

PROVINCE OF THE WESTERN CAPE

**CONSTITUTION
OF THE WESTERN CAPE
FIRST AMENDMENT BILL**

(As introduced)

(THE PREMIER)

[B 1—2021]

PROVINSIE WES-KAAP

**EERSTE WYSIGINGSWETSONTWERP
OP DIE GRONDWET
VAN DIE WES-KAAP**

(Soos ingedien)

(DIE PREMIER)

[W 1—2021]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOLUNGISO WONKUQALA
WOMGAQO-SISEKO
WENTSHONA KOLONI**

(Njengoko wazisiwe)

(YIÑKULUMBUSO)

[B 1—2021]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

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

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

Amendment of section 15 of Act 1 of 1998

1. Section 15 of the Constitution of the Western Cape, 1997 (the Provincial Constitution), is amended by the substitution for subsection (3) of the following subsection: 5

- “(3) A person loses membership of the Provincial Parliament if that person—
- (a) ceases to be eligible;
 - (b) resigns as a member; **[or]**
 - (c) is absent from the Provincial Parliament without permission in circumstances for which the rules and orders of the Provincial Parliament prescribe loss of membership ; or 10
 - (d) ceases to be a member of the party that nominated that person as a member of the Provincial Parliament.”.

Amendment of section 17 of Act 1 of 1998 15

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

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

Substitution of section 30 of Act 1 of 1998 20

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

“Money Bills

- 30.** (1) A Bill [**that**] is a money Bill if it—
- (a) appropriates money; **[or]**
 - (b) imposes provincial taxes, levies, **[or]** duties or surcharges [**is a money Bill**];
 - (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
 - (d) authorises direct charges against the Provincial Revenue Fund.
- (2) A money Bill may not deal with any other matter except—
- (a) a subordinate matter incidental to the appropriation of money; **[or]**
 - (b) the imposition, abolition or reduction of provincial taxes, levies, **[or]** duties or surcharges;
 - (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or
 - (d) the authorisation of direct charges against the Provincial Revenue Fund.
- [(2)](3) A provincial Act must provide for a procedure by which the Provincial Parliament may amend a money Bill.”.

Substitution of section 49 of Act 1 of 1998

4. The following section is substituted for section 49 of the Provincial Constitution: 20

“[Supervision of] Intervention in local government

- 49.** (1) When a municipality in the Western Cape cannot or does not fulfil an executive obligation in terms of the national Constitution, this Constitution or legislation, the Provincial Cabinet may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—
- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; **[and]**
 - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary—
 - (i) to maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the Western Cape as a whole; or
 - (iii) to maintain economic unity; or
 - (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.
- (2) If the Provincial Cabinet intervenes in a municipality under subsection (1)(b)—
- [(a)] **the intervention must end unless it is approved by the national Cabinet member responsible for local government affairs within 14 days of the intervention;**
 - (b) [(a)] it must submit a written notice of the intervention **[must be tabled in]** to—
 - (i) the national Cabinet member responsible for local government affairs;
 - (ii) the Provincial Parliament; and
 - (iii) **[in]** the National Council of Provinces,
 within 14 days **[of their respective first sittings]** after the intervention began; and
 - [(c)] [(b)] the intervention must end **[unless it is approved by the National Council of Provinces within 30 days of its first sitting after the intervention began]** if—
 - (i) the national Cabinet member responsible for local government affairs disapproves the intervention within 28

- days after the intervention began or by the end of that period has not approved the intervention; or
- (ii) the National Council of Provinces disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention. 5
- (3) If a Municipal Council is dissolved in terms of subsection (1)(c)—
- (a) the Provincial Cabinet must immediately submit a written notice of the dissolution to—
- (i) the national Cabinet member responsible for local government affairs; 10
- (ii) the Provincial Parliament; and
- (iii) the National Council of Provinces; and
- (b) the dissolution takes effect 14 days from the date of receipt of the notice by the National Council of Provinces unless set aside by that national Cabinet member or the National Council of Provinces before the expiry of those 14 days. 15
- (4) If a municipality cannot or does not fulfil an obligation in terms of the national Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the Provincial Cabinet must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and— 20
- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and 25
- (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the Provincial Cabinet must— 30
- (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which— 35
- (i) is to be prepared in accordance with national legislation; and
- (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and
- (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and— 40
- (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and 45
- (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality.
- (6) If the Provincial Cabinet imposes a recovery plan in terms of subsection (5)(a) and the Municipal Council is not dissolved in terms of subsection (5)(b), the Provincial Cabinet must assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan. 50
- (7) If the Provincial Cabinet intervenes in a municipality in terms of subsection (4), (5) or (6), it must submit a written notice of the intervention to— 55
- (a) the national Cabinet member responsible for local government affairs;
- (b) the Provincial Parliament; and
- (c) the National Council of Provinces, 60
- within seven days after the intervention began.”.

