

PROVINCE OF THE WESTERN CAPE

**WESTERN CAPE COMMUNITY
SAFETY BILL**

(As introduced)

(MINISTER OF COMMUNITY SAFETY)

[B 8—2012]

PROVINSIE WES-KAAP

**WES-KAAPSE
WETSONTWERP OP
GEMEENSKAPSVEILIGHEID**

(Soos ingedien)

(MINISTER VAN GEMEENSKAPSVEILIGHEID)

[W 8—2012]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WEZOKHUSELEKO LOLUNTU
WENTSHONA KOLONI**

(Njengoko wazisiwe)

(NGUMPHATHISWA WEZOKHUSELEKO LOLUNTU)

[B 8—2012]

BILL

To provide for the carrying out and the regulation of the functions of the Province and the Department of Community Safety under Chapter 11 of the Constitution of the Republic of South Africa, 1996, and Chapter 8 of the Constitution of the Western Cape, 1997; to provide for the support of and cooperation with the Civilian Secretariat and the Provincial Secretariat established in terms of the Civilian Secretariat for Police Service Act, 2011; to provide for directives for the establishment of community police forums and boards in terms of the South African Police Service Act, 1995; to provide for the accreditation of organisations and associations as neighbourhood watches; to provide for partnerships with community organisations; to establish and maintain an integrated information system and a database of organisations; to provide for the voluntary registration of security service providers on the database of organisations; to establish the Office of the Western Cape Provincial Police Ombudsman to investigate complaints regarding the police; to regulate reporting on the police service; to establish the Provincial Safety Advisory Committee; and to provide for matters incidental thereto.

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

Definitions

1. In this Act, unless the context otherwise indicates—
 - “**Civilian Secretariat**” means the Civilian Secretariat for the Police Service established by section 4 of the Civilian Secretariat for Police Service Act, 2011 (Act 2 of 2011);
 - “**Committee**” means the Provincial Safety Advisory Committee established by section 25;
 - “**community police forums and boards**” means community police forums and boards established in terms of sections 19 to 21 of the South African Police Service Act, 1995 (Act 68 of 1995);
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
 - “**Department**” means the provincial Department of Community Safety responsible for the functions referred to in Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997 (Act 1 of 1998) and established under section 3A of the Public Service Act, 1994 as reflected in Schedule 2 of that Act;
 - “**Head of the Department**” means the head of the provincial Department of Community Safety;

- “**Independent Police Investigative Directorate**” means the Independent Police Investigative Directorate established by section 3(1) of the Independent Police Investigative Directorate Act, 2011 (Act 1 of 2011);
- “**Minister**” means the national cabinet member responsible for policing; 5
- “**municipal police service**” means a municipal police service established in the Province in terms of section 64A of the South African Police Service Act, 1995;
- “**neighbourhood watch**” means an organisation or association contemplated in section 6(1) and accredited in terms of section 6(5);
- “**Ombudsman**” means the Western Cape Provincial Police Ombudsman appointed in terms of section 11; 10
- “**police**” means police officials of the police service;
- “**police official**” means a member of the South African Police Service deployed in the Province or a member of a municipal police service;
- “**police service**” means the South African Police Service deployed in the Province or a municipal police service; 15
- “**policing**” means the functions performed by police officials;
- “**prescribe**” means prescribe by regulation;
- “**Province**” means the Province of the Western Cape;
- “**Provincial Cabinet**” means the Provincial Cabinet as referred to in section 42 of the Constitution of the Western Cape, 1997; 20
- “**Provincial Commissioner**” means the provincial commissioner appointed for the Province in terms of section 207(3) of the Constitution;
- “**Provincial Minister**” means the provincial minister responsible for the functions referred to in Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997; 25
- “**Provincial Secretariat**” means the provincial secretariat for the Province established in terms of section 16 of the Civilian Secretariat for Police Service Act, 2011;
- “**regulation**” means a regulation made under section 31;
- “**security service provider**” means a security service provider as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001); 30
- “**South African Police Service**” means the South African Police Service established by section 5(1) of the South African Police Service Act, 1995, and deployed in the Province; and
- “**this Act**” includes the regulations made under section 31 and any directives made under sections 3(f) and 5. 35

Purpose of Act

2. The purpose of this Act is to—
- (a) regulate and to provide for the carrying out of the functions of the Province referred to in sections 206(1), (3), (4), (5) and (9) and 207(5) and (6) of the Constitution, and sections 66, 67, 68(1), (2)(a) and (b) and 69(2) of the Constitution of the Western Cape, 1997, to— 40
- (i) determine policing needs and priorities;
 - (ii) monitor police conduct;
 - (iii) oversee the effectiveness and efficiency of the police service, including receiving reports on the police service; 45
 - (iv) promote good relations between the police and the community;
 - (v) assess the effectiveness of visible policing;
 - (vi) investigate any complaints of police inefficiency or a breakdown in relations between the police and any community; 50
 - (vii) require the Provincial Commissioner to report to and appear before the Provincial Parliament; and
 - (viii) institute proceedings for the removal or transfer of, or disciplinary action against the Provincial Commissioner; and
- (b) support the objects of the Civilian Secretariat and Provincial Secretariat. 55

