

THE PROVINCE OF THE NORTHERN CAPE
DIE PROVINSIE NOORD-KAAP

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No. 12

OFFICE OF THE PREMIER

KANTOOR VAN DIE PREMIER

4 12 September 1994

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

3 of 1994: Northern Cape Provincial Service
Commission Act, 1994.

No. 4 12 September 1994

Hierby word bekendgemaak dat die Premier die
onderstaande Wet bekragtig het, wat hierby vir alge-
mene kennisname gepubliseer word:—

No. 3 van 1994: Noord-Kaapse Wet op Provinsiale
Dienskommissie, 1994.

ACT

To provide for the establishment of a Provincial Service Commission; the tenure of office, remuneration and other conditions of service of members of the Commission; the removal from office of, and the vacation of office by members of the Commission; the exercising, performance and delegation of the powers and functions of the Commission; the appointment and duties of staff of the Commission, measures to ensure the independence and impartiality of the Commission; and matters connected therewith.

(English text signed by Premier)
(Assented to 2 September 1994)

BE IT ENACTED by the Provincial legislature of the Northern Cape, as follows:—

Definitions

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

"Commission" means the Provincial Service Commission for the Province established by section 2(1) and, in relation to any power or function conferred upon, assigned to or imposed upon the Commission by or in terms of the Constitution, includes any member or members of the Commission or any officer or officers to whom the exercise of such power or the performance of such function has been delegated by the Commission in terms of section 213(1)(c) of the Constitution; 5 10

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

"employee" means a person referred to in section 8(1)(c) of the Public Service Act, 1994; 15

"officer" means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post referred to in section 8(1)(a) of the Public Service Act, and includes a person referred to in section 8(1)(b) or 8(3)(c) of that Act; 20

"Province" means the Northern Cape Province established by section 124(1) of the Constitution;

WET

Om voorsiening te maak vir die instelling van 'n Provinsiale Dienskommissie; die ampstermyn, vergoeding en ander diensvoorwaardes van lede van die Kommissie, die ontslag uit en die ontheffing van hul amp van lede van die Kommissie; die uitoefening, verrigting en delegering van bevoegdhede en werksaamhede van die Kommissie; die aanstelling en pligte van personeel van die Kommissie; maatreëls om die onafhanklikheid en onpartydigheid van die Kommissie te verseker; en aangeleenthede wat daarmee in verband staan.

(Engelse teks deur Premier geteken)
(Goedgekeur op 2 September 1994)

DAAR WORD BEPAAL deur die Noord-Kaapse wetgewer, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- 5 “beampte” ’n persoon wat vas aangestel is, al is die aanstelling op proef, in ’n pos bedoel in artikel 8(1)(a) van die Staatsdienswet, en ook ’n persoon bedoel in artikel 8(1)(b) of 8(3)(c) van daardie Wet;
- “Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993);
- 10 “Kommissie” die Provinsiale Dienskommissie vir die Provinsie, ingestel by artikel 2(1) en, met betrekking tot enige bevoegdheid of werksaamheid wat aan die Kommissie toegeken, toegewys of opgelê word ingevolge die Grondwet, ook enige lid of lede van die Kommissie of enige beampte of beamptes aan wie die uitoefening van daardie bevoegdheid of die verrigting van daardie werksaamheid deur
- 15 die Kommissie gedelegeer is ingevolge artikel 213(2) van die Grondwet;
- “Provinsiale Administrasie” die Provinsiale Administrasie: Noord-Kaap genoem in kolom 1 van Bylae 1 tot die Staatsdienswet en ook alle departemente en kantore daarvan;
- 20 “Provinsie” die Provinsie Noord-Kaap ingestel by artikel 124(1) van die Grondwet;

"Provincial Administration" means the Provincial Administration: Northern Cape referred to in column 1 of Schedule 1 to the Public Service Act and includes all its departments and offices;

"public servant" means any person appointed in the public service;

"Public Service Act" means the Public Service Act, 1994; 5

"public service" means the public service as contemplated in section 7 of the Public Service Act;

"Public Service Commission" means the Public Service Commission established by section 209(1) of the Constitution.

Establishment of Provincial Service Commission 10

2. (1) There shall be a Provincial Service Commission for the Province which shall, subject to the norms and standards laid down by the Public Service Commission and in respect of public servants employed by the Province, have the powers and functions entrusted to it by or in terms of the Constitution. 15

(2) The Commission shall exercise its powers and perform its functions fairly, impartially and independantly.

(3) The Commission shall, in respect of the exercise and performance of its powers and functions be accountable to the Provincial legislature. 20

Constitution of the Commission

3. (1) The Commission shall consist of not fewer than three members and not more than five members appointed by the Premier of which one member shall be designated as chairperson by the Premier.

(2) A person shall be qualified to be appointed to the Commission if he or she— 25

(a) is a South African citizen; and

(b) is a person who has sufficient knowledge of or experience in the administration, management or rendering of public services.