Amendment of section 59 of Act 1 of 1998

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

“(b) flat-rate surcharges on **[the tax bases of]** any tax, levy or duty that is imposed by national legislation, other than **[the tax bases of]** on corporate income tax, value-added tax, rates on property or customs duties.”. 5

Substitution of section 63 of Act 1 of 1998

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

“Loans

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

(a) may be raised only when necessary for bridging purposes during a fiscal year[; and

(b) **must be repaid within 12 months]**.”. 15

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

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

Substitutions of expressions in Act 1 of 1998

8. The Provincial Constitution is amended—

(a) by the substitution for the expression “President of the Constitutional Court”, wherever it appears, of the expression “Chief Justice”; and

(b) by the substitution in the Xhosa text for the expressions “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” and “isiBhulu”, wherever they appear, of the expressions “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” and “isiAfrikansi”, respectively. 25

Short title

9. This Act is called the Constitution of the Western Cape First Amendment Act, 2021.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE WESTERN CAPE FIRST AMENDMENT BILL, 2021

1. BACKGROUND

Alignment with Constitution

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

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

Commissioner for the Environment

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

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

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

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

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

2. OBJECTS OF BILL

The purpose of the Bill is to—

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

3. CONTENTS OF BILL

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

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

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

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

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

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

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

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

Clause 9 makes provision for the short title of the Bill, once enacted.

4. CONSULTATION

The following provincial departments were consulted:

- (a) Department of the Premier: Legal Services;
- (b) Department of the Premier: Policy and Strategy; and
- (c) Department of Environmental Affairs and Development Planning.

The Draft Bill was published for comment on 6 March 2018 in the *Provincial Gazette* with a closing date for comments of 6 April 2018 (Provincial Notice 33 in *Provincial Gazette Extraordinary* 7891 of 6 March 2018). Media notices providing information pertaining to the Bill and calling for further comments were subsequently published in four newspapers circulating in the Province. The Draft Bill was also forwarded by registered post and by e-mail to the South African Local Government Association (SALGA) and all municipalities in the Western Cape on 18 April 2018. The due date for submission of further comments was 18 May 2018.

5. FINANCIAL IMPLICATIONS

The Department of the Premier will incur costs for legal representation in the Constitutional Court in respect of the certification of the Bill by the Constitutional Court.

6. LEGISLATIVE COMPETENCE

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

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vetdruk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

WETSONTWERP

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

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

Wysiging van artikel 15 van Wet 1 van 1998

1. Artikel 15 van die Grondwet van die Wes-Kaap, 1997 (die Provinsiale Grondwet), word gewysig deur subartikel (3) deur die volgende subartikel te vervang: 5

- “(3) 'n Persoon verloor lidmaatskap van die Provinsiale Parlement indien [so 'n] daardie persoon—
- (a) ophou om bevoeg te wees om 'n lid te wees;
 - (b) as lid bedank; [of]
 - (c) sonder toestemming van die Provinsiale Parlement afwesig is in 10 omstandighede waarvoor die reëls en orders van die Provinsiale Parlement verlies van lidmaatskap voorskryf; of
 - (d) ophou om 'n lid te wees van die party wat daardie persoon as 'n lid van die Provinsiale Parlement benoem het.”.

Wysiging van artikel 17 van Wet 1 van 1998 15

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

- “(2A) 'n Proklamasie wat 'n verkiesing uitskryf en datums daarvoor bepaal, kan voor of ná die verstryking van die termyn van die Provinsiale Parlement uitgereik word.”. 20

Vervanging van artikel 30 van Wet 1 van 1998

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

“**Geldwetsontwerpe**

- 30.** (1) 'n Wetsontwerp [**wat**] is 'n Geldwetsontwerp indien dit—
- (a) geld bewillig; [**of**]
 - (b) provinsiale belastings, heffings, [**of**] regte of bobelastings oplê, is 'n Geldwetsontwerp; 5
 - (c) provinsiale belastings, heffings, regte of bobelastings afskaf of verminder of vrystellings daarvan verleen; of
 - (d) 'n regstreekse las teen die Provinsiale Inkomstefonds magtig.
- (2) 'n Geldwetsontwerp mag oor geen ander aangeleentheid handel nie, behalwe— 10
- (a) 'n ondergeskikte aangeleentheid wat verband hou met die bewilliging van geld; [**of**]
 - (b) die oplegging, afskaffing of vermindering van provinsiale belastings, heffings, [**of**] regte of bobelastings;
 - (c) die verlening van vrystelling van provinsiale belastings, heffings, regte of bobelastings; of 15
 - (d) die magtiging van regstreekse laste teen die Provinsiale Inkomstefonds.

[(2)](3) 'n Provinsiale Wet moet voorsiening maak vir 'n prosedure waarvolgens die Provinsiale Parlement 'n Geldwetsontwerp kan wysig.’’. 20

Vervanging van artikel 49 van Wet 1 van 1998

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

“[**Toesig oor**] **Ingryping in plaaslike regering**

- 49.** (1) Wanneer 'n munisipaliteit in Wes-Kaap 'n uitvoerende 25
verpligting ingevolge die nasionale Grondwet, hierdie Grondwet of wetgewing nie nakom of nie kan nakom nie, kan die Provinsiale Kabinet ingryp deur enige gepaste stappe te doen om te verseker dat daardie verpligting nagekom word, insluitende—
- (a) die uitreiking van 'n lasgewing aan die Munisipale Raad waarin die mate van die versuim om sy [**verpligting**] verpligtinge na te kom, beskryf word en stappe wat nodig is om sy verpligtinge na te kom, vermeld word; [**en**] 30
 - (b) die aanvaarding van verantwoordelikheid vir die betrokke verpligting in daardie munisipaliteit in die mate wat nodig is om— 35
 - (i) noodsaaklike nasionale standaarde te handhaaf of aan gevestigde minimum standaarde vir die lewering van 'n diens te voldoen;
 - (ii) te voorkom dat daardie Munisipale Raad onredelike stappe doen wat nadelig is vir die belange van 'n ander munisipaliteit of van Wes-Kaap as geheel; of 40
 - (iii) ekonomiese eenheid te handhaaf; of
 - (c) die ontbinding van die Munisipale Raad en aanstelling van 'n administrateur totdat 'n pas verkose Munisipale Raad verkose verklaar is, indien buitengewone omstandighede so 'n stap regverdig. 45
- (2) Indien die Provinsiale Kabinet kragtens subartikel (1)(b) in 'n munisipaliteit ingryp, moet—
- [(a) **die ingryping beëindig word, tensy die lid van die Nasionale Kabinet wat vir plaaslike regeringsake verantwoordelik is, dit binne 14 dae vanaf die ingryping goedkeur;** 50
 - (b)](a) die Provinsiale Kabinet 'n skriftelike kennisgewing van die ingryping voorlê aan—
 - (i) die lid van die nasionale Kabinet wat vir plaaslike-regeringsaangeleenthede verantwoordelik is; 55
 - (ii) [**in**] die Provinsiale Parlement; en

- (iii) [in] die Nasionale Raad van Provinsies [ter tafel gelê word],
binne 14 dae [vanaf hul onderskeie eerste sittings] nadat die ingryping 'n aanvang geneem het; en
- [(c)](b) die ingryping beëindig word[, tensy die Nasionale Raad van Provinsies dit binne 30 dae vanaf sy eerste sitting nadat die ingryping begin het, goedkeur] indien—
- (i) die nasionale Kabinetslid wat vir plaaslikeregeringsaangeleenthede verantwoordelik is, die ingryping afkeur binne 28 dae nadat die ingryping 'n aanvang geneem het of by die einde van daardie tydperk die ingryping nie goedgekeur het nie; of
- (ii) die Nasionale Raad van Provinsies die ingryping afkeur binne 180 dae nadat die ingryping 'n aanvang geneem het of by die einde van daardie tydperk die ingryping nie goedgekeur het nie.
- (3) Indien 'n Munisipale Raad ingevolge subartikel (1)(c) ontbind is—
- (a) moet die Provinsiale Kabinet onmiddellik 'n skriftelike kennisgewing van die ontbinding voorlê aan—
- (i) die nasionale Kabinetslid wat vir plaaslike-regeringsaangeleenthede verantwoordelik is;
- (ii) die Provinsiale Parlement; en
- (iii) die Nasionale Raad van Provinsies; en
- (b) neem die ontbinding 'n aanvang 14 dae vanaf die datum van ontvangs van die kennisgewing deur die Nasionale Raad van Provinsies tensy tersyde gestel deur die nasionale Kabinetslid of die Nasionale Raad van Provinsies voor die verstryking van daardie 14 dae.
- (4) Indien 'n munisipaliteit 'n verpligting ingevolge die nasionale Grondwet of wetgewing om 'n begroting of inkomstegenererende maatreëls goed te keur wat nodig is om aan die begroting gevolg te gee nie kan nakom nie of dit nie nakom nie, moet die Provinsiale Kabinet ingryp deur enige gepaste stappe te doen om te verseker dat die begroting of daardie inkomstegenererende maatreëls goedgekeur word, met inbegrip van die ontbinding van die Munisipale Raad en—
- (a) die aanstelling van 'n administrateur totdat 'n pas verkose Munisipale Raad verkose verklaar is; en
- (b) die goedkeuring van 'n voorlopige begroting of inkomstegenererende maatreëls om vir die voortgesette funksionering van die munisipaliteit voorsiening te maak.
- (5) Indien 'n munisipaliteit, as gevolg van 'n krisis in sy finansiële sake, in ernstige of volgehoue wesenlike versuim is van sy verpligtinge om basiese dienste te verskaf of om sy finansiële ondernemings na te kom, of erken dat hy nie in staat is om sy verpligtinge of finansiële ondernemings na te kom nie, moet die Provinsiale Kabinet—
- (a) 'n herstelplan voorskryf wat daarop gerig is om die munisipaliteit se vermoë om sy verpligtinge om basiese dienste te verskaf of sy finansiële ondernemings na te kom, te verseker, wat—
- (i) voorberei moet word ooreenkomstig nasionale wetgewing; en
- (ii) die munisipaliteit in die uitoefening van sy wetgewende en uitvoerende gesag bind, maar slegs in die mate wat nodig is om die krisis in sy finansiële sake op te los; en
- (b) die Munisipale Raad ontbind, indien die munisipaliteit wetgewende maatreëls, met inbegrip van 'n begroting of enige inkomstegenererende maatreëls wat nodig is om aan die herstelplan gevolg te gee, nie kan goedkeur nie of dit nie goedkeur nie, en—
- (i) 'n administrateur aanstel totdat 'n pas verkose Munisipale Raad verkose verklaar is; en
- (ii) 'n voorlopige begroting of inkomstegenererende maatreëls of enige ander maatreëls wat aan die herstelplan gevolg gee, goedkeur om vir die voortgesette funksionering van die munisipaliteit voorsiening te maak.