Functions of Provincial Minister

3. The Provincial Minister may, in order to achieve the objectives of section 206(1), (3), (4) and (5) of the Constitution, and sections 66 and 68(1), (2)(a) and (b) of the Constitution of the Western Cape, 1997, exercise and perform the following powers and functions— 5
- (a) monitor police conduct;
 - (b) oversee the effectiveness and the efficiency of the police service;
 - (c) oversee the effectiveness of policies and directives implemented by the police service in relation to appointments, training and policing;
 - (d) promote good relations between the police and the community; 10
 - (e) identify causes of any breakdown in relations between the police and any community and establish measures to improve the relations;
 - (f) issue directives for the establishment and strengthening of community police forums and boards and to facilitate their proper functioning in order to promote good relations between the police and the community; 15
 - (g) establish partnerships with any community aimed at promoting good relations between the police and the community;
 - (h) maintain a database of community organisations involved in the field of policing and related fields;
 - (i) assess the effectiveness of visible policing; 20
 - (j) establish and maintain integrated information systems in order to oversee the effectiveness and efficiency of the police service and to determine the policing needs and priorities of the Province;
 - (k) liaise with the Minister regarding crime and policing in the Province;
 - (l) record complaints relating to police inefficiency or a breakdown in relations between the police and the community; 25
 - (m) receive and analyse reports, including quantitative and qualitative information on the police service;
 - (n) collect empirical information on performance indicators and resource distribution; 30
 - (o) identify indicators to monitor and assess the effectiveness and efficiency of the police service;
 - (p) receive and analyse information about the funding, expenditure, activities, outputs and outcomes of policing;
 - (q) analyse the competence and capacity of the police service, and patterns and practices of police conduct, and identify problems and shortcomings in the policing system and make recommendations to the Minister on how to remedy it; 35
 - (r) advise the Provincial Cabinet on the policing needs and priorities of the Province as contemplated in section 23; 40
 - (s) liaise with and make recommendations to the Minister regarding the policing needs and priorities of the Province as determined by the Provincial Cabinet;
 - (t) evaluate how policing needs and priorities are reflected in national policing policy;
 - (u) identify and address specific police oversight issues which other bodies involved in police oversight do not address; 45
 - (v) table an annual report in the Provincial Parliament on the exercise and performance of the powers and functions in terms of this Act;
 - (w) conduct research as may be required;
 - (x) liaise with and facilitate cooperation amongst stakeholders with an interest in the exercise and performance of the powers and functions in terms of this Act; 50
 - (y) oversee the functioning of the Provincial Secretariat;
 - (z) monitor complaints referred by the Provincial Cabinet to the Independent Police Investigative Directorate;
 - (aa) facilitate close cooperation between the Department and the Civilian Secretariat, the Provincial Secretariat, the Independent Police Investigative Directorate and the police in the performance of the functions in terms of this Act. 55

Monitoring, oversight and assessment of policing

4. (1) The Provincial Minister may in the prescribed manner, subject to section 13(11) of the South African Police Service Act, 1995, authorise employees of the Department to—
- (a) attend protests, crime scenes and any other scene of police activity to observe and record the interaction between the police and the community; 5
 - (b) monitor and evaluate the allocation, distribution and use of human and other resources for policing;
 - (c) inspect police stations, or other police premises in order to— 10
 - (i) monitor police conduct;
 - (ii) oversee the effectiveness and efficiency of the police service in the area;
 - (iii) oversee the effectiveness and efficiency of the police service in dealing with complaints from the community regarding policing in the area; 15
 - (iv) evaluate the relations between the community and the police;
 - (v) monitor the treatment and conditions of persons held in police custody in order to determine the recognition by the police of the rights of detained persons in terms of section 35(2) of the Constitution. 20
- (2) The Provincial Minister may authorise any other person in the prescribed manner to perform the functions referred to in subsection (1) at the remuneration determined by the Provincial Minister with the concurrence of the Provincial Minister responsible for finance.
- (3) In order to perform the functions in terms of this Act, the Provincial Minister or any employee or person authorised in terms of subsection (1) or (2)— 25
- (a) may request and obtain information and documents under the control of the police service or a municipality in question;
 - (b) may enter any building, premises, vehicle or property under the control of the police service or a municipality in question; 30
 - (c) is entitled to assistance by any member of the police service.
- (4) Any dispute relating to a request, access or assistance contemplated in subsection (3) must be reported to the Provincial Minister.