(3) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his or her functions. 30

Tenure of office and remuneration of members

4. (1) Subject to the provisions this section, a member of the Commission shall, at his or her first appointment as such member, hold office for a period of six years, but shall on the expiry of his or her period of office with his or her consent be eligible for reappointment for a further period not exceeding, or for further periods not exceeding in the aggregate, six years, as the Premier may determine. 35

(2) The Premier may, if he or she deems it in the public interest, retain a member of the Commission, with his or her consent, in his or her office beyond the age at which he or she shall, in accordance with subsection (3) vacate his or her office or retire for the unexpired portion of his or her period of office or for a period or periods which shall not exceed in the aggregate two years after such age, as the Premier may deem fit. 45

"staatsamptenaar" enigiemand aangestel in die Staatsdiens;

"staatsdiens" die staatsdiens soos bedoel in artikel 7 van die Staatsdienswet;

5 "Staatsdienskommissie" die Staatsdienskommissie ingestel by artikel 209(1) van die Grondwet;

"Staatsdienswet" die Staatsdienswet, 1994;

"werknemer" 'n persoon bedoel in artikel 8(1)(c) van die Staatsdienswet.

Instelling van Provinsiale Dienskommissie

10 2. (1) Daar is 'n Provinsiale Dienskommissie vir die Provinsie wat, behoudens die norme en standarde neergelê deur die Staatsdienskommissie, ten opsigte van staatsamptenare in diens van die Provinsie, die bevoegdhede en werksaamhede het wat by of ingevolge die Grondwet daaraan toevertrou is.

15 (2) Die Kommissie oefen sy bevoegdhede uit en verrig sy werksaamhede op 'n billike, onpartydige en onafhanklike wyse.

(3) Die Kommissie is ten opsigte van die uitoefening en verrigting van sy bevoegdhede en werksaamhede teenoor die Provinsiale wetgewer aanspreeklik.

20 Samestelling van die Kommissie

3. (1) Die Kommissie bestaan uit nie minder as drie en nie meer as vyf lede aangewys deur die Premier waarvan een lid deur die Premier as voorsitter aangewys word.

25 (2) 'n Persoon is bevoeg om as lid van die Kommissie aangestel te word indien hy of sy—

(a) 'n Suid-Afrikaanse burger is; en

(b) 'n persoon is wat oor voldoende kennis van of ondervinding in die administrasie, bestuur of lewering van openbare dienste beskik.

30 (3) 'n Lid van die Kommissie mag nie 'n amp in enige politieke party of organisasie beklee nie en moet onpartydig by die verrigtinge van sy of haar werksaamhede wees.

Ampstermyn en vergoeding van lede

35 4. (1) Behoudens die bepalinge van hierdie artikel word 'n lid van die Kommissie by sy of haar eerste aanstelling as sodanige lid aangestel vir 'n periode van ses jaar, maar by die afloop van sy of haar termyn kan hy of sy met sy of haar instemming deur die Premier aangestel word vir 'n verdere periode of vir sodanige periodes wat gesamentlik nie ses jaar te bowe gaan nie.

40 (2) Indien hy of sy dit in die openbare belang ag, kan die Premier na goedgekeurde, met die instemming van 'n lid, niesteenstaande die feit dat 'n lid ingevolge subartikel (3) sy of haar amp moet ontruim of aftree, daardie lid vir die onverstreke gedeelte van sy of haar termyn, of vir sodanige periodes wat gesamentlik nie vir twee jaar na die bereiking van die voorgeskrewe periode voortduur, aanstel.

(3) Subject to the provisions of subsection (2), a member of the Commission shall vacate his or her office, and if he or she is a member referred to in subsection (4), he or she shall retire on attaining the age of 65 years, but if he or she attains that age after the first day of any month, he or she shall be deemed to have attained that age on the first day of the following month. 5

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

(a) the period of his or her service as such member shall be reckoned as part of and continuous with his or her employment in the public service for the purposes of leave and pension and any other condition of service, and the provisions of any pension law applicable to him or her as such officer or employee or, after his or her death, to his or her dependants, and which are not in conflict with the provisions of this Act, shall *mutatis mutandis* continue to apply; and 15

(b) such member shall retain the same right to vacate his or her office and to retire as he or she would have had on the attainment of an age prescribed by the Public Service Act or any other law or on any later date on which he or she desires to do so, had he or she remained in the public service. 20

(5) (a) Whenever the office of the chairperson, is vacant or the chairperson is absent or incapacitated or refuses or fails to act, the powers, rights, functions and duties of the chairperson shall be exercised and performed by the vice-chairperson, elected from its members by the Commission. 25

(b) The Premier may, if he or she deems it necessary or expedient, appoint any person or persons who, in his or her opinion, are suitable thereto, to act as a member or members of the Commission during any period when any member or members of the Commission are or may be absent, and any person so appointed shall, during the period of his or her appointment, for all purposes be deemed to be a member of the said Commission. 30