(6) Indien die Provinsiale Kabinet 'n herstelplan ingevolge subartikel (5)(a) voorskryf en die Munisipale Raad nie ingevolge subartikel (5)(b) ontbind word nie, moet die Provinsiale Kabinet verantwoordelikheid aanvaar vir die uitvoer van die herstelplan in die mate wat die munisipaliteit die herstelplan nie andersins kan uitvoer of dit nie uitvoer nie. 5

(7) Indien die Provinsiale Kabinet ingevolge subartikel (4), (5) of (6) in 'n munisipaliteit ingryp, moet hy 'n skriftelike kennisgewing van die ingryping voorlê aan— 10

(a) die nasionale Kabinetslid wat vir plaaslikeregeringsaangeleenthede verantwoordelik is;

(b) die Provinsiale Parlement; en

(c) die Nasionale Raad van Provinsies, binne sewe dae nadat die ingryping 'n aanvang geneem het.’’.

Wysiging van artikel 59 van Wet 1 van 1998 15

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

“(b) uniforme bobelasting hef op [**die belastingbasisse van**] enige belasting, heffing of reg wat deur nasionale wetgewing opgelê word, uitgesonderd [**die belastingbasisse van**] op korporatiewe inkomstebelasting, belasting op toegevoegde waarde, eiendomsbelasting of doeaneregte.’’ 20

Vervanging van artikel 63 van Wet 1 van 1998

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

“Lenings

63. Die Wes-Kaapse regering kan lenings vir kapitaaluitgawes of lopende uitgawes ooreenkomstig [**voorwaardes wat deur**] nasionale wetgewing [**bepaal word,**] aangaan, maar lenings vir lopende uitgawes[— 25

(a) kan slegs aangegaan word wanneer dit gedurende 'n belastingjaar vir oorbruggingsdoeleindes nodig is; en 30

(b) moet binne 12 maande terugbetaal word.’’.

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

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

Vervanging van uitdrukkings in Wet 1 van 1998

8. Die Provinsiale Grondwet word gewysig— 35

(a) deur die uitdrukking “President van die Konstitusionele Hof”, waar dit ook al voorkom, deur die uitdrukking “Hoofregter” te vervang; en

(b) deur in die Xhosateks die uitdrukkings “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” en “isiBhulu”, waar dit ook al voorkom, onderskeidelik deur die uitdrukkings “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” en “isiAfrikansi” te vervang. 40

Kort titel

9. Hierdie Wet heet die Eerste Wysigingswet op die Grondwet van die Wes-Kaap, 2021.

MEMORANDUM OOR DIE OOGMERKE VAN DIE EERSTE WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN DIE WES-KAAP, 2021

1. AGTERGROND

Ooreenstemming met die Grondwet

Verskeie wysigings aan die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet), is reeds gemaak. Hierdie wysigings is nog nie opgeneem in die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998) (die Provinsiale Grondwet), nie.

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

Omgewingskommissaris

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

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

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

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

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

2. OOGMERKE VAN WETSONTWERP

Die doel van die Wetsontwerp is om—

- (a) die Provinsiale Grondwet te wysig om dit in ooreenstemming te bring met die wysigings wat aan die Grondwet gemaak is;
- (b) die bepalings met betrekking tot die Omgewingskommissaris te herroep; en
- (c) die Xhosateks te verbeter.

3. INHOUD VAN WETSONTWERP

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

Klousule 2 wysig artikel 17 van die Provinsiale Grondwet deur die invoeging van subartikel (2A) ná subartikel (2) om die gewysigde artikel 108 van die Grondwet te weerspieël, wat voorsiening maak vir die afkondiging van verkiesingsdatums voor of ná die verstryking van 'n provinsiale wetgewer se termyn indien die provinsiale wetgewer ingevolge artikel 109 van die Grondwet ontbind word of wanneer sy termyn verstryk. (“Constitution Fourth Amendment Act of 1999”)

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

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

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

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

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

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

Klousule 9 maak voorsiening vir die kort titel van die Wetsontwerp nadat dit verorden is.

4. OORLEGPLEGING

Daar is met die volgende provinsiale departemente oorleg gepleeg:

- (a) Departement van die Premier: Regsdienste;
- (b) Departement van die Premier: Beleid en Strategie; en
- (c) Departement van Omgewingsake en Ontwikkelingsbeplanning.

Die Konsepwetsontwerp is op 6 Maart 2018 in die *Provinsiale Koerant* gepubliseer met 'n sluitingsdatum vir kommentaar van 6 April 2018 (Provinsiale Kennisgewing 33 in *Buitengewone Provinsiale Koerant* 7891 van 6 Maart 2018). Mediakennisgewings wat inligting oor die Wetsontwerp verskaf en verdere kommentaar aanvra, is gevolglik in vier koerante wat sirkuleer in die Provinsie, gepubliseer. Die Konsepwetsontwerp is ook op 18 April 2018 per geregistreerde pos en per e-pos aangestuur na die Suid-Afrikaanse Vereniging vir Plaaslike Regering (SALGA) en alle munisipaliteite in die Wes-Kaap. Die sluitingsdatum vir die indiening van verdere kommentaar was 18 Mei 2018.

5. FINANSIËLE IMPLIKASIES

Die Departement van die Premier sal koste aangaan vir regsverteenvoording in die Konstitusionele Hof ten opsigte van die sertifisering van die Wetsontwerp deur die Konstitusionele Hof.

6. WETGEWENDE BEVOEGDHEID

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

INGCACISO GABALALA:

[] Amagama abhalwe ngqindilili kwizibiyeli ezisikwere abonakalisa oko kuye kwasuswa kwimithetho esele iphunyeziwe.

Amagama akrwelelwe umgca ongqindilili ngaphantsi abonakalisa oko kufakelweyo kumthetho osele uphunyeziwe kwimithetho ekhoyo.

UMTHETHO OSAYILWAYO

Ukwenziwa kwezilungiso kuMgaqo-siseko weNtshona Koloni, ka-1997, ukuze unqamane noMgaqo-siseko weRiphabliki yoMzantsi Afrika, ka-1996, ngokunxulumene nokulahlekelwa bubulungu kwiPalamente yePhondo, ukubizwa nokubekwa kwemihla yonyulo lwePalamente yePhondo, ukuchazwa kweBhili yemali, ukungenelela kwephondo kurhulumente wengingqi, ukufakwa kweerhafu yiPalamente yePhondo nokufunwa kwemali-mboleko ngurhulumente wePhondo leNtshona Koloni; kukubhangisa imiba enxulumene necandelo lemali lephondo, uMkhomishinala weNdalo esiNgqongileyo; ukutshintsha imbekiselo ethi uMongameli weNkundla yoMgaqo-siseko; ukuqalisa iinguqulelo zombhalo ezithile nokuchaza ngemiba enxulumene noku.

NGOKO KE yiPalamente yePhondo leNtshona Koloni, iphumeza umthetho ngale ndlela ilandelayo:—

Izilungiso kwicandelo 15 loMthetho 1 ka-1998

1. Icandelo 15 loMgaqo-siseko weNtshona Koloni, ka-1997 (uMgaqo-siseko wePhondo), lenziwa izilungiso ngokufakela eli candelwana (3) endaweni yelicandelwana lilandelayo:

“(3) Umntu uyaphelelwa bubulungu bakhe kwiPalamente yePhondo xa ngaba—

- (a) kuye kwenzeka ukuba angafaneleki;
- (b) [okanye] xa eziyekela ebulungwini;
- (c) uye akabikho kwiPalamente yePhondo ngaphandle kwemvume phantsi kweemeko ekuchaziweyo ukuba umntu uyaphelelwa bubulungu xa engekho kuzo; okanye
- (d) uyayeka ukuba lilungu lombutho owamkethayo ukuba awumele kwiPalamente yePhondo.”

Izilungiso kwicandelo 17 loMthetho 1 ka-1998

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

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

Ukufakwa kwelinye icandelo endaweni yecandelo 30 loMthetho 1 ka-1998

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

“[Ibhili zemali] IiBhili zeMali

- 30 . (1) [Ibhili ehlahla imali yokusetyenziswa okanye] IBhili yiBhili yezemali ukuba—**
- (a) ihlahla imali;
- (b) **[ebeka] ibeka** iirhafu, imirhumo **[neentlawulo yibhili yezemali.]**, imisebenzi okanye iintlawulo ezongezelelekileyo zephondo; 5
- (c) ibhangisa okanye inciphisa, okanye inikezela ngemvume yokungahlawuli, nazo naziphi na iirhafu zephondo, imirhumo, imisebenzi neentlawulo ezongezelelekileyo; okanye
- (d) ukugunyazisa iintlawulo ezingqale kwiNgxowamali yeRhafu yePhondo. 10
- (2) **[Ibhili] IBhili** yezemali akufuneki ukuba ibandakanye neminye imiba ngaphandle—
- (a) kwemiba ephathelele ekuhlalweni kwemali; **[eza kusetyenziswa okanye]** 15
- (b) ekunyanzelweni **[ekubekweni kweerhafu, imirhumo neentlawulo]**, ekubhangisweni okanye ekuncitshisweni kweerhafu, imirhumo, imisebenzi okanye iintlawulo ezongezelelekileyo;
- (c) ukunikezelwa ngemvume yokungahlawuli iirhafu, imirhumo, imisebenzi okanye iintlawulo ezongezelelekileyo zephondo; okanye 20
- (d) ukugunyazisa iintlawulo ezingqale kwiNgxowamali yeRhafu yePhondo.
- [(2)](3) UMthetho wephondo kufuneka ube nenkqubo enokuthi ihambe ngayo iPalamente yePhondo xa isenza isilungiso kwibhili yezemali.” 25