Directives for establishment of community police forums and boards

5. (1) In order to promote good relations between the South African Police Service and the community, the Provincial Minister may issue directives regarding the establishment of community police forums and boards in terms of sections 19(1), 20(1) and 21(1) of the South African Police Service Act, 1995, including directives relating to— 35
- (a) the requirements for identifying relevant community organisations, institutions and interest groups to form part of a community police forum or board; 40
 - (b) the procedures for the establishment of a community police forum or board;
 - (c) the term of office of members of a community police forum or board;
 - (d) the adoption of a constitution for a community police forum or board and the minimum content thereof; 45
 - (e) dispute resolution procedures applicable to any dispute in respect of the establishment of a community police forum or board.
- (2) The Head of the Department must—
- (a) evaluate the level of functionality of community police forums and boards and the relations between the police and the community police forums and boards; 50
 - (b) regularly attend the meetings of the community police forums and boards in order to promote the objectives of section 18(1) of the South African Police Service Act, 1995; and
 - (c) annually report his or her findings in respect of paragraphs (a) and (b) to the Provincial Minister. 55
- (3) The Head of the Department may assist community police forums and boards by providing funding, training or resources.

Accreditation of and support to neighbourhood watches

6. (1) Any organisation or association that—
- (a) operates not for gain as a voluntary organisation or association;
 - (b) comprises members who are residents, tenants or owners of immovable property or with any other relevant interest in the area where the organisation or association operates; and
 - (c) has the purpose of safeguarding its members, their immovable and other property against crime and other safety concerns in the area where the organisation or association operates,
- may apply to the Provincial Minister in the prescribed form for accreditation as a neighbourhood watch. 10
- (2) The Provincial Minister—
- (a) must request the police official in charge of the police station in the area within which the organisation or association operates; and
 - (b) may request any other organisation,
- to comment, within the period stated in the request, on the proposed accreditation of the organisation or association as a neighbourhood watch in that area. 15
- (3) If the police official or an organisation fails to comment within the stated period referred to in subsection (2), the police or the organisation is regarded as having no comment on the proposed accreditation of the organisation or association. 20
- (4) The Provincial Minister may require further information from the organisation or association in support of the application.
- (5) The Provincial Minister may accredit an organisation or association as a neighbourhood watch after considering, within the prescribed period—
- (a) an application; 25
 - (b) any further information provided by the applicant;
 - (c) any comment received from the police or an organisation as contemplated in subsection (2);
 - (d) whether the organisation or association conducts its activities according to the prescribed standards relating to— 30
 - (i) criteria for membership of a neighbourhood watch and the conduct of members;
 - (ii) the structures of a neighbourhood watch; and
 - (iii) the control and use of funds of a neighbourhood watch; and
 - (e) whether the organisation or association cooperates with the community police forum in the area. 35
- (6) If the Provincial Minister decides—
- (a) to accredit an organisation or association as a neighbourhood watch, the Provincial Minister must—
 - (i) enter the name of the neighbourhood watch in the register of neighbourhood watches; 40
 - (ii) issue a certificate of accreditation in the name of the neighbourhood watch stating the period of accreditation, the area within which the neighbourhood watch operates and other terms of accreditation; and
 - (iii) send the certificate of accreditation to the neighbourhood watch, the community police forum and the police official in charge of the police station in the area; or 45
 - (b) not to accredit the organisation or association as a neighbourhood watch, the Provincial Minister must advise the unsuccessful applicant in writing of his or her decision and the reasons for the decision. 50
- (7) The Provincial Minister must annually publish a list of neighbourhood watches in the *Provincial Gazette*.
- (8) The Provincial Minister may provide funding, training or resources to a neighbourhood watch.
- (9) The Provincial Minister must keep a register of neighbourhood watches and make the register available for inspection to any interested person at his or her request and on payment of the prescribed fee. 55
- (10) A neighbourhood watch must—
- (a) renew its accreditation every two years in the prescribed manner, failing which the accreditation will lapse; 60
 - (b) report in the prescribed manner and within the prescribed period to the Provincial Minister on—

- (i) safety concerns and crime incidents in the area where the neighbourhood watch operates;
- (ii) the activities of the neighbourhood watch; and
- (iii) any prescribed matter required by the Provincial Minister to determine policing needs and priorities and the effectiveness and efficiency of the police service;

- (c) keep record of the matters contemplated in paragraph (b)(i) to (iii); and
- (d) preserve the records contemplated in paragraph (c) for at least five years from the date of recording.

(11) An employee of the Department, authorised by the Provincial Minister, has access to any records kept by or on behalf of a neighbourhood watch and may examine, make extracts from or copies of, the records to obtain further information in respect of a report made in terms of subsection (10)(b) and to verify whether the neighbourhood watch is complying with the standards contemplated in subsection (5)(d) and (e).

(12) If a neighbourhood watch fails to comply with the standards contemplated in subsection (5)(d) and (e) or with subsection (10)(b), (c) or (d), the Provincial Minister may by written notice direct the neighbourhood watch to comply with those sections within the period mentioned in the notice.

(13) If the neighbourhood watch fails to give effect to the notice within the period mentioned therein, the Provincial Minister may withdraw the accreditation of that neighbourhood watch.

Database and partnerships with community organisations

7. (1) To promote good relations between the police and communities in the Province, the Provincial Minister may—

- (a) maintain a database of community organisations involved in the field of policing, support of victims of crime, crime prevention or community safety;
- (b) assist community organisations on the database by providing support, information, training or resources;
- (c) subject to any law governing the award of contracts by the Province, with the concurrence of the Provincial Minister responsible for finance, enter into a contract with any party to design, finance or operate any community safety initiative or partnership to achieve the purpose of this Act;
- (d) facilitate the establishment of specialised units in response to specific categories of crime.

(2) A community organisation listed on the database must report to the Head of the Department, in the prescribed form, on safety concerns and crime incidents dealt with by the organisation.

Integrated information system

8. (1) In order to oversee the effectiveness and the efficiency of the police service and to determine the policing needs and priorities of the Province, the Provincial Minister must establish and maintain an integrated information system.

(2) The Head of the Department must authorise employees of the Department to collect information and to administer and maintain the integrated information system.

(3) The Provincial Minister may consult with the Civilian Secretariat and the Provincial Secretariat regarding the integrated information system to ensure the integration of information with any safety models and monitoring tools developed by the Provincial Secretariat as contemplated in section 17(2) of the Civilian Secretariat for Police Service Act, 2011.

(4) The integrated information system must provide for—

- (a) the collection of data from relevant organs of state or institutions, security service providers registered in terms of subsection (6) and the police service;
- (b) the analysis of the data;
- (c) the recording of safety concerns in communities of the Province;
- (d) the incorporation of information in a report contemplated by sections 6(10)(b), 7(2) and 8(7)(a); and
- (e) the analysis of the number and nature of complaints relating to the police received by the Ombudsman in terms of section 16, organs of state, community police forums and other institutions.

- (5) The Head of the Department may refer information relating to crime or criminal activities received through the integrated information system to the Provincial Commissioner.
- (6) The Provincial Minister may request a security service provider that operates in the Province to register on the database referred to in section 7. 5
- (7) A registered security service provider must—
- (a) report in the prescribed manner and within the prescribed period to the Provincial Minister on—
 - (i) safety concerns and crime incidents in the area where the security service provider operates; 10
 - (ii) firearms that are lost or stolen whilst in the possession of the security service provider; and
 - (iii) any prescribed matter required by the Provincial Minister to determine policing needs and priorities and to oversee the effectiveness and efficiency of the police service; 15
 - (b) keep record of the matters contemplated in paragraph (a)(i) to (iii); and
 - (c) preserve the records contemplated in paragraph (b) for at least five years from the date of recording.
- (8) An employee of the Department, authorised by the Provincial Minister, has access to any records kept by or on behalf of a security service provider in terms of subsection (7)(b), and may examine, make extracts from or copies of, the records for the purposes of obtaining further information in respect of a report made in terms of subsection (7)(a). 20

Confidentiality and disclosure

- 9.** (1) No personal information collected for the purpose of this Act by the Provincial Minister, the Head of the Department or an employee or person authorised in terms of this Act, concerning— 25
- (a) an individual;
 - (b) a household;
 - (c) a business; or 30
 - (d) a private organisation,
- may, subject to the laws regulating state information and subsections (2) and (3), be disclosed to any other person.
- (2) Subject to section 8(5), the information contemplated in subsection (1) may be disclosed— 35
- (a) to any organ of state—
 - (i) for a purpose relating to the functions in this Act;
 - (ii) in accordance with the directions of the Provincial Minister;
 - (iii) on condition that the name, address or any other means by which a specific individual, household, business or private organisation may be identified is deleted; 40
 - (iv) if its disclosure is not reasonably expected to endanger the life or physical safety of an individual, or prejudice or impair the security of property; and
 - (v) the Provincial Minister is satisfied that the confidentiality of that information or data will not be impaired; or 45
 - (b) to the person from whom the information was collected or his or her representative;
 - (c) with the prior written consent of the person from whom the information was collected or his or her representative; 50
 - (d) where the information is already available to the public from the individual, household, business or private organisation concerned; or
 - (e) if it is regarded as necessary or expedient in the interests of justice.
- (3) Despite the confidentiality constraints applicable to the Provincial Minister, the Head of the Department and authorised employees or persons, the Ombudsman is entitled to information or sight of documentation referred to in subsection (1) and in the Provincial Minister's possession which may be relevant in the consideration of a complaint. 55

- (4) The Provincial Minister, the Head of the Department and every employee or person authorised in terms of this Act—
- (a) must take all reasonable steps to ensure that—
 - (i) information which is collected for the purposes of this Act is accurate, up-to-date and as complete as possible; 5
 - (ii) the confidentiality of that information is protected; and
 - (iii) the information is secured against unauthorised access; and
 - (b) may not record or deal with information referred to in subsection (1) other than for the purposes of this Act and in accordance with this section.
- (5) The Provincial Minister must ensure that the confidentiality of information referred to in subsection (1) which is reflected in a record of the Department is protected when that record is disposed of. 10

Establishment of Office of Western Cape Provincial Police Ombudsman

10. (1) The Office of the Western Cape Provincial Police Ombudsman is established in the Department. 15
- (2) The staff members required for the performance of the functions of the Ombudsman are appointed in terms of the Public Service Act, 1994.
- (3) The police and employees of the Department and of any other organ of state must cooperate with and assist the Ombudsman and staff members of the Ombudsman in the performance of their functions in terms of this Act, which includes providing them with reasonable access to any building, premises, vehicle, property, information or document under the control of the organ of state concerned. 20

Appointment of Ombudsman

11. (1) The Premier must appoint a suitably qualified person, with experience in the field of law or policing, as the Western Cape Provincial Police Ombudsman. 25
- (2) The Ombudsman is appointed by the Premier—
- (a) after consultation with the Provincial Minister, the Provincial Commissioner and the executive heads of municipal police services; and
 - (b) subject to approval by the Provincial Parliament's standing committee responsible for community safety by a resolution adopted in accordance with its rules. 30
- (3) The remuneration and other terms of appointment of the Ombudsman must be determined by the Premier with the concurrence of the Provincial Minister responsible for finance.
- (4) The Ombudsman is appointed for a non-renewable term not exceeding five years. 35
- (5) The Ombudsman may at any time resign by submitting a written resignation to the Premier at least three months prior to the intended date of vacation of office, unless the Premier allows a shorter period.
- (6) The Premier may on good cause shown—
- (a) after consultation with the persons referred to in subsection (2)(a); and 40
 - (b) subject to approval by the Provincial Parliament's standing committee responsible for community safety by a resolution adopted in accordance with its rules,
- remove the Ombudsman from office on the ground of misbehaviour, incapacity or incompetence, after affording him or her a reasonable opportunity to be heard. 45
- (7) The Ombudsman may, in the performance of his or her functions, also be assisted by a person or body whose service the Ombudsman requires for the purpose of a particular investigation.

Finances of Ombudsman

12. (1) Expenditure in connection with the functions of the Ombudsman must be funded from monies appropriated by the Provincial Parliament for that purpose, as part of the budget vote of the Department. 50
- (2) The Department must, subject to the laws governing the public service, make available human and other resources to enable the Ombudsman to perform his or her functions. 55

Reporting by Ombudsman

- 13.** (1) The Ombudsman must report annually to the Provincial Minister on the activities of the Ombudsman during the previous financial year including—
- (a) the number of complaints investigated;
 - (b) the number of complaints determined to be manifestly frivolous or vexatious under section 17(1);
 - (c) the outcome of investigations into the complaints; and
 - (d) the recommendations regarding the investigated complaints.
- (2) The Ombudsman must report to the Provincial Minister on his or her activities in terms of this Act as and when requested to do so by the Provincial Minister.
- (3) The Provincial Minister must table the report contemplated in subsection (1) in the Provincial Parliament.

Independence and impartiality of Ombudsman

- 14.** (1) The Ombudsman and staff members of the Ombudsman must serve independently and impartially and must perform their functions in good faith and without fear, favour, bias or prejudice, subject to the Constitution and the law.
- (2) The Ombudsman and staff members of the Ombudsman must preserve confidentiality in respect of any information acquired in terms of this Act.

Functions of Ombudsman

- 15.** The Ombudsman must—
- (a) receive and may investigate complaints submitted in terms of section 16, regarding inefficiency of the police or a breakdown in relations between the police and any community; and
 - (b) perform the other functions assigned to him or her under this Act.

Submitting complaints

- 16.** (1) Any person may submit a complaint in the prescribed manner and form to the Ombudsman regarding alleged police inefficiency or a breakdown in relations between the police and any community.
- (2) Any member of the Provincial Parliament may, on becoming aware of a complaint regarding alleged police inefficiency or a breakdown in relations between the police and any community, submit it to the Ombudsman for investigation.
- (3) The Ombudsman must issue guidelines that are publicly accessible in respect of the procedures to submit a complaint and the type of complaints that may be submitted to the Ombudsman.

Investigations by Ombudsman

- 17.** (1) The Ombudsman may, if a complaint which is not manifestly frivolous or vexatious is submitted, institute any investigation that is necessary into alleged police inefficiency or a breakdown in relations between the police and any community.
- (2) If a member of the Provincial Parliament refers a matter contemplated in subsection (1) to the Ombudsman, he or she must conduct an investigation into that matter.
- (3) The Ombudsman may by notice in the *Provincial Gazette*, make known any investigation which he or she is conducting and state that any person may, within a period specified in the notice, make written representations to the Ombudsman regarding the investigation.
- (4) If the Ombudsman is of the opinion that a complaint may more appropriately be dealt with by another competent authority, including a national authority, a community police forum, a constitutional institution or the Provincial Commissioner, he or she may at any time refer a complaint or aspect thereof to that other authority.
- (5) The Ombudsman may, after consultation with the authority to which the matter has been referred and if the matter could not be resolved by that authority, at any time resume the investigation into that matter.
- (6) If the Ombudsman is of the opinion that a complaint is of a serious nature or that it may more appropriately be dealt with by a commission of inquiry, the Ombudsman

may recommend to the Premier that a commission of inquiry into the complaint be appointed in terms of the Western Cape Provincial Commissions Act, 1998 (Act 10 of 1998).

(7) If the Ombudsman decides not to initiate an investigation, the Ombudsman must inform the complainant of his or her decision and the reasons therefor. 5

(8) Upon completion of an investigation and if the matter could not be resolved, the Ombudsman must submit a recommendation on the investigation and his or her findings to the Provincial Minister and inform the complainant that he or she has done so.

(9) The Provincial Minister must make a recommendation to the Minister on any investigated complaint that could not be resolved by the Ombudsman, and must inform 10 the complainant of the recommendation made.

(10) In order to avoid unnecessary duplication, the Ombudsman must coordinate his or her functions and activities in terms of this Act with other authorities that have jurisdiction in respect of the investigation of complaints against the police.

Investigating powers and officers 15

18. (1) For the purposes of an investigation, the Ombudsman may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question that person thereon. 20

(2) The Ombudsman may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on the matter being investigated or to be investigated.

(3) The Ombudsman may designate staff members of the Ombudsman or other suitable persons as investigating officers to perform the functions referred to in 25 subsections (1) and (2).

(4) An investigating officer who is not in the full-time service of the state must be appointed on the prescribed conditions and at the prescribed remuneration.

(5) An investigating officer must be provided with a certificate of appointment signed by or on behalf of the Ombudsman in which it is stated that he or she is an 30 investigating officer appointed in terms of this Act.

(6) An investigating officer must have a certificate of appointment on his or her person when performing a function in terms of this Act.

Reporting by Provincial Commissioner

19. (1) In order for the Provincial Minister to oversee the effectiveness and efficiency 35 of the police service and to monitor police conduct, the Provincial Commissioner must, within and in respect of the period prescribed, report in writing to the Provincial Minister on the following matters:

- (a) with regard to the South African Police Service—
 - (i) the number of firearms issued to police officials which have been lost or 40 stolen and the circumstances under which they have been lost or stolen;
 - (ii) the number of persons arrested by the police service, the number of cases relating to those arrests that have been referred to court, the number of those cases that have been prosecuted and the number of convictions in respect of those cases; 45
 - (iii) the allocation of funds and resources to safety objectives, the methods used to achieve the objectives and measurable outcomes achieved;
 - (iv) the number of disciplinary and criminal cases instituted against police officials, the names of those officials, the case reference numbers, the charges laid in respect thereof and the outcome of those cases; 50
 - (v) the number and nature of complaints received by the police regarding poor service delivery and police misconduct and how those complaints have been resolved;
 - (vi) statistical information regarding the number and nature of crimes 55 reported to the police;
 - (vii) the circumstances regarding incidents where the police fires a weapon, allows a weapon to be fired or orders the firing of a weapon;

- (viii) the number of cases reported in terms of section 29 of the Independent Police Investigative Directorate Act, 2011 and the outcome of the investigations into those cases; and
 - (ix) any other matter, as may be prescribed, relating to police conduct, efficiency and effectiveness of the police service or relations between the police and the community; and 5
- (b) with regard to a municipal police service, the number of persons arrested by the municipal police service, the number of cases relating to those arrests that have been referred to court, the number of those cases that have been prosecuted and the number of convictions in respect of those cases. 10
- (2) The Provincial Commissioner must without delay inform the Provincial Minister of any deaths of police officials in the execution of their duties, any deaths caused by police officials in the execution of their duties, any persons that have died whilst in police custody and the circumstances under which they have died.
- (3) The Provincial Commissioner must report to the Provincial Parliament on policing and the matters contemplated in this section. 15
- (4) The Provincial Minister may request the Provincial Commissioner to furnish any other report required by the Provincial Minister to perform his or her functions in terms of this Act.
- (5) The Provincial Parliament may require the Provincial Commissioner to appear before it or any of its committees to answer questions. 20
- (6) If the Provincial Commissioner fails to comply with any request by the Provincial Minister for information, the Provincial Minister must report the failure to the Provincial Parliament, which in turn must require the Provincial Commissioner to appear before it to explain the failure to comply with the request. 25

Loss of confidence in Provincial Commissioner

20. If the Provincial Cabinet loses confidence in the Provincial Commissioner, the Provincial Cabinet must, except in exceptional circumstances, require the Provincial Commissioner to appear before it or a committee of its members as contemplated in section 69(2) of the Constitution of the Western Cape, 1997, prior to instituting proceedings for the removal or transfer of, or disciplinary action against the Provincial Commissioner. 30

Reporting by executive head of municipal police service

- 21.** (1) In order for the Provincial Minister to oversee the effectiveness and the efficiency of a municipal police service and to monitor the conduct of the municipal police, an executive head of a municipal police service must, within and in respect of the period prescribed, report in writing to the Provincial Minister on the following matters in respect of the municipal police service under his or her control— 35
- (a) the matters referred to in section 19(1)(a)(i) and (iii) to (ix) read with the necessary changes; and 40
 - (b) the number of persons arrested by the municipal police service.
- (2) An executive head of a municipal police service must without delay inform the Provincial Minister of any deaths of municipal police officials in the execution of their duties, any deaths caused by municipal police officials in the execution of their duties, any persons that have died whilst in the custody of municipal police officials and the circumstances under which they have died. 45
- (3) The Provincial Minister may request an executive head of a municipal police service to furnish any other report required by the Provincial Minister to perform his or her functions in terms of this Act.
- (4) The Provincial Parliament may require the executive head of a municipal police service to appear before it or any of its committees to answer questions. 50
- (5) If the Provincial Minister is satisfied that a municipal police service has failed to comply with the conditions subject to which the municipal service was established or with national standards, the Provincial Minister may take the appropriate steps contemplated in section 64N of the South African Police Service Act, 1995. 55

Recording of requests and recommendations

- 22.** (1) The Provincial Minister must keep a register recording the following—
- (a) any written report or recommendation made to the Minister in terms of this Act;
 - (b) any request for information given in writing to the Provincial Commissioner or an executive head of a municipal police service in terms of this Act; and
 - (c) any written comment or response received from the Minister, the Provincial Commissioner or an executive head of a municipal police service in respect of a report or recommendation referred to in paragraph (a) or a request referred to in paragraph (b).
- (2) The Provincial Minister must annually table a certified copy of the register in the Provincial Parliament.

Policing needs and priorities

- 23.** (1) The Provincial Minister must annually report to the Provincial Parliament on his or her functions in terms of this Act and the findings in relation thereto.
- (2) The Provincial Parliament must refer the report referred to in subsection (1) to its standing committee responsible for community safety.
- (3) The standing committee must consider and debate the report and may hold public hearings and request representations from stakeholders with an interest in the report.
- (4) The Provincial Parliament must afford the Provincial Commissioner and the executive heads of municipal police services an opportunity to respond to the report, representations and any other comments received.
- (5) The findings and comments of the standing committee must be taken into account by the Provincial Minister when he or she formulates a recommendation on the policing needs and priorities of the Province for approval by the Provincial Cabinet.
- (6) The Provincial Minister must submit the approved policing needs and priorities of the Province to the Minister to be taken into account when the policing policies and plans for the Province are formulated, as contemplated in sections 206(1) and (2) of the Constitution.

Cooperation and intergovernmental relations

- 24.** (1) The Provincial Minister, the Head of the Department, authorised persons and employees of the Department, investigating officers and the Ombudsman must perform their functions in terms of this Act in accordance with the principles of cooperative government and intergovernmental relations referred to in Chapter 3 of the Constitution.
- (2) The Provincial Minister may make recommendations regarding the police and policing matters to the Civilian Secretariat or enter into agreements to strengthen the cooperation between the various role players as contemplated in section 6(1)(g) of the Civilian Secretariat for Police Service Act, 2011.
- (3) The Provincial Minister must regularly liaise and consult with the Civilian Secretariat and the Provincial Secretariat regarding any matter relating to mutual administrative support and the coordination of their respective functions to avoid unnecessary duplication.

Provincial Safety Advisory Committee

- 25.** (1) The Provincial Safety Advisory Committee is established.
- (2) The Committee advises and make recommendations to the Provincial Minister at his or her request, with regard to—
- (a) the functions of the Province in terms of Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997;
 - (b) strategies, policies, budgets and annual performance plans in respect of the functions in terms of Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997;
 - (c) regulations in terms of this Act that may be necessary; or
 - (d) any other matter arising from the application of this Act.

Composition of Committee

26. (1) The members of the Committee must be appointed by the Provincial Minister and consist of—
- (a) a representative of the business community;
 - (b) a member of the judiciary, the Cape Bar or the Cape Law Society; 5
 - (c) a senior member of an academic institution with experience in the field of criminology;
 - (d) a representative from a non-governmental organisation involved in policing or related areas; and
 - (e) the Head of the Department as an *ex officio* member. 10
- (2) Employees of the Department designated by the Provincial Minister must provide administrative support to the Committee.
- (3) The members of the Committee referred to in subsection (1)(a) to (d) may only be appointed after the Provincial Minister, by notice in the *Provincial Gazette* and in other media that the Provincial Minister may consider appropriate, has invited all interested parties to submit, within the period mentioned in the notice, names of persons who are fit and proper persons to be so appointed. 15

Term of office and conditions of service of members of Committee

27. (1) A member, except for the *ex officio* member, is appointed for a term of three years, which is renewable once. 20
- (2) The office of a member becomes vacant if—
- (a) the member is absent from two consecutive meetings of the Committee without the leave of the chairperson of the Committee;
 - (b) the member tenders his or her resignation in writing to the chairperson of the Committee; 25
 - (c) the member is removed from the Committee under subsection (3); or
 - (d) the member dies.
- (3) The Provincial Minister may remove any member of the Committee if, in the opinion of the Provincial Minister, sufficient reasons exist for his or her removal.
- (4) A vacancy on the Committee arising in terms of subsection (2) must be filled by the Provincial Minister in terms of section 26(1) and (3). 30
- (5) A member who is appointed by virtue of subsection (4) holds office for the unexpired portion of the period for which the member, who vacated his or her office, was appointed.
- (6) The Provincial Minister must designate one of the members of the Committee as chairperson. 35
- (7) The Provincial Minister may determine any other conditions of appointment not provided for in this section.
- (8) Members of the Committee referred to in section 26(1)(a) to (d) may be paid the allowances and be reimbursed for the expenses as determined by the Provincial Minister in concurrence with the Provincial Minister responsible for finance. 40

Meetings of Committee

28. (1) The Committee may, subject to the approval of the Provincial Minister, make rules in relation to decision-making by the Committee, the holding of and the procedure at meetings of the Committee. 45
- (2) Meetings of the Committee must be held at the time and place as may be determined by the chairperson of the Committee in accordance with the rules of the Committee.

Awards

29. (1) The Provincial Minister may, in accordance with the prescribed criteria, make an appropriate award including a monetary award to any member of a community or other person for meritorious service in promoting the purpose of this Act. 50
- (2) The Provincial Minister must keep a register of, and annually report to the Provincial Parliament on any award made in terms of subsection (1).

Offences

- 30.** (1) Any person who—
- (a) without just cause, refuses or fails to comply with a direction or request under section 18(1) or (2) or refuses to answer any question put to him or her under that section or gives to such question an answer which to his or her knowledge is false; or 5
 - (b) hinders or obstructs the Ombudsman or an investigating officer in the exercise or performance of his or her powers or functions in terms of this Act, is guilty of an offence and liable on conviction to a fine or imprisonment not exceeding three years or both. 10
- (2) Any person who contravenes section 9(1) or (4)(b) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or both.

Regulations

- 31.** The Provincial Minister may make regulations regarding— 15
- (a) any matter in respect of which this Act requires or authorises regulations;
 - (b) the functions and duties of the Provincial Minister or the Ombudsman;
 - (c) the receipt and processing of complaints submitted in terms of section 16;
 - (d) the methodology for conducting an investigation of complaints submitted in terms of section 16; 20
 - (e) the format and the procedure to direct persons under section 18(1) or to request an explanation under section 18(2);
 - (f) requirements for reporting by the Provincial Commissioner or an executive head of a municipal police service in terms of this Act;
 - (g) the format of any report required in terms of this Act; 25
 - (h) the determination of key indicators and types of empirical data that must be included in a report required in terms of this Act;
 - (i) measures to ensure confidentiality, control of and access to information obtained through the integrated information system;
 - (j) the requirements for authorisation and screening of employees, investigating officers and other persons authorised by the Provincial Minister to perform functions in terms of this Act; 30
 - (k) indicators to oversee and assess the effectiveness and efficiency of the police service; or
 - (l) any other matter necessