicant;
- (b) in the case of an application which does not qualify for a waiver of adjudication fees, apportioning liability for costs; 40
- (c) including a statement of the adjudicator's reasons for the order; and
- (d) drawing attention in the prescribed form to the right of appeal.

(2) An order may require a person to act, or refrain from acting, in a specified way.

(3) The order may contain such ancillary and ensuing provisions as the adjudicator considers necessary or appropriate. 45

(4) The order must set the time—

- (a) when the order takes effect; or
- (b) within which the order must be complied with.

(5) The adjudicator's order may provide that the order has the effect of any type of resolution or decision provided for in the scheme governance documentation. 50

- (iii) nasendaweni yomphakathi, kubandakanya nendawo yomphakathi elungiselelwe ukusetshenziswa ngokukhethekile.
- (2) Umahluleli kufanele anikeze isaziso esizwakalayo ekomidini leziphathimandla noma kumhlali wendawo ekhethekile noma wendawo yomphakathi okufanele ifakwe ngokwemigomo yesigatshana soku-(1)(d). 5
- (3) Inhlango noma omunye umuntu onemininingwane yenhlango egciniwe, uma icelwa umahluleli ngaphandle kokukhokha imali, kufanele—
- (a) ivumele umahluleli ukuba athole imininingwane egciniwe engakapheli amahora angama-24 ngemuva kokwaziswa ngezimfuno zikamahluleli; futhi
- (b) inikeze umahluleli amakhophi emininingwane egciniwe. 10

Ukumelwa

52. Ofake isicelo nomunye umuntu oqondene akufanele babe nabameli abazobamela ngesikhathi sokwahlulela ngaphandle—
- (a) uma umahluleli kanye nezinye izinhlangothi zivumelana; noma
- (b) umahluleli, ngemuva kokubheka— 15
- (i) umsuka wemibuzo yezomthetho evezwe ingxabano;
- (ii) ukuba bucayi kanye nokuba semqoka kwengxabano; kanye
- (iii) kuqhathaniswa ulwazi lwezinhlangothi ukuba zizimele uma kwahlulelwa,
- kuvela ukuthi ngeke kuzwakale kahle uma kulindelwe ukuba uhlangothi lubhekane 20 nokwahlulelwa uma lingamelwe.

Isahluko 5

Imiyalelo yomahluleli

Umyalelo ochitha isicelo

53. (1) Umahluleli angenza umyalelo ochitha isicelo uma, ngemuva kokuphenya— 25
- (a) umahluleli ebona ukuthi isicelo asinaso isidingo, siyanenga, asiqondakali kahle noma asinawo umongo; noma
- (b) ofake isicelo ehluleka ukulandela izimfuno ngokwemigomo yesigaba sama-52.
- (2) Uma umahluleli enza umyalelo ngokwemigomo yesigatshana soku-(1)(a), 30 umahluleli—
- (a) angakhipha ukuba izindleko zofake isicelo zikhokhele umuntu ochaphazelekile kokulahlekile kubangelwa isicelo; futhi
- (b) uma ebuka izindleko, kufanele abheke izicelo zaphambilini ezenziwa ofake isicelo. 35
- (3) Isamba sezindleko esikhishiwe ngokwemigomo yesigatshana sesi-(2) akufanele sidlule isamba sokugcina esinqunyiwe.

Umyalelo wokudingida isicelo

54. (1) Uma isicelo singachithiwe, umahluleli kufanele enze umyalelo—
- (a) ovumela noma onqabela uhlangothi ngalunye isisombululo ebesifunwa ofake isicelo; 40
- (b) uma kuyisicelo esingafanele sikhishelwe eceleni izimali ezahlulelwe, ahlukalise izindleko zesikweletu;
- (c) kubandakanya isitatimende sezizathu zomyalelo womahluleli; futhi
- (d) sigxile endleleni enqunyiwe yelungelo lokubuyezwa. 45
- (2) Umyalelo ungadinga umuntu ukuba aziphathe, noma agweme ukuziphatha ngendlela ethile.
- (3) Umyalelo ungabandakanya imibandela yokwengeza noma ezolandela umahluleli abone inesidingo futhi ifanele.
- (4) Umyalelo kufanele ubeke isikhathi— 50
- (a) sokuqala ukusebenza komyalelo; noma
- (b) lapho kufanele kulandelwe umyalelo.
- (5) Umyalelo womahluleli ungahlinzekela ukuthi umyalelo uchaphazelwe esinye isisombululo noma isinqumo esinikezwe emiqulwini yokusingatha uhlelo.

Notice of order

55. (1) An adjudicator must cause a copy of an order made in terms of this Act to be delivered to—

- (a) the applicant;
- (b) the association; 5
- (c) the ombud; and
- (d) any other affected person.

(2) If the order affects owners or occupiers generally, or a particular category of owners or occupiers, the adjudicator need not serve a copy of the order on each affected person individually, but may instead serve notice in a way that ensures, as far as 10 reasonably practicable, that the order comes to the attention of all owners or occupiers or particular category of owners or occupiers.

Enforcement of orders

56. (1) If an adjudicator's order is for the payment of an amount of money or any other relief which is within the jurisdiction of a magistrate's court, the order must be enforced 15 as if it were a judgment of such Court and a clerk of such a Court must, on lodgment of a copy of the order, register it as an order in such Court.

(2) If an adjudicator's order is for the payment of an amount of money or any other relief which is beyond the jurisdiction of the magistrate's court, the order may be enforced as if it were a judgment of the High Court, and a registrar of such a Court must, 20 on lodgement of a copy of the order, register it as an order in such Court.

Right of appeal

57. (1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.

(2) An appeal against an order must be lodged within 30 days after the date of delivery 25 of the order of the adjudicator.

(3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

Chapter 6

General 30

Public access to information in regard to orders

58. (1) On receiving an application accompanied by the prescribed fee, the ombud must make available to the applicant—

- (a) a statement indicating whether an order has been made within the previous six years in terms of this Act with regard to a community scheme identified in the application and, if so, a copy of the order; and 35
- (b) a copy of every order made in respect of the community schemes specified in the application.

(2) The Service must publish and make available for inspection by the public—

- (a) a copy of an order made at any time in terms of this Act; and 40
- (b) the reasons for such order.

Levies and annual returns

59. Every community scheme must, with effect from the commencement date of this Act, in each calendar year and at such times as may be prescribed—

Isaziso ngomyalelo

55. (1) Umahluleli kufanele enze ikhophi yomyalelo owenziwe ngokwemigomo yalo Mthetho ukuba ithunyelwe—

- (a) kofake isicelo;
- (b) enhlanganweni;
- (c) komunye umuntu ochaphazelekile; futhi
- (d) nakumphenyi wezikhaziso .

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(2) Uma umyalelo uchaphazela abanikazi noma abahlali ngokujwayelekile, ingxenye ethile yabanikazi noma yabahlali, umahluleli akufanele akhiphe ikhophi yomyalelo kumuntu ngamunye ochaphazelekile, kodwa kunalokho anganikeza isaziso ngendlela eqikelela ukuthi umyalelo ufika kubanikazi bonke noma kubahlali noma engxenyeni yabanikazi abathile noma yabahlali, ngendlela okungenzeka ngayo.

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Ukubophezela imiyalelo

56. (1) Uma umyalelo womahluleli kungowokukhokha isamba semali noma kungowesinye isisombululo esibhalwe ngokwegunya leNkantolo kaMantshi, lowo myalelo ungabophezela njengowenkantolo futhi unobhala waleyo Nkantolo kufanele, uma sekufakwe ikhophi yomyalelo, awubhalise njengomyalelo waleyo Nkantolo.

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(2) Uma umyalelo womahluleli kungowokukhokha isamba semali noma kungowesinye isisombululo esingaphezu kwegunya leNkantolo kaMantshi, lowo myalelo kufanele ubophezela njengomyalelo weNkantolo Ephakeme futhi unobhala waleyo Nkantolo kufanele, uma sekufakwa ikhophi yomyalelo, awubhalise njengomyalelo waleyo Nkantolo.

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Ilungelo lokubuyekeza

57. (1) Ofake isicelo, inhlango noma umuntu ochaphazelekile onganelisekile ngomyalelo womahluleli angawubuyekeza eNkantolo Ephakeme, kodwa ngokomthetho.

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(2) Ukubuyekeza umyalelo kufanele kwenziwe zingakapheli izinsuku ezingama-30 ngemuva kokuthunyelwa komyalelo womahluleli.

(3) Umuntu ofuna kubuyekeze umyalelo angafaka isicelo eNkantolo Ephakeme sokubambeza ukukhishwa komyalelo obuyekeziwe ukuze kuqikelelwe ukuphumelela kokubuyekeza.

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Isahluko 6***Okujwayekile*****Ukufinyelela komphakathi eminingwaneni emayelana nemyalelo**

58. (1) Uma sekutholwe isicelo esihambisana nemali enqunyiwe, umphenyi wezikhaziso kufanele enze ukuba ofake isicelo athole—

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- (a) isitatimende esiveza ukuthi ngabe umyalelo wenziwe yini esikhathini esiyiminyaka eyisithupha ngokwemigomo yalo Mthetho mayelana nohlelo lomphakathi oluvezwe esicelweni futhi, uma kunjalo, ikhophi yomyalelo; kanye

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- (b) nekhophi yayo yonke imiyalelo eyenziwa ezinhlelweni zomphakathi evezwe esicelweni.

(2) UPhiko kufanele lushicilele futhi lenze kutholakale lokhu okulandelayo uma kuhlolwa umphakathi—

- (a) ikhophi yomyalelo owenziwa noma nini ngokwemigomo yalo Mthetho; kanye
- (b) nezizathu zomyalelo.

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Izinhlawulo kanye nenzuzo yonyaka

59. Zonke izinhlelo zomphakathi kufanele, kusukela ngosuku lokuqala ukusebenza kwalo Mthetho, onyakeni ngamunye futhi ngezikhathi ezinganqunywa—

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- (a) pay to the Service a levy in an amount calculated as prescribed, subject to such discounts or waivers as may be prescribed; and
- (b) file with the Service—
 - (i) an annual return in the prescribed form;
 - (ii) a copy of its annual financial statements; and
 - (iii) any other prescribed document or information.

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Short title and commencement

60. This Act is called the Community Schemes Ombud Service Act, 2011, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

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- (a) zikhokhele uPhiko inhlawulo eyisamba esibaliwe njengoba sinqunyiwe, ngokwezaphulelo noma ukukhishelwa eceleni kwezimali ngendlela okunqunywe ngayo; futhi
- (b) zigcine emabhukwini oPhiko—
- (i) inzuzo yonyaka ngendlela enqunyiwe;
 - (ii) ikhophi yezitatimende zalo zezezimali; kanye
 - (iii) neminye imiqulu noma imininingwane enqunyiwe.

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Isihloko esifingqiwe kanye nokuqala ukusebenza

60. Lo Mthetho ubizwa ngokuthi uMthetho WoPhiko Oluphenya Ngezinhlelo Zomphakathi, we-2011, futhi uzoqala ukusebenza ngosuku oluzonqunywa uMongameli 10 ngesimemezelo kuSomqulu.