
PROVINCE OF WESTERN CAPE

**WESTERN CAPE CULTURAL
COMMISSION AND CULTURAL
COUNCILS ACT, 1998**

PROVINSIE WES-KAAP

**WES-KAAPSE
KULTUURKOMMISSIE EN
KULTUURRADEWET, 1998**

No 14, 1998

ACT

To provide for the establishment and reasonable funding, within the available resources of the Western Cape of a Provincial Cultural Commission, and of a cultural council or councils for a community or communities in the Western Cape sharing a common cultural and language heritage; to determine the objects, powers and functions of such Cultural Commission and councils; and to provide for matters thereto.

PREAMBLE

Taking account of the fact that a multicultural and true democratic community not only respects cultural diversity, but also creates the appropriate climate for the preservation, promotion and extension of culture;

Taking account of the fact that the importance of the rich cultural diversity in the Western Cape should be protected and promoted in such a way that it will lead to a better understanding and mutual respect for various cultures in the Western Cape; and

In an endeavour to encourage an interplay between cultural communities in the Western Cape, to extend international cultural contacts between Western Cape cultural communities and cultural communities overseas, as well as promote involvement of youth in culture in the Western Cape;

THE PROVINCIAL PARLIAMENT of the Western Cape, enacts as follows:—

Definitions

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

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); 5

“**culture**” means the dynamic totality of distinctive spiritual, material, intellectual and emotional features which characterise a society or social group. It includes the arts and literature, but also modes of life, the fundamental rights of the human being, value systems, traditions, heritage and beliefs developed over time and subject to change; 10

“**cultural council or councils**” means a cultural council or councils representing a community or communities sharing a common cultural and language heritage, established in terms of section 18;

“**Cultural Commission**” means the Western Cape Cultural Commission for arts, culture and heritage established in terms of section 3; 15

“**Provincial Minister**” means the Provincial Minister responsible for cultural affairs;

“**Standing Committee**” means a committee of the Western Cape Provincial Parliament responsible for cultural affairs. 20

CHAPTER 1 WESTERN CAPE CULTURAL COMMISSION

Powers of Provincial Minister

2. (1) Over and above the other powers assigned to the Provincial Minister by this Act, he or she may, with the money appropriated by the Provincial Parliament for the preservation, promotion and development of culture in the Western Cape- 5
- (a) acquire, develop and maintain movable property, or place such movable property under the supervision of the Cultural Commission;
 - (b) subject to the provisions of the Western Cape Land Administration Act, 1998 (Act 6 of 1998), acquire, develop and maintain immovable property or place such immovable property under the supervision of the Cultural Commission; 10
 - (c) regulate co-operation and liaison with other provinces and countries in relation to the promotion of culture;
 - (d) provide the services which he or she deems necessary or expedient to give effect to a recommendation of the Cultural Commission; and
 - (e) subsidise or fund functions relating to cultural affairs which he or she deems necessary or expedient. 15
- (2) A grant or the funding of a service in terms of subsection (1) is subject to conditions determined by the Provincial Minister, including conditions relating to the submission of progress and financial reports.
- (3) The Provincial Minister: 20
- (a) must, on the recommendation of the Cultural Commission and in consultation with the Provincial Minister responsible for finance, determine tariffs for the renting of any movable or immovable property under the supervision of the Cultural Commission; and
 - (b) may, at his or her discretion, convene and consult the members of the Cultural Commission with a view to determining his or her policy as contemplated in section 7. 25

Establishment and composition of Cultural Commission

3. (1) A Cultural Commission to be known as the Western Cape Cultural Commission is hereby established. 30
- (2) The Cultural Commission is a juristic person and will be represented by the chairperson or deputy chairperson or any of its members designated by the Cultural Commission in general or for a specific purpose.
- (3) The Cultural Commission will consist of no fewer than 10 and no more than 14 members, none of whom may be full-time members, and which number will be determined by the Provincial Minister, taking into account the following factors:— 35
- (a) cost-effective management;
 - (b) administration and service rendering;
 - (c) cultural and language realities; and
 - (d) geographical and demographical considerations. 40
- (4) Members of the Cultural Commission must:-
- (a) be South African citizens;
 - (b) be permanently resident in the Western Cape; and
 - (c) be representative as far as possible of the cultural diversity of the people of the Western Cape. 45

Appointment of Cultural Commission

4. (1) The Provincial Minister appoints the Cultural Commission in accordance with the procedure set out in sub-section (2) for a period of three years.
- (2) (a) The Standing Committee must, on the instruction of the Provincial Minister, invite the general public to nominate persons for appointment as members of the Cultural Commission. 50
- (b) The Standing Committee must compile a short list of a maximum of 20 candidates and submit it to the Provincial Minister, with due consideration of the requirements for nominees as contained in sections 3(3) and 3(4) of this Act.
- (c) The Provincial Minister appoints the members of the Cultural Commission from the short list of candidates submitted to him or her. 55

(3) Any member of the Cultural Commission may, upon expiry of his or her term of office, be re-appointed.

Dismissal of members of Cultural Commission

5. A member of the Cultural Commission may be dismissed by the Provincial Minister only on the basis of misconduct, inability or incompetence. 5

Filling of vacancies

6. If a vacancy occurs in the Cultural Commission before the expiry of a member's normal term of office, the Provincial Minister must after consultation with the Standing Committee, as soon as practically possible, appoint another person for the unexpired portion of his or her predecessor's term of office. 10

Aims of Cultural Commission

7. The aims of the Cultural Commission are to preserve, promote and develop culture in the Western Cape, in accordance with a policy determined by the Provincial Minister.

Chairperson and deputy chairperson of Cultural Commission

8. (1) The Cultural Commission elects at its first meeting a member as chairperson 15 and another member as deputy chairperson.

(2) When the chairperson of the Cultural Commission is absent or incapable of performing his or her functions as chairperson, the deputy chairperson will act as chairperson, and, while he or she is acting in this capacity, the deputy chairperson has all the powers and performs all the functions of the chairperson. 20

(3) Should the chairperson or deputy chairperson ceases to occupy his or her office as a member of the Cultural Commission, the Cultural Commission must elect another member of the Commission in his or her place.

(4) Should the chairperson and the deputy chairperson be absent from a meeting of the Cultural Commission, the members of the Commission present at the meeting will elect 25 one of their number to preside at that meeting.

(5) The offices of chairperson and deputy chairperson become vacant—

- (a) upon the expiry of the relevant member's term of office as chairperson or deputy chairperson;
- (b) when the relevant member resigns from one of these offices; or 30
- (c) when the relevant member ceases to be a member of the Cultural Commission.

Declaration of interests of members

9. (1) Should members of the Cultural Commission be involved in projects regarding which the cultural councils have applied for funding, they must declare such interest and may not participate in the discussion of and recommendation concerning those 35 applications by the cultural councils.

(2) Members are obliged to reveal any other conflict of interests to the Cultural Commission.

Internal rules of procedure for Cultural Commission

10. (1) The Cultural Commission must determine its own internal arrangements, 40 proceedings and procedures by drafting rules for:—

- (a) the convening of meetings;
- (b) the procedure at meetings;
- (c) the frequency of meetings, but at least four meetings per year must be held; 45
- and
- (d) the election of the chairperson and deputy chairperson.

(2) A quorum for a meeting is an ordinary majority of all the members of the Cultural Commission.

(3) Decisions of the Cultural Commission are taken by resolution of a majority of all the members present at a meeting of the Cultural Commission, and, in the event of an 50

equality of votes, the person presiding at the meeting will have a deciding vote in addition to his or her participatory vote as a member of the Cultural Commission.

Powers and functions of Cultural Commission

- 11.** (1) In order to achieve the aims for which the Cultural Commission was established, the Commission must:— 5
- (a) consider the registration and deregistration of cultural councils;
 - (b) control, manage, develop and maintain movable or immovable property placed under its supervision in terms of section 2(1)(a) or (b); and
 - (c) perform such other functions as the Provincial Minister may assign to the Commission. 10
- (2) The Cultural Commission may of its own accord, or at the request of the Provincial Minister or at the request of a cultural council or councils make recommendations on how the aims of the Cultural Commission can best be achieved with respect to *inter alia* the following areas:— 15
- (a) the visual, performing and literary arts;
 - (b) the natural and human sciences;
 - (c) cultural-historical fields; and
 - (d) youth's cultural awareness and involvement.
- (3) The Cultural Commission may, after approval by the Provincial Minister, and, where necessary, by the Provincial Minister responsible for finance:— 20
- (a) acquire, hire, let or otherwise alienate movable property;
 - (b) erect, equip, maintain, or alter any building or structure on the immovable property referred to in subsection (1)(b); and
 - (c) receive movable or immovable property as a gift, bequest or in trust, and control, use, manage or otherwise deal with it subject to the conditions of the donation, bequest or trust which are consistent with the aims of the Cultural Commission. 25
- (4) Any immovable property donated or bequeathed to the Cultural Commission and accepted with the required approval vests in the Cultural Commission.
- (5) Besides the powers set out above, the Cultural Commission may give assistance within its available resources, to a cultural council or councils as established under this Act, by:— 30
- (a) subsidising culturally related projects, research and conferences as from time to time determined by the Provincial Minister, and for which a cultural council or councils have applied; 35
 - (b) promoting and co-ordinating national and international intercultural contact; and
 - (c) providing information to preserve, promote and develop culture.
- (6) The Cultural Commission is entitled to establish, compile and maintain databases, including databases of persons, organisations, institutions, equipment and facilities relating to cultural affairs in the Western Cape. 40
- (7) The Cultural Commission must make recommendations to the Provincial Minister in respect of the determining of tariffs for the renting of any movable or immovable property as envisaged in section 2(3)(a).

Allowances to members 45

12. Members of the Cultural Commission and of its committees shall be paid from the funds of the Cultural Commission, in respect of the performance of their functions as a member, such allowances as determined by the Provincial Minister in consultation with the Provincial Minister responsible for finance.

Administrative work of Cultural Commission 50

13. The administrative work attached to the performance of the functions of the Cultural Commission will be performed by officials in the service of the provincial department responsible for cultural affairs, as mutually agreed to between the chairperson of the Cultural Commission and the Provincial Minister.

Funds of Cultural Commission

- 14.** (1) The funds of the Cultural Commission consist of—
- (a) an appropriation by the Provincial Parliament;
 - (b) money received by way of a donation, bequest or in trust;
 - (c) subsidies or money received under section 2(1)(e); 5
 - (d) interest received on investments; and
 - (e) money acquired from any other source.

(2) The Cultural Commission must, in accordance with the Western Cape Treasury Act, 1994 (Act 4 of 1994), open an account at a banking institution approved by the Provincial Minister responsible for finance, and must deposit in that account all money received by the Cultural Commission under this Act. 10

Financial control and reports

15. (1) The financial year of the Cultural Commission is the same as that of the Western Cape Provincial Government.

(2) The Cultural Commission must annually submit to the Provincial Minister for approval estimates of income and expenditure for the next financial year, and may, during the course of a financial year, submit to the Provincial Minister for approval supplementary estimates of expenditure for that financial year. 15

(3) The Cultural Commission may only incur such expenditure in respect of any financial year, as has been approved by the Provincial Minister in the budget of the Cultural Commission for that financial year. 20

(4) The Cultural Commission must keep full and accurate accounting records of all money received and expended by the Commission, transactions entered into and all the Commission's assets and liabilities.

(5) The accounting officer must annually, within two months of the end of the financial year, submit to the Provincial Minister and the Auditor-General financial statements in respect of the preceding financial year, and must provide the Provincial Minister and the Auditor-General with any additional information required by them. 25

(6) The financial statements of the Cultural Commission will be audited by the Auditor-General. 30

(7) The Cultural Commission must present within two months after the end of the financial year, to the Provincial Minister and the Provincial Parliament a report on its work during the preceding financial year.

Accounting Officer and accountability

16. (1) The programme manager responsible for cultural affairs is the accounting officer for the Cultural Commission. 35

(2) The accounting officer is responsible for accounting for all state monies received and all payments made by the Cultural Commission and the acquisition, receipt, custody and disposal of all state property by the Cultural Commission as referred to in section 11.

(3) The accounting officer must exercise the powers conferred upon him or her and perform the duties assigned to him or her by law. 40

Liability of members of Cultural Commission

17. Members of the Cultural Commission will not be personally liable in respect of anything contained in any report, finding, view, advice or recommendation given or expressed in good faith and submitted or revealed to the Provincial Parliament, the Provincial Minister or a cultural council under this Act, or as a consequence of any act performed in good faith in the exercise of their duty as members of the Cultural Commission. 45

CHAPTER 2 CULTURAL COUNCILS

Establishment and registration of cultural councils

18. (1) Cultural councils, which are voluntary associations of persons based on the principle of freedom of association and which represents a community or communities sharing a common cultural and language heritage, as established for a community or communities in the Western Cape, may be registered in terms of subsection (2). 5

(2) Cultural councils, as contemplated in subsection (1), may apply to the Cultural Commission for registration and must furnish in the application such details required by the Cultural Commission as determined in regulations.

Powers and functions of cultural councils 10

19. (1) A registered cultural council may, inter alia, besides any other culturally related power and function:—

- (a) preserve, promote and develop culture in the community or communities it represents;
- (b) monitor, investigate, research, provide education on, solicit support for and advise and report to the Cultural Commission on cultural matters in the community or communities it represents; 15
- (c) report to the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, as established in terms of section 185 of the Constitution, any matter relating to the constitutional and other rights of the community concerned; 20
- (d) at the request of Western Cape Provincial Government or of local authorities in the Western Cape, furnish advice on any culturally related matter;
- (e) as it deems fit, establish contact with other cultural groups in the Western Cape, other provinces and other countries; and 25
- (f) report any cultural threat to the Cultural Commission for possible investigations and proposed solutions.

(2) A registered cultural council may apply to the Cultural Commission for financial support for culturally related projects, research and the holding of conferences.

(3) A registered cultural council receiving financial support in terms of subsection (2) must, within two months of the completion of the culturally related activity, submit to the Cultural Commission a report and statements of income and expenditure regarding the project. 30

Administrative work of cultural council

20. (1) The administrative work relating to the performance of the functions of a cultural council is the responsibility of that cultural council. 35

(2) A registered cultural council is not entitled to administrative assistance from officials of the provincial department responsible for cultural affairs.

Remuneration of members of cultural council

21. Members of a registered cultural council will not be remunerated for the performance of their functions by the Cultural Commission or the provincial department responsible for cultural affairs. 40

CHAPTER 3 GENERAL PROVISIONS

Regulations

22. The Provincial Minister may make regulations regarding:— 45

- (a) procedures relating to the rendering of services on behalf of the Cultural

- Commission or relating to the provision of goods and materials to the Cultural Commission;
- (b) the safekeeping including the insurance of any movable and immovable property placed under the supervision of the Cultural Commission;
 - (c) co-operation and liaison with other provinces and countries in respect of the promotion of cultural affairs; 5
 - (d) requirements for the registration of cultural councils;
 - (e) the deregistration of cultural councils; and
 - (f) in general, any matter which the Provincial Minister considers necessary or expedient for the achievement of the aims of this Act. 10

Delegation

23. The Provincial Minister may delegate any of his or her powers under section 2(1) to an official with at least the rank of director in the service of the Western Cape Provincial Administration.

Transitional measures 15

24. The transitional measures contained in Schedule 1 are applicable to the period between the commencement of this Act and the appointment of the Cultural Commission.

Short title and commencement

25. This Act is called the Western Cape Cultural Commission and Cultural Councils Act, 1998, and comes into operation on a date fixed by the Premier and announced by proclamation in the Provincial Gazette. 20

SCHEDULE 1

TRANSITIONAL MEASURES

Functioning and dissolution of Western Cape Regional Council for Cultural Affairs

1. (1) The Western Cape Regional Council for Cultural Affairs, established under the Cultural Affairs Act (House of Assembly), 1989 (Act 65 of 1989), will continue to function after the commencement of this Act until a date determined by the Provincial Minister, which date must be before the day of the appointment of the Cultural Commission.

(2) The Western Cape Regional Council for Cultural Affairs ceases to exist on the date referred to in subsection (1).

(3) Legal liability of the Western Cape Regional Council for Cultural Affairs is transferred to the Cultural Commission.

Assets and liabilities of Western Cape Regional Council for Cultural Affairs

2. Any assets and liabilities of the Western Cape Regional Council for Cultural Affairs is transferred to the Cultural Commission.

Appointment of Cultural Commission

3. The Cultural Commission must be appointed within six months of the commencement of this Act.