(c) Whenever the offices of both chairperson and vice-chairperson are vacant or both the chairperson and vice-chairperson are absent or incapacitated or refuse or fail to act, the powers, rights, functions and duties of the chairperson and vice-chairperson shall be exercised and performed by such other member or such acting member or members of the Commission as may be designated by the Premier. 35

(6) A member of the Commission shall not be suspended or removed from office except in accordance with the provisions of subsections (7), (8) and (9) or section 9(2)(b). 40

(7) The Premier may require a member of the Commission to absent himself or herself temporarily from his or her duties in order to afford the Premier the opportunity to consider the possible removal of such member from office in terms of section 211(1)(e), read with section 213(2) of the Constitution. 45

(3) Behoudens die bepalings van subartikel (2), ontruim 'n lid van die Kommissie sy of haar amp, en indien 'n lid 'n lid is soos voorsien in subartikel (4), tree 'n lid af, by die bereiking van die ouderdom van 65 jaar, maar indien hy of sy daardie ouderdom bereik na die eerste dag van 'n maand, word dit geag dat hy of sy daardie ouderdom op die eerste dag van die daaropvolgende maand bereik het.

(4) Indien 'n beampte of werknemer in die Kommissie aangestel word—

(a) word die tydperk van sy of haar diens as sodanige lid gereken as deel van en aaneenlopend met sy of haar diens in die staatsdiens vir doeleindes van verlof en pensioen en enige ander diensvoorwaarde, en bly die bepalings van enige pensioenwet vir hom of haar as sodanige beampte of werknemer of, na sy of haar afsterwe, vir sy of haar afhanklikes, en wat nie strydig met die bepalings van hierdie Wet is nie, *mutatis mutandis* van toepassing; en

(b) behou sodanige lid dieselfde reg om sy of haar amp neer te lê en af te tree soos hy of sy sou gedoen het by bereiking van 'n ouderdom bepaal deur die Staatsdienswet of enige ander wet of op enige later datum waarop hy of sy dit wil doen indien hy of sy in die staatsdiens gebly het.

(5) (a) Wanneer die amp van die voorsitter vakant is of indien die voorsitter afwesig is of onbevoeg is of weier of versuim om op te tree, word die bevoegdhede, regte, werksaamhede en pligte van die voorsitter deur die ondervoorsitter, wat deur die Kommissie uit sy lede gekies is, uitgeoefen en verrig.

(b) Die Premier kan, indien hy of sy dit nodig of wenslik ag, enige persoon of persone wat volgens sy oordeel daarvoor geskik is, aanstel om op te tree as 'n lid of lede van die Kommissie gedurende enige tydperk wanneer enige lid of lede van die Kommissie afwesig is of kan wees, en enige persoon wat so aangestel is, word gedurende die tydperk van sy of haar aanstelling vir alle doeleindes geag 'n lid van genoemde Kommissie te wees.

(c) Wanneer die ampte van sowel voorsitter as ondervoorsitter vakant is of die voorsitter sowel as die ondervoorsitter afwesig is of onbevoeg is of weier of versuim om op te tree, word die bevoegdhede, regte, werksaamhede en pligte van die voorsitter en ondervoorsitter uitgeoefen of verrig deur sodanige ander lid of sodanige waarnemende lid of lede van die Kommissie wat deur die Premier aangewys word.

(6) 'n Lid van die Kommissie word nie geskors of van sy of haar amp onthef nie, behalwe ooreenkomstig die bepalings van subartikels (7), (8) en (9) of artikel 9(2)(b).

(7) Die Premier kan van 'n lid van die Kommissie vereis dat hy of sy hom of haar tydelik van sy of haar pligte onttrek om die Premier die geleentheid te gee om die moontlike ontheffing van sodanige lid uit sy of haar amp te oorweeg ingevolge artikel 211(1)(e), saamgelees met artikel 213(2) van die Grondwet.

(8) The Premier may, if a member becomes afflicted with a permanent infirmity of mind or body which disables him or her from the proper discharge of the duties of his or her office—

- (a) allow him or her to vacate his or her office; or
- (b) remove him or her from office on the ground of incapacity. 5

(9) If a member referred to in subsection (4)—

- (a) is allowed to vacate his or her office on account of continued ill-health, it shall be deemed that his or her service have been terminated on the grounds of ill-health and he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if his or her services had been terminated on the grounds of ill-health without the member being instrumental in causing his or her own ill-health; 10
- (b) is removed from his or her office on account of misconduct during his or her first period of office, or if for reasons other than his or her own unfitness or incapacity, or if his or her removal from office will promote efficiency or economy, he or she shall be deemed to have been retired in terms of section 16(4) of the Public Service Act, and he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if he or she had been so retired; or 15
- (c) is removed from his or her office on account of misconduct during his or her subsequent period of office, he or she shall be deemed to have vacated his or her office for reasons other than his or her own unfitness or incapacity or if his or her removal from office will promote efficiency or economy, he or she shall be entitled to such pension as contemplated in paragraph (b). 20 25

(10) A member of the Commission who—

- (a) immediately prior to his or her appointment as such was an officer in the public service; 30
- (b) at the expiry of his or her period of office as a member of the Commission is not reappointed thereto; and
- (c) at such expiry date has not reached the age at which he or she would, in terms of the Public Service Act, have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission, 35

shall have the right to retire, or may be required by the Premier to retire, and if he or she so retires or is so required to retire, he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if he or she had been compelled to retire from the public service owing to the abolition of his or her post. 40

(11) If a member of the Commission who, immediately prior to his or her appointment as such, was an officer or employee in the public service, is appointed under an Act of Parliament or a provincial law with his or her consent to an office to which the provisions of this Act or the Public Service 45

(8) Die Premier kan, indien 'n lid 'n permanente geestes- of liggaamsgebrek ontwikkel wat hom of haar ongeskik maak vir die behoorlike verrigting van die pligte van sy of haar amp—

(a) hom of haar toelaat om sy of haar amp te ontruim; of

5 (b) hom of haar van sy of haar amp onthef op grond van ongeskiktheid.

(9) Indien 'n lid bedoel in subartikel (4)—

10 (a) toegelaat word om sy of haar amp te ontruim as gevolg van voortdurende swak gesondheid, word sy of haar dienste geag beëindig te gewees het op grond van swak gesondheid en is hy of sy geregtig op die pensioen waarop hy of sy, kragtens die pensioenwet van toepassing op hom of haar, geregtig sou gewees het indien sy of haar dienste beëindig is op grond van swak gesondheid wat sonder sy of haar toedoen veroorsaak is; of

20 (b) van sy of haar amp onthef word weens wangedrag gedurende sy of haar eerste ampstermyn, of om ander redes as sy of haar eie ongeskiktheid of onbevoegdheid, of indien sy of haar ontheffing uit die amp doeltreffendheid of besparing sal bevorder, word hy of sy geag af te getree het ingevolge artikel 16(4) van die Staatsdienswet, en is hy of sy geregtig op die pensioen waarop hy of sy, kragtens die pensioenwet van toepassing op hom of haar, geregtig sou gewees het indien hy of sy so sou afgetree het; of

25 (c) van sy of haar amp onthef word weens wangedrag gedurende sy of haar daaropvolgende ampstermyn of ampstermyne, word hy of sy geag sy of haar amp te ontruim het vir ander redes as sy of haar eie ongeskiktheid of onbevoegdheid of as sy of haar ontheffing uit die amp doeltreffendheid of besparing sal bevorder, is hy of sy geregtig op die pensioen bedoel in paragraaf (b).

30 (10) 'n Lid van die Kommissie wat—

(a) onmiddellik voor sy of haar aanstelling as sodanig, 'n beampste in die staatsdiens was;

35 (b) by die verstryking van sy of haar ampstermyn as lid van die Kommissie, nie weer daarin aangestel word nie; en

(c) op daardie verstrykingsdatum nie die ouderdom bereik het waarop hy of sy, ingevolge die Staatsdienswet, die reg sou gehad het om af te tree en verplig sou gewees het om af te tree indien hy of sy nie aangestel was as 'n lid van die Kommissie nie,

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het die reg om af te tree, of kan deur die Premier aangesê word om af te tree, en indien hy of sy aldus aftree of aldus aangesê word om af te tree, is hy of sy geregtig op die pensioen waarop hy of sy, kragtens die pensioenwet van toepassing op hom of haar, geregtig sou gewees het om af te tree
45 uit die staatsdiens as gevolg van die afskaffing van sy of haar pos.

(11) Indien 'n lid van die Kommissie wat onmiddellik voor sy of haar aanstelling as sodanig, 'n beampste of werknemer in die staatsdiens was, aangestel word kragtens 'n Parlements wet of 'n provinsiale wet met sy of haar instemming in 'n amp waarop die bepalings van hierdie Wet of die

(8) The Premier may, if a member becomes afflicted with a permanent infirmity of mind or body which disables him or her from the proper discharge of the duties of his or her office—

- (a) allow him or her to vacate his or her office; or
- (b) remove him or her from office on the ground of incapacity. 5

(9) If a member referred to in subsection (4)—

- (a) is allowed to vacate his or her office on account of continued ill-health, it shall be deemed that his or her service have been terminated on the grounds of ill-health and he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if his or her services had been terminated on the grounds of ill-health without the member being instrumental in causing his or her own ill-health; 10
- (b) is removed from his or her office on account of misconduct during his or her first period of office, or if for reasons other than his or her own unfitness or incapacity, or if his or her removal from office will promote efficiency or economy, he or she shall be deemed to have been retired in terms of section 16(4) of the Public Service Act, and he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if he or she had been so retired; or 15
- (c) is removed from his or her office on account of misconduct during his or her subsequent period of office, he or she shall be deemed to have vacated his or her office for reasons other than his or her own unfitness or incapacity or if his or her removal from office will promote efficiency or economy, he or she shall be entitled to such pension as contemplated in paragraph (b). 20 25

(10) A member of the Commission who—

- (a) immediately prior to his or her appointment as such was an officer in the public service; 30
- (b) at the expiry of his or her period of office as a member of the Commission is not reappointed thereto; and
- (c) at such expiry date has not reached the age at which he or she would, in terms of the Public Service Act, have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission, 35

shall have the right to retire, or may be required by the Premier to retire, and if he or she so retires or is so required to retire, he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if he or she had been compelled to retire from the public service owing to the abolition of his or her post. 40

(11) If a member of the Commission who, immediately prior to his or her appointment as such, was an officer or employee in the public service, is appointed under an Act of Parliament or a provincial law with his or her consent to an office to which the provisions of this Act or the Public Service 45

(8) Die Premier kan, indien 'n lid 'n permanente geestes- of liggaamsgebrek ontwikkel wat hom of haar ongeschik maak vir die behoorlike verrigting van die pligte van sy of haar amp—

- (a) hom of haar toelaat om sy of haar amp te ontruim; of
5 (b) hom of haar van sy of haar amp onthef op grond van ongeschiktheid.

(9) Indien 'n lid bedoel in subartikel (4)—

- (a) toegelaat word om sy of haar amp te ontruim as gevolg van voortdurende swak gesondheid, word sy of haar dienste geag beëindig te gewees het op grond van swak gesondheid en is hy of sy geregtig op die pensioen waarop hy of sy, kragtens die pensioenwet van toepassing op hom of haar, geregtig sou gewees het indien sy of haar dienste beëindig is op grond van swak gesondheid wat sonder sy of haar toedoen veroorsaak is; of
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- (b) van sy of haar amp onthef word weens wangedrag gedurende sy of haar eerste ampstermyn, of om ander redes as sy of haar eie ongeschiktheid of onbevoegdheid, of indien sy of haar ontheffing uit die amp doeltreffendheid of besparing sal bevorder, word hy of sy geag af te getree het ingevolge artikel 16(4) van die Staatsdienswet, en is hy of sy geregtig op die pensioen waarop hy of sy, kragtens die pensioenwet van toepassing op hom of haar, geregtig sou gewees het indien hy of sy so sou afgetree het; of
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- (c) van sy of haar amp onthef word weens wangedrag gedurende sy of haar daaropvolgende ampstermyn of ampstermyne, word hy of sy geag sy of haar amp te ontruim het vir ander redes as sy of haar eie ongeschiktheid of onbevoegdheid of as sy of haar ontheffing uit die amp doeltreffendheid of besparing sal bevorder, is hy of sy geregtig op die pensioen bedoel in paragraaf (b).
30

(10) 'n Lid van die Kommissie wat—

- (a) onmiddellik voor sy of haar aanstelling as sodanig, 'n beampte in die staatsdiens was;
35 (b) by die verstryking van sy of haar ampstermyn as lid van die Kommissie, nie weer daarin aangestel word nie; en
(c) op daardie verstrykingsdatum nie die ouderdom bereik het waarop hy of sy, ingevolge die Staatsdienswet, die reg sou gehad het om af te tree en verplig sou gewees het om af te tree indien hy of sy nie aangestel was as 'n lid van die Kommissie nie,
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het die reg om af te tree, of kan deur die Premier aangesê word om af te tree, en indien hy of sy aldus aftree of aldus aangesê word om af te tree, is hy of sy geregtig op die pensioen waarop hy of sy, kragtens die pensioenwet van toepassing op hom of haar, geregtig sou gewees het om af te tree
45 uit die staatsdiens as gevolg van die afskaffing van sy of haar pos.

(11) Indien 'n lid van die Kommissie wat onmiddellik voor sy of haar aanstelling as sodanig, 'n beampte of werknemer in die staatsdiens was, aangestel word kragtens 'n Parlements wet of 'n provinsiale wet met sy of haar instemming in 'n amp waarop die bepalings van hierdie Wet of die

Act do not apply, he or she shall as from the date on which he or she is so appointed, cease to be a member of the Commission, and if at that date he or she has not reached the age at which he or she would, in terms of the Public Service Act, have had the right to retire, he or she shall, subject to the provisions of section 4(3) of the Auditor-General Act, 1989 (Act No. 52 of 1989), in the case of the appointment of a member as Auditor-General, be deemed to have retired on that date and he or she shall, subject to the said provisions, be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to, had he or she been compelled to retire from the public service owing to the abolition of his or her post. 5 10

(12) (a) The Premier shall, after consultation with the Public Service Commission and in concurrence with the member of the Executive Council responsible for Finance, determine the salaries and conditions of service of members of the Commission. 15

(b) The other conditions of service referred to in paragraph (a) shall not be less favourable than those of the Director-General: Provincial Administration: Northern Cape.

Exercise of powers and functions of the Commission

5. (1) The Commission shall exercise its powers and performs its functions in accordance with the provisions of sections 212(2)(b) and 213(2) of the Constitution. 20

(2) (a) A recommendation or direction in respect of any matter made or given by at least two, if the Commission consists of three members, and three, if the Commission consists of more than three members, shall, subject to the provisions of subsection (2), be deemed to be a recommendation or direction of the Commission. 25

(b) The Commission shall decide on any matter by written consent of every member who is present to perform his or her duties, or by a majority of votes cast by the members present at a meeting of the Commission. 30

(c) In the event of an equality of votes on any matter considered by the Commission at a meeting thereof, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(3) All decisions of the Commission shall be recorded.

(4) Any delegation or authorisation made by the Commission in terms of section 213(1)(c) of the Constitution, may at any time be amended or revoked by the Commission and any decision or recommendation made or direction given in terms of such delegation or authorisation, may at any time be amended or revoked by the Commission. 35

Commission's power of inquiry

6. (1) The Commission may designate one or more of its members or an officer or officers to conduct an inquiry into any matter in respect of which it may make recommendations or give directions in terms of section 213(1) of the Constitution. 40

Staatsdienswet nie van toepassing is nie, hou hy of sy op om 'n lid van die Kommissie te wees vanaf die datum waarop hy of sy aldus aangestel word, en indien hy of sy op daardie datum nie die ouderdom bereik het waarop hy of sy, ingevolge die Staatsdienswet, geregtig sou gewees het om af te tree
5 nie, word hy of sy, behoudens die bepalings van artikel 4(3) van die Wet op die Ouditeur-generaal, 1989 (Wet No. 52 van 1989), in geval van die aanstelling van 'n lid as Ouditeur-Generaal, geag af te getree het op daardie datum en is hy of sy, behoudens die genoemde bepalings, geregtig op die pensioen waarop hy of sy, kragtens die pensioenwet van toepassing op
10 hom of haar, geregtig sou gewees het as hy of sy verplig was om af te tree uit die staatsdiens as gevolg van die afskaffing van sy of haar pos.

(12) (a) Die salarisse en diensvoorwaardes van lede van die Kommissie word deur die Premier, na oorlegpleging met die Staatsdienskommissie en met die instemming van die lid van die Uitvoerende Raad verantwoordelik vir Finansies, bepaal.
15

(b) Die ander diensvoorwaardes in paragraaf (a) bedoel, mag nie minder gunstig as dié van die Direkteur-generaal: Provinsiale Administrasie: Noord-Kaap wees nie.

20 **Uitoefening van bevoegdhede en werksaamhede van die Kommissie**

5. (1) Die Kommissie oefen sy bevoegdhede uit en verrig sy werksaamhede ooreenkomstig die bepalings van artikels 212(2)(b) en 213(2) van die Grondwet.

(2) (a) 'n Aanbeveling of lasgewing ten opsigte van enige saak wat
25 gemaak of gedoen word deur ten minste twee, indien die Kommissie uit drie lede bestaan, en drie, indien die Kommissie uit meer as drie lede bestaan, word behoudens die bepalings van subartikel (2) geag 'n aanbeveling of lasgewing van die Kommissie te wees.

(b) Die Kommissie beslis oor enige saak deur die skriftelike instemming van elke lid wat teenwoordig is om sy of haar pligte te verrig, of deur 'n meerderheid van stemme uitgebring deur die lede wat teenwoordig is by 'n vergadering van die Kommissie.
30

(c) In die geval van 'n staking van stemme oor enige saak wat deur die Kommissie by 'n vergadering daarvan oorweeg word, het die voorsitter
35 'n beslissende stem benewens sy of haar gewone stem.

(3) Alle besluite van die Kommissie word geboekstaaf.

(4) Enige delegasie of magtiging wat deur die Kommissie gemaak is ingevolge artikel 213(1)(c) van die Grondwet, kan te eniger tyd deur die Kommissie gewysig of herroep word en enige besluit, lasgewing of aanbeveling gemaak ingevolge sodanige delegasie of magtiging kan te eniger tyd
40 deur die Kommissie gewysig of herroep word.

Bevoegdheid tot ondersoek deur die Kommissie

6. (1) Die Kommissie kan, ten einde ondersoek in te stel na enige saak ten opsigte waarvan dit aanbevelings kan maak of lasgewings kan
45 doen ingevolge artikel 213(1) van die Grondwet, een of meer lede of een of meer beampptes daartoe aanwys.

(2) For the purpose of ascertaining any matter relating to the subject of its investigation, the Commission shall have the powers which a Provincial Division of the Supreme Court of South Africa has within its province, to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects. 5

(3) A summons for the attendance of a witness or for the production of any book, document or object before the Commission shall be signed and issued by the presiding member or officer in a form prescribed by the chairperson of the Commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a superior court at the place where the attendance or production is to take place. 10

(4) If required to do so by the presiding member or officer a witness shall, before giving evidence, take an oath or make an affirmation, which oath or affirmation shall be administered by the presiding member or officer. 15

(5) Any person who has been summoned to attend any sitting of the Commission as a witness or who has given evidence before the Commission shall be entitled to the same witness fees from public funds, as if he or she had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before the Commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court shall apply. 20 25

(6) Any person who wilfully interrupts the proceedings of the Commission or who wilfully hinders or obstructs the Commission in the performance of its functions shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and imprisonment. 30

(7) Any person summoned to attend and give evidence or the produce any book, document or object before the Commission who, without sufficient cause (the onus of proof whereof shall rest upon him or her) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he or she is excused by the presiding member or officer from further attendance, or having attended refuses to be sworn or to make affirmation as a witness after he or she has been required by the presiding member or officer to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her or fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment. 35 40 45

(8) Any person who, after having been sworn or having made affirmation, gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment. 50

(2) Ten einde een of ander feit te wete te kom met betrekking tot die onderwerp van sy ondersoek, het die Kommissie die bevoegdhede wat 'n Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika in sy provinsie het om getuies te dagvaar, om aan hulle die eed op te lê of hulle te ondervra en om die voorlegging van boeke, dokumente en voorwerpe op te eis.

(3) 'n Dagvaardig aan iemand om voor die Kommissie 'n boek, dokument of onderwerp voor te lê, word deur die voorsittende lid of beamppte geteken en uitgevaardig in 'n vorm wat die voorsitter van die Kommissie voorgeskryf het, en word op dieselfde wyse gedien as 'n dagvaarding van 'n getuie om in 'n strafgeding in 'n hoër hof te verskyn op die plek waar die verskyning of oorlegging moet geskied.

(4) Indien die voorsittende lid of beamppte dit vereis moet 'n getuie, voordat hy of sy getuienis aflê, 'n eed aflê of 'n bevestiging maak, en die eed word opgelê en die bevestiging afgeneem deur die voorsittende lid of beamppte.

(5) Iemand wat gedagvaar is om 'n sitting van die Kommissie as getuie by te woon of wat voor die Kommissie getuienis afgelê het, is gereg-tig op dieselfde getuieloon uit staatsgelde asof hy of sy gedagvaar was om 'n strafgeding in 'n hoër hof gehou op die plek van bedoelde sitting by te woon of daarby getuienis afgelê het, en in verband met die aflegging van getuienis of die voorlegging van 'n boek of dokument voor die Kommissie, is die regsbepalings omtrent privilegie, soos toepaslik op 'n getuie wat in so 'n hof getuienis aflê of gedagvaar is om daarin 'n boek of dokument oor te lê, van toepassing.

(6) Enigeen wat die verrigtinge van die Kommissie opsetlik steur of die Kommissie by die verrigting van sy werksaamhede opsetlik hinder of dwarsboom, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf van hoogstens ses maande of met beide daardie boete en gevangenisstraf.

(7) Iemand wat gedagvaar is om voor die Kommissie te verskyn en getuienis af te lê of 'n boek, dokumente of onderwerp voor te lê en wat sonder voldoende rede (waarvan die bewyslas op hom of haar rus) in gebreke bly om op die tyd en plek in die dagvaarding aangegee, te verskyn, of om aanwesig te bly totdat die ondersoek voltooi is of totdat die voorsittende lid of beamppte hom of haar verlof gegee het om weg te bly, of wat na verskyning weier om as getuie die eed af te lê of 'n bevestiging te maak nadat die voorsittende lid of beamppte dit van hom of haar vereis het of wat, na eedaflegging of bevestiging, weier om elke wettiglik aan hom of haar gestelde vraag ten volle en op bevredigende wyse te beantwoord, of wat in gebreke bly om 'n boek, dokument of onderwerp oor te lê wat in sy besit of bewaring of onder sy beheer is en tot oorlegging waarvan hy gedagvaar is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf van hoogstens ses maande of met beide daardie boete en gevangenisstraf.

(8) Iemand wat, nadat hy of sy die eed afgelê of 'n bevestiging gemaak het, omtrent enige onderwerp valse getuienis voor die Kommissie aflê met die wete dat daardie getuienis vals is, of terwyl hy of sy nie weet of glo dat dit juis is nie, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vierhonderd rand of met gevangenisstraf van hoogstens twaalf maande of met beide daardie boete en gevangenisstraf.

(9) All the evidence and addresses heard by the Commission shall be heard in public: Provided that the presiding member or officer at an inquiry may, in his or her discretion, direct that it should be held in camera.

Staff of the Commission

7. (1) Subject to the provisions of this Act and of the Public Service Act, the Commission shall in terms of the last-mentioned Act, be assisted by as many other officers and employees as may from time to time be necessary to enable the Commission effectively to exercise its powers and to perform its functions. 5

(2) The officers and employees referred to in subsection (1) shall observe such directions and carry out such duties as may from time to time be given to or imposed upon him or her by the Commission. 10

Reports of the Commission

8. (1) The Commission shall as soon as possible after 31 December in each year frame a report on matters which have been dealt with by the Commission during the year that ended on that day, and also from time to time such special reports as the Commission deem desirable. 15

(2) Every report framed by the Commission in pursuance of subsection (1), shall be submitted to the Premier and shall be submitted to the Provincial Legislature within seven days after the Premier has received it if the Provincial Legislature sits, or if the Provincial Legislature is not then sitting, within seven days after the commencement of its next ensuing sitting. 20

Measures to ensure the independence and impartiality of the Commission

9. (1) Any public servant employed by the Provincial Administration who feels aggrieved by a recommendation or direction of the Commission on the grounds that the Commission did not act independently or impartially when the recommendation was made or the direction was given about which he or she feels aggrieved, may, apart from making an appeal to the Public Service Commission to intervene or approaching the Public Protector or Provincial Protector to look into his or her complaint, apply to the Supreme Court to set aside such recommendation or direction. 25 30

(2) When the Court decides the matter, the Court may, over and above any other competent order— 35

- (a) replace the recommendation or direction with any other recommendation or direction the Court deems fair under the circumstances;
- (b) direct the Premier to remove one or all of the members of the Commission from office; or 40
- (c) order that the recommendation or direction be referred back to the Commission for reconsideration irrespective of whether any member or members of the Commission have been removed from office as contemplated in paragraph (c).

Short title

10. This Act shall be called the Northern Cape Provincial Service Commission Act, 1994. 45

(9) Alle getuienis en toesprake, deur die Kommissie aangehoor, word in die openbaar aangehoor: Met dien verstande dat die voorsittende lid of beampte in 'n ondersoek volgens goeë dunnke kan besluit dat verrigtinge in privaat moet geskied.

5 Personeel van die Kommissie

7. (1) Behoudens die bepalings van hierdie Wet en van die Staatsdienswet, word die Kommissie ingevolge laasgenoemde Wet bygestaan deur soveel ander beamptes en werknemers as wat van tyd tot tyd nodig is om die Kommissie in staat te stel om doeltreffend sy bevoegdhede uit te oefen en sy werksaamhede te verrig.

(2) Die beamptes en werknemers bedoel in subartikel (1) moet die lasgewings nakom en die pligte uitvoer wat van tyd tot tyd aan hom of haar gemaak of opgedra word deur die Kommissie.

Verslae van die Kommissie

8. (1) So gou as moontlik na 31 Desember van elke jaar word 'n verslag ten opsigte van al die aangeleenthede waarmee die Kommissie gehandel het gedurende die jaar wat op daardie dag eindig, en ook spesiale verslae wanneer die Kommissie dit nodig ag, deur die kommissie saamgestel.

(2) Elke verslag opgestel deur die Kommissie in navolging van subartikel (1) word voorgelê aan die Premier en as die Provinsiale wetgewer sit, ook aan die Provinsiale wetgewer binne sewe dae na die ontvangs daarvan deur die Premier, en as die Provinsiale wetgewer nie sit nie, binne sewe dae na die aanvang van die eersvolgende sitting daarvan.

25 Maatreëls om die onafhanklikheid en onpartydigheid van die Kommissie te verseker

9. (1) Enige staatsamptenaar in diens van die Provinsiale Administrasie wat veronreg voel deur 'n aanbeveling of lasgewing van die Kommissie op grond daarvan dat die Kommissie nie onafhanklik of onpartydig opgetree het nie toe die aanbeveling gemaak is of die lasgewing gedoen is waaroor hy of sy veronreg voel, behalwe om 'n beroep te doen op die Staatsdienskommissie om tussen beide te tree of om die Openbare Beskermer of Provinsiale Beskermer te nader om sy of haar klagte te ondersoek, kan by die Hooggeregshof aansoek doen om die tersydestelling van daardie aanbeveling of lasgewing.

(2) Wanneer die Hof die saak beslis, kan die Hof, bo en behalwe enige ander bevoegde bevel—

- (a) die aanbeveling of lasgewing vervang deur enige ander aanbeveling of lasgewing te gee wat die Hof in die omstandighede regverdig ag;
- (b) die Premier gelas om enige of al die lede van die Kommissie van hul ampte te onthef; of
- (c) beveel dat die aanbeveling of lasgewing terugverwys word na die Kommissie vir heroorweging ongeag of enige lid of lede van die Kommissie van hul ampte onthef is soos bedoel in paragraaf (c).

Kort titel

10. Hierdie Wet heet die Noord-Kaapse Wet op Provinsiale Dienskommissie, 1994.

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