

PROVINCE OF WESTERN CAPE

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AMENDMENTS OF THE STANDING COMMITTEE ON THE  
**WESTERN CAPE  
COMMISSIONER FOR  
CHILDREN BILL**

[B 4—2018]

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*(As agreed to by the Standing Committee on the Premier and Constitutional Matters)*

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[B 4A—2018]

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PROVINSIE WES-KAAP

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STAANDE KOMITEE SE AMENDEMENTE OP DIE  
**WETSONTWERP OP DIE  
WES-KAAPSE  
KOMMISSARIS VIR KINDERS**

[W 4—2018]

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*(Soos goedgekeur deur die Staande Komitee oor die Premier en Grondwetlike Aangeleenthede)*

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[W 4A—2018]

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IPHONDO LENTSHONA KOLONI

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**UMTHETHO OSAYILWAYO  
WOMKHOMISHINALA  
WEZABANTWANA  
WENTSHONA KOLONI**

[B 4—2018]

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*(Njengoko kuvunyelwene yiKomidi Emile kwiNkulumbuso kunye neMicimbi-siseko)*

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[B 4A—2018]

**AMENDMENTS AGREED TO**

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**WESTERN CAPE COMMISSIONER FOR CHILDREN BILL**

**[B4—2018]**

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**PREAMBLE**

1. On page 2, in paragraph 2, after “Children” to insert:  
and provides that the Commissioner must assist the Western Cape Government in protecting and promoting the interests of children in the Province

**CLAUSE 1**

1. On page 2, in line 18, to omit the second “of” and to substitute “to”.

**CLAUSE 3**

1. On page 3, in line 34, to omit “or”.
2. On page 3, in line 35, after “party” to insert “; or”.
3. On page 3, after line 35, to add the following paragraph:  
(e) hold any office that causes a conflict of interest
4. On page 3, before line 36, to add the following subsection:  
(3) A person may not be nominated for or appointed as the Commissioner if he or she—  
(a) has at any time been convicted of—  
(i) an offence relating to dishonesty or violence; or  
(ii) a sexual offence as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007);  
(b) is unsuitable to work with children as contemplated in the Children’s Act, 2005 (Act 38 of 2005); or  
(c) is an unrehabilitated insolvent.  
(3) A person may not be nominated for or appointed as the Commissioner if he or she—  
(a) has at any time been convicted of—  
(i) an offence relating to dishonesty or violence; or  
(ii) a sexual offence as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007);  
(b) is unsuitable to work with children as contemplated in the Children’s Act, 2005 (Act 38 of 2005); or  
(c) is an unrehabilitated insolvent.

**CLAUSE 5**

1. On page 3, from line 54, to omit subparagraphs (ii) and (iii).

**CHAPTER 3**

1. On page 4, in line 16, to omit “FUNCTIONS” and to substitute “POWERS AND DUTIES”.

**CLAUSE 6**

1. On page 4, in line 18, to omit “functions” and to substitute “duties”.
2. On page 4, from line 24, to omit paragraph (c) and to substitute:  
(c) have regard to the Constitution, other national legislation pertaining to children and the Provincial Constitution;

**CLAUSE 8**

1. On page 5, in line 35, to omit “functions” and to substitute “powers or duties”.

**CLAUSE 9**

1. On page 5, in line 52, to omit “functions” and to substitute “powers or duties”.

**CLAUSE 10**

1. On page 6, in line 8, to omit paragraph (b) and to substitute:  
(b) the Constitution, other national legislation pertaining to children and the Provincial Constitution;
2. On page 6, in line 12, to omit “functions” and to substitute “powers or duties”.

**CLAUSE 13**

1. On page 6, from line 44, to omit subsection (1) and to substitute:  
(1) Any person may request the Commissioner to take up a matter for monitoring, investigation or research in terms of the powers conferred and duties imposed on the Commissioner by this Act.

**CLAUSE 14**

1. On page 7, in line 18, to omit “functions” and to substitute “powers and duties”.

**CLAUSE 15**

1. On page 7, from line 26, to omit “in terms of this Act” and to substitute “contemplated in section 8”.
2. On page 7, after line 42, to add the following subsection:  
(4) Any evidence or answer given or statement made by a person appearing before the Commissioner pursuant to a subpoena or notice contemplated in subsection (1)(b) may not be used against that person in any court, except in criminal proceedings where that person is tried for perjury or an offence contemplated in section 26(c)(iv) or (v).

**CLAUSE 18**

1. On page 8, in line 12, to omit “functions” and to substitute “powers or duties”.
2. On page 8, in line 17, to omit “perform his or her functions” and to substitute:  
exercise his or her powers and perform his or her duties

**CLAUSE 19**

1. On page 8, from line 22, to omit clause 19 and to substitute:  
**19.** (1) The Director-General of the Province, or another official acting under delegated authority, must appoint, in terms of the Public Service Act, 1994, the staff members required for the exercise or performance of the powers and duties of the Commissioner.  
(2) The staff members contemplated in subsection (1) must in the performance of their functions apply the principles contemplated in section 6.

**CLAUSE 20**

1. On page 8, in line 27, to omit “perform his or her functions” and to substitute:  
exercise his or her powers and perform his or her duties

**CLAUSE 25**

1. On page 9, in line 8, after “Premier” to insert:  
, after consultation with the standing committee,

**CLAUSE 26**

1. On page 9, in line 34, to omit “not exceeding R10 000” and to substitute:  
or imprisonment not exceeding twelve months

**AMENDEMENTE GOEDGEKEUR**

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**WETSONTWERP OP DIE WES-KAAPSE KOMMISSARIS VIR KINDERS**

[W4—2018]

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**AANHEF**

1. Dat op bladsy 13, in paragraaf 2, ná “instel” ingevoeg word:  
     en voorsiening maak dat die Kommissaris die Wes-Kaapse Regering  
     moet bystaan by die beskerming en bevordering van die belange van  
     kinders in die Provinsie

**KLOUSULE 1**

1. Dat, in die Engelse teks, op bladsy 2, in reël 18, die tweede “of” geskrap word  
     en vervang word deur “to”.

**KLOUSULE 3**

1. Dat op bladsy 14, in reël 33, “of” geskrap word.
2. Dat op bladsy 14, in reël 34, ná “nie” “; of” ingevoeg word.
3. Dat op bladsy 14, ná reël 34, die volgende paragraaf bygevoeg word:  
     (e) enige amp beklee wat ’n belangebotsing veroorsaak nie
4. Dat op bladsy 14, voor reël 35, die volgende subartikel bygevoeg word:  
     (3) ’n Persoon mag nie benoem word vir of aangestel word as die  
     Kommissaris nie indien hy of sy—  
     (a) te eniger tyd skuldig bevind is aan—  
         (i) ’n misdryf wat met oneerlikheid of geweld verband hou; of  
         (ii) ’n seksuele misdryf soos omskryf in artikel 1 van die  
             Wysigingswet op die Strafbereg (Seksuele Misdrywe en  
             Verwante Aangeleenthede), 2007 (Wet 32 van 2007);  
     (b) ongeskik is om met kinders te werk soos beoog in die “Children’s  
     Act, 2005” (Wet 38 van 2005); of  
     (c) ’n ongerehabiliteerde insolvent is.

**KLOUSULE 5**

1. Dat op bladsy 14, vanaf reël 53, subparagraawe (ii) en (iii) geskrap word.

**HOOFSTUK 3**

1. Dat op bladsy 15, in reël 12, “**WERKSAAMHEDE**” geskrap word en  
     vervang word deur “**BEVOEGDHEDE EN PLIGTE**”.

**KLOUSULE 6**

1. Dat op bladsy 15, in reël 14, “werksaamhede” geskrap word en vervang word  
     deur “pligte”.
2. Dat op bladsy 15, in reël 20, paragraaf (c) geskrap word en vervang word deur:  
     (c) die Grondwet, ander nasionale wetgewing betreffende kinders en  
     die Provinsiale Grondwet in ag neem;

**KLOUSULE 8**

1. Dat op bladsy 16, in reël 32, “werksaamhede” geskrap word en vervang word  
     deur “bevoegdhede of pligte”.

**KLOUSULE 9**

1. Dat op bladsy 16, in reël 50, “werksaamhede” geskrap word en vervang word  
     deur “bevoegdhede of pligte”.

**KLOUSULE 10**

1. Dat op bladsy 17, in reël 5, paragraaf (b) geskrap word en vervang word deur:  
(b) die Grondwet, ander nasionale wetgewing betreffende kinders en die Provinsiale Grondwet;
2. Dat op bladsy 17, in reël 10, “werksaamhede” geskrap word en vervang word deur “bevoegdhede of pligte”.

**KLOUSULE 13**

1. Dat op bladsy 17, vanaf reël 42, subartikel (1) geskrap word en vervang word deur:  
(1) Enigiemand kan die Kommissaris versoek om ’n aangeleentheid vir monitering, ondersoek of navorsing op te neem ingevolge die bevoegdhede en pligte aan die Kommissaris verleen en opgelê by hierdie Wet.

**KLOUSULE 14**

1. Dat op bladsy 18, in reël 21, “werksaamhede” geskrap word en vervang word deur “bevoegdhede en pligte”.

**KLOUSULE 15**

1. Dat op bladsy 18, in reël 32, “ingevolge hierdie Wet” geskrap word en vervang word deur “beoog in artikel 8”.
2. Dat op bladsy 18, ná reël 49, die volgende subartikel bygevoeg word:  
(4) Enige getuienis of antwoord gegee of verklaring afgelê deur ’n persoon wat voor die Kommissaris verskyn na aanleiding van ’n dagvaarding of kennisgewing beoog in subartikel (1)(b), mag nie teen daardie persoon in enige hof gebruik word nie, behalwe in strafregtelike verrigtinge waar daardie persoon vir meened of ’n misdryf beoog in artikel 26(c)(iv) of (v) verhoor word.

**KLOUSULE 18**

1. Dat op bladsy 19, in reël 21, “werksaamhede” geskrap word en vervang word deur “bevoegdhede of pligte”.
2. Dat op bladsy 19, in reël 26, “sy of haar werksaamhede op ’n wyse verrig” geskrap word en vervang word deur:  
sy of haar bevoegdhede uitoefen en sy of haar pligte verrig op ’n wyse

**KLOUSULE 19**

1. Dat op bladsy 19, vanaf reël 31, klousule 19 geskrap word en vervang word deur:  
**19.** (1) Die Direkteur-generaal van die Provinsie, of ’n ander beamppte wat kragtens gedelegeerde bevoegdheid handel, moet ingevolge die Staatsdienswet, 1994, die personeellede aanstel wat vir die uitoefening of verrigting van die bevoegdhede en pligte van die Kommissaris benodig word.  
(2) Die personeellede beoog in subartikel (1) moet by die verrigting van hul werksaamhede die beginsels beoog in artikel 6 toepas.

**KLOUSULE 20**

1. Dat op bladsy 19, vanaf reël 37, “sy of haar werksaamhede ingevolge hierdie Wet te verrig” geskrap word en vervang word deur:  
sy of haar bevoegdhede en pligte ingevolge hierdie Wet uit te oefen en te verrig

**KLOUSULE 25**

1. Dat op bladsy 20, in reël 20, ná “Premier” ingevoeg word:  
, ná oorleg met die staande komitee,

**KLOUSULE 26**

1. Dat op bladsy 20, vanaf reël 46, “van hoogstens R10 000” geskrap word en vervang word deur:  
of gevangenisstraf van hoogstens twaalf maande

**IZILUNGISO ZIVUNYIWE**

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**UMTHETHO OSAYILWAYO WOMKHOMSHINALA WABANTWANA  
WENTSHONA KOLONI**

**[B4—2018]**

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**IMBULAMBETHE**

1. Kwiphepha 2, kumhlathi 2, emva “kwaBantwana” kufakelwe: kwaye kubonelelwe ukuba uMkhomishinala makancedise uRhulumente weNtshona Koloni ekukhuseleni nasekukhuthazeni imidla yabantwana kwiPhondo

**ISOLOTYA 1**

1. Kwiphepha 2, kumgca 18, kushiye “eyo” wesibini kuze kufakelwe endaweni yakhe “uku”.

**ISOLOTYA 3**

1. Kwiphepha 3, kumgca 34, kushiye “okanye”.
2. Kwiphepha 3, kumgca 35, emva “kweqela” kufakelwe “; okanye”.
3. Kwiphepha 3, emva komgca 35, kufakelwe lo mhlathi ulandelayo:
  - (e) ukubamba i-ofisi okubangela ingozi yedolo
4. Kwiphepha 3, phambi komgca 36, kongezwe eli candelwana lilandelayo:
  - (3) Umntu akanakutyunjwa okanye aqeshwe njengoMkhomishinala ukuba yena—
    - (a) ukhe ngathuba lithile wagwetyelwa—
      - (i) ityala elinxulumene nokungathembeki okanye ubundlobongela; okanye
      - (ii) ityala lezesondo njengoko kuchaziwe kwicandelo 1 loMthetho woLwaphulomthetho (aMatyala ezeSondo neMiba eNxulumene noko) uMthetho woLungiso, 2007 (uMthetho 32 ka-2007);
    - (b) akafanelekanga ukusebenza nabantwana njengoko kucingelaka kuMthetho waBantwana, 2005 (uMthetho 38 ka-2005); okanye
    - (c) ubhangiswe kangangkuba akalungiseki.

**ISOLOTYA 5**

1. Kwiphepha 3, ukusuka kumgca 54, kushiye imihlathana (ii) nowe (iii).

**ISAHLUKO 3**

1. Kwiphepha 4, kumgca 16, kushiye “**IMISEBENZI**” kuze endaweni yayo kufakelwe “**AMAGUNYA NEMISEBENZI**”.

**ISOLOTYA 6**

1. Kwiphepha 4, kumgca 18, kushiye “imisebenzi” kuze endaweni yayo kufakelwe “uxanduva”.
2. Kwiphepha 4, ukusuka kumgca 24, kushiye umhlathi (c) kuze endaweni yayo kufakelwe:
  - (c) uthobela uMgaqo-siseko, omnye umthetho kazwelonke omalunga nabantwana kunye noMgaqo-siseko wePhondo;

**ISOLOTYA 8**

1. Kwiphepha 5, kumgca 35, kushiye “imisebenzi” kuze endaweni yayo kufakelwe “amagunya nemisebenzi”.

**ISOLOTYA 9**

1. Kwiphepha 5, kumgca 52, kushiywe “imisebenzi” kuze endaweni yayo kufakelwe “amagunya nemisebenzi”.

**ISOLOTYA 10**

1. Kwiphepha 6, kumgca 8, kushiywe umhlathi (b) kuze endaweni yawo kufakelwe:
  - (b) uMgaqo-siseko, omnye umthetho kazwelonke omalunga nabantwana kunye noMgaqo-siseko wePhondo;
2. Kwiphepha 6, kumgca 12, kushiywe “imisebenzi” kuze endaweni yayo kufakelwe “amagunya okanye uxanduva”.

**ISOLOTYA 13**

1. Kwiphepha 6, ukusuka kumgca 44, kushiywe icandelwana (1) kuze endaweni yalo kufakelwe:
  - (1) Nawuphi na umntu ocelwe nguMkhomishinala ukuba athabathele umba kuphononongo, uphando lwasemthethweni okanye uphando ngokwemigaqo yamagunya anikezelweyo nemisebenzi enyanzelwe kuMkhomishinala ngulo Mthetho.

**ISOLOTYA 14**

1. Kwiphepha 7, kumgca 18, kushiywe “imisebenzi” kuze endaweni yayo kufakelwe “amagunya okanye uxanduva”.

**ISOLOTYA 15**

1. Kwiphepha 7, kumgca 26, kushiywe “ngokwemigaqo yalo Mthetho” kuze endaweni yawo kufakelwe “okucingelwa kwicandelo 8”.
2. Kwiphepha 7, emva komgca 42, kongezwe eli candelwana lilandelayo:
  - (4) Nabuphina ubungqina okanye impendulo enikezelweyo okanye ingxelo eyenziweyo ngumntu ovele phambi koMkhomishinala kulandela umsila wengwe okanye isaziso esicingeleka kwicandelwana (1)(b) akunakusetyenziswa ngakula mntu enkundleni, ngaphandle kwa-kwiinkqubo zolwaphulo-mthetho apho loo mntu emangalelwe ukuxoka phantsi kwesifungo okanye ityala elicingeleka kwicandelo 26(c)(iv) okanye (v).

**ISOLOTYA 18**

1. Kwiphepha 8, kumgca 12, kushiywe “imisebenzi” kuze endaweni yayo kufakelwe “amagunya okanye uxanduva”.
2. Kwiphepha 8, kumgca 17, kushiywe “ukuqhuba imisebenzi yakhe” kuze endaweni yayo kufakelwe:
  - ukusebenzisa amagunya akhe nokuqhuba uxanduva lwakhe

**ISOLOTYA 19**

1. Kwiphepha 8, ukusuka kumgca 22, kushiywe isoloty 19 kwaye endaweni yalo kufakelwe:
  - (1) Umlawuli-Jikelele wePhondo, okanye elinye igosa elisebenza phantsi kwesiganyaziso esiyalelweyo, maliqeshe, ngokwemigaqo yoMthetho weNkonzo yoLuntu, 1994, amalungu esitafu afunelwa umsebenzi wamagunya nemisebenzi yoMkhomishinala.
  - (2) Amalungu esitafu acingeleka kwicandelwana (1) makathi ekuqhubeni imisebenzi yawo asebenzise imigaqo ecingelwa kwicandelo 6.



**ISOLOTYA 20**

1. Kwiphepha 8, kungca 27, kushiye “ukuqhuba imisebenzi yakhe” nokuba endaweni yako kufakelwe:  
ukusebenzisa amagunya akhe nokuqhuba imisebenzi yakhe

**ISOLOTYA 25**

1. Kwiphepha 9, kungca 8, emva “koNkulumbuso” kufakelwe:  
, emva kokubonisana nekomiti esisigxina,

**ISOLOTYA 26**

1. Kwiphepha 9, kungca 34, kushiye “kungagqithanga kwi-R10 000” kwaye endaweni yako kufakelwe:  
okanye ukugwetyelwa emjiva okungagqithanga kwiinyanga ezilishumi elinambini