Ukutshintshwa kwecandelo 49 loMthetho 1 ka-1998

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

- “**[Ukubeka iliso kulawulo lweedolophu] Ungenelelo kurhulumente wengingqi** 30
- 49. (1)** Xa umasipala othile apha kweli Phondo engawenzi kakuhle umsebenzi wakhe wokulawula ngokoMgaqo-siseko kazwelonke, lo Mgaqo-siseko okanye ngokwemithetho, iKhabhinethi yePhondo isenokuthi ingenelele ngokuthi ithathe amanyathelo afanelekileyo okuqinisekisa ukuba loo misebenzi iyenziwa, manyathelo lawo anokubandakanya la alandelayo[:]— 35
- (a) ukukhupha ingcaciso eya kwiKhansile kaMasipala lowo ichaza ngokupheleleyo indlela esilele ngayo ekwenzeni umsebenzi wayo, inike nezikhokelo kananjalo zokuba loo meko ingalungiswa njani na; 40
- (b) ukuthathela kuyo uxanduva lokwenza loo msebenzi asilele kuwo umasipala lowo iluthwale kangangoko kuyimfuneko—
- (i) ukugcina imigangatho yesizwe eyimfuneko okanye ukukhawulelana nemigangatho efunekayo ekunikweni kweenkonzo; 45
- (ii) ukuthintela iKhansile kaMasipala lowo ukuba ingathabathi amanyathelo angafanelekanga naya kuthi abeke esichengeni izinto ezichaphazela omnye umasipala okanye iNtshona Koloni iphela; 50
- (iii) okanye ukugcina umanyano kwinkalo yezoqoqosho; okanye
- (c) ukubhangisa iBhunga likaMasipala kuze kuqashwe umlawuli wethutyana kude kubhengezwe ukonyulwa kweBhunga lika-Masipala elitsha, ukuba iimeko ezizodwa zifunisa amanyathelo anjalo. 55
- (2) Ukuba ngaba iKhabhinethi yePhondo ingenelela kwimeko kamasipala othile ngokwalo mhlathana (1)(b)—

- [(a) kufuneka oko kungenelela kufikelele esiphelweni ngaphandle kokuba kuyavunywa nguMphathiswa wesizwe ojongene nolawulo lweedolophu;**
- (b)](a) kufuneka ingenise isaziso esibhaliweyo soko kungenelela [sandlalwe phambi kwePalamente] — 5**
- (i) kwilungu leKhabhinethi kazwelonke elijongene nemicimbi yorhulumente wengingqi;
- (ii) kwiPalamente yePhondo;
- (iii) **[nakwiKhansile yeSizwe yuMaphondo] nakwiBhunga laMaphondo leSizwe, 10**
- zingadlulanga iintsuku ezili-14 emva **[kokuba ihleli okokuqala emva] kolo ngenelelo; kwaye**
- [(c)](b)[kufuneka oko kungenelela] ungenelelo kuphele [kufikelele esiphelweni ngaphandle kokuba kuyavunywa yiKhansile yeSizwe yaMaphondo zingadlulanga iintsuku ezingama-30 emva kokuhlala kwayo okokuqala emva kolo ngenelelo] ukuba— 15**
- (i) ilungu leKhabhinethi kazwelonke elinoxanduva lwemicimbi yorhulumente wengingqi alivumelani nongenelelo kwisithuba seentsuku ezingama-28 emva kokuba ungenelelo luqalisile okanye ngasekupheleni kwelo xesha alikagunyazisi ukuba kungenelelwe; okanye
- (ii) iBhunga lamaPhondo leSizwe alivumelani nongenelelo zingaphelanga iintsuku ezili-180 emva kokuba luqalisile okanye ngasekupheleni kwelo xesha ayikagunyazisi ukuba kungenelelwe. 20
- (3) Ukuba iBhunga likaMasipala liyachithwa ngokwecandelwana (1)(c)—
- (a) iKhabhinethi yePhondo imele ukuba ngoko nangoko ithumele isaziso esibhaliweyo sokuchithwa kwalo— 30
- (i) kwilungu leKhabhinethi kazwelonke elinoxanduva lolawulo lwemicimbi yorhulumente wengingqi;
- (ii) kwiPalamente yePhondo;
- (iii) nakwiBhunga lamaPhondo leSizwe; kwaye
- (b) ukuchithwa kuya kusebenza kwiintsuku ezili-14 emva komhla wokufunyanwa kwesaziso liBhunga lamaPhondo leSizwe ngaphandle kokuba ilungu leKhabhinethi yesizwe okanye iBhunga lamaPhondo leSizwe lithi makungabi njalo ngaphambi kokuphela kwezo ntsuku zili-14. 35
- (4) Ukuba umasipala akakwazi okanye akayenzi imisebenzi yakhe ngokoMgaqo-siseko okanye ngokomthetho ogunyazisa ulwabiwo-mali okanye nawaphi na amanyathelo okwenza ingeniso efunekayo ukuze lusebenze ulwabiwo-mali, iKhabhinethi yePhondo imele ingenelele ngokuthatha nawaphi na amanyathelo afanelekileyo ukuze iqinisekise ukuba ulwabiwo-mali okanye loo manyathelo okwenza ingeniso ayagunyaziswa, kuquka nokuchitha iBhunga likaMasipala kunye— 40
- (a) nokubeka umlawuli kude kubhengezwe ukonyulwa kweBhunga likaMasipala elitsha;
- (b) nokugunyazisa ulwabiwo-mali lwexeshana okanye amanyathelo okwenza ingeniso ukuze umasipala aqhubeke esebenza. 45
- (5) Ukuba umasipala, ngenxa yeengxaki zemali, uyaqhubeka engayiphumezi imisebenzi yakhe yokunikela ngeenkonzo ezisisiseko okanye akayifezi imisebenzi yakhe yemali, okanye uyavuma ukuba akakwazi kuphumeza imisebenzi yakhe okanye ukuhlawula, iKhabhinethi yePhondo kufuneka— 50
- (a) inyanzelise isicwangciso sokulungisa loo ngxaki ngenjongo yokunceda loo masipala ukuba aphinde enze imisebenzi yakhe yokunikela ngeenkonzo ezisisiseko okanye yokwenza imisebenzi yakhe yemali, nekufuneka—
- (i) ilungiselelwe ngokungqamanayo nomthetho kazwelonke; yaye 55
- 60

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

Izilungiso kwicandelo 59 loMthetho 1 ka-1998

5. Icandelo 59 loMgaqo-siseko wePhondo lenziwa izilungiso kwisiNgesi nakwiAfrikansi ngokufakelwa kwalo mhlathi (b) wecandelwana (1):
- “(b) flat-rate surcharges on **[the tax bases of]** any tax, levy or duty that is imposed by national legislation, other than **[the tax bases of]** on corporate income tax, value-added tax, rates on property or customs duties.”.

Izilungiso kwicandelo 63 loMthetho 1 ka-1998

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

“Iimali-mboleko

63. Urhulumente weNtshona Koloni usenokwandisa iimalimboleko ukwenzela inkunzi okanye inkcitho yangoku [usenokuthi ehamba ngokwemiqathango yemithetho] nemithetho karhulumente wezizwe[, afune imali-mboleko yokujongana neendleko zokuthenga izinto nokwenza izakhiwo kwakunye nezomhla nezolo], kodwa ke iimboleko ezenzelwa ukujongana neendleko zomhla nezolo—
- (a) kufuneka zenziwe kuphela xa kukho imfuneko yokuba kuvalwe izikhewu kuloo nyaka-mali;
- (b) kwaye kufuneka zihlawulwe zingaphelanga iinyanga ezilishumi elinesibini.”.

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

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

Ukukhutshwa kwamabinzana kuMthetho 1 ka-1998

8. UMgaqo-siseko wePhondo wenziwa izilungiso—

- (a) ngokufakelwa kwebinzana elithi “uMongameli weNkundla yoMgaqosiseko” endaweni yebinzana elithi “uMongameli weNkundla yoMgaqosiseko”, naphi na apho livela khona;
- (b) ngokufakelwa kwegama elithi “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” nelithi “isiAfrikansi” endaweni yelithi “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” nelithi “isiBhulu” naphi na apho livela khona kwinguqulelo yesiXhosa, ngokwahlukahlukeneyo. 5

Isihloko esifutshane

9. Lo Mthetho ubizwa ngokuba nguMthetho woLungiso wokuQala woMgaqo-siseko weNtshona Koloni, 2021. 10

**IMEMORANDAM ENGEZINTO ZOMTHETHO OSAYILWAYO
WOLUNGISO WOKUQALA KUMGAQO-SISEKO WENTSHONA
KOLONI, 2021**

1. INTSUKAPHI

Ungqanyaniso noMgaqosiseko

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

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

Umkhomishinala wezokuSingqongileyo

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

Isikhundla soMkhomishinala wezokuSingqongileyo asinamntu kwaye akukaze kuqeshwe mntu kuso.

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

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

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

2. IINJONGO ZALO MTHETHO USAYILWAYO

Injongo yeBhili—

- (a) kukulungisa uMgaqo-siseko wePhondo ukuze ungqamane nohlaziyo olwenziwe kuMgaqo-siseko;
- (b) ukubhangiswa kwezibonelelo zoMkhomishinala wezokuSingqongileyo; kunye
- (c) nokuphucula ukubhalwa kwesiXhosa.

3. IZIQULATHO ZALO MTHETHO USAYILWAYO

Isoloty 1 lilungisa icandelo 15 loMgaqo-siseko wePhondo ngokufakela icandelwana (3) ukuze libonise icandelo 106(3) elilungisiweyo loMgaqo-siseko ukuze licacise ngokulahlekelwa lilungu lepalamente, ukuba ilungu liyayeka ukuba lilungu lombutho olikhethileyo ukuba liwumele. (*i-Constitution Tenth Amendment Act of 2003* kunye ne-*Constitution Fourteenth Amendment Act of 2008*)

Isoloty 2 lilungisa icandelo 17 loMgaqo-siseko wePhondo, ngokufakela icandelwana (2A) emva kwecandelwana (2), ukuze libonise icandelo 108 elilungisiweyo loMgaqo-siseko, elithi kufanele kuchazwe imihla yonyulo ngaphambi okanye ngemva kokuphelelwa kwepalamente yephondo kwimeko apho amalungu endlu yowisomthetho yephondo abhangisiwe ngokwecandelo 109 loMgaqosiseko xa liphelelwa lixesha. (*i-Constitution Fourth Amendment Act of 1999*)

Isoloty 3 lilungisa icandelo 30 loMgaqo-siseko wePhondo ukuze libonise ingcaciso elungisiweyo “yeBhili zeMali” ngokwecandelo 120 loMgaqo-siseko. (*i-Constitution Seventh Amendment Act of 2001*)

Isoloty 4 lilungisa icandelo 49 loMgaqo-siseko wePhondo ukuze libonise icandelo 139 elilungisiweyo loMgaqo-siseko eliphathelele ukungenelela kwephondo kurhulumente wengingqi. (*i-Constitution Eleventh Amendment Act of 2003*)

Isoloty 5 lilungisa icandelo 59(1)(b) loMgaqo-siseko wePhondo kwiSingesi nakwi-Afrikansi ukuze libonise icandelo 228 elilungisiweyo loMgaqo-siseko ngokuphathelele ukufakwa kweerhafu ngamaphondo. (*i-Constitution Seventh Amendment Act of 2001*)

Isoloty 6 lilungisa icandelo 63 loMgaqo-siseko wePhondo ukubonisa icandelo elilungisiweyo 230 loMgaqo-siseko eliphathelele nokukhulisa iimali-mboleko. (*i-Constitution Seventh Amendment Act of 2001*)

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

Isoloty 8 lifakelwa kwindawo yebinzana elithi “uMongameli weNkundla yoMgaqo-siseko” kuze endaweni yalo kufakelwe elithi “iJaji eyiNtloko” naphina na apho livela khona kuMgaqo-siseko wePhondo (*i-Constitution Sixth Amendment Act of 2001*) namanye amabinzana athile kuMgaqo-siseko wePhondo obhalwe ngesiXhosa.

Isoloty 9 lenza ulungiselelo lwesihloko esifutshane soMthetho oSayilwayo, ukuwiswa nje kwawo.

4. UKUCEBISANA

Kucetyiswene nala masebe ephondo alandelayo:

- (a) ISebe leNkulumbuso: Iinkonzo zoMthetho;
- (b) ISebe leNkulumbuso: UMgaqo-nkqubo neQhinga lokusebenza; kunye
- (c) neSebe leMicimbi yokuSingqongileyo neSicwangciso soPhuhliso.

UQulunqo loMthetho oSayilwayo lwapapshelwa ukufumana izimvo ngomhla we-6 kweyoKwindla 2018 kwi*Gazethi yePhondo* eyayinomhla wamanqam

wokufumana izimvo we-6 kwekaTshazimpuzi 2018 (ISaziso sePhondo 33 kwi*Songezelelo seGazethi yePhondo* 7891 yomhla we-kweyoKwindla 2018). Izasizo zamajelo eendaba ezazinika iinkcukacha ezimayela nalo Mthetho oSayilwayo kunye nokucelwa kwezimvo ezongezelelekileyo zapapashwa kumaphephandaba amane walapha kwiPhondo. Nalo uQulunqo loMthetho oSayilwayo lwathunyelwa ngeposi ebhalisiweyo nange-imeyili kuManyano yooRhulumente beNgingqi yoMzantsi Afrika (i-SALGA) nakubo bonke oomasipala eNtshona Koloni ngomhla we-18 kwekaTshazimpuzi 2018. Umhla wamanqam okungeniswa kwezimvo ezongezelelekileyo yayingumhla we-18 kwekaCanzibe 2018.

5. IMALI EDINGEKAYO

ISebe leNkulumbuso liza kuzihlawula iindleko zomeli wezomthetho kwiNkundla yoMgaqo-siseko ngokunxulumene nolwaneliseko lweNkundla ngoMthetho oSayilwayo.

6. ISAKHONO SOWISO-MTHETHO

INkulumbuso yanelisekile kukuba kulungiselelwe loMthetho uSayilwayo ophantsi kwesakhono sowiso-mthetho sePhondo.

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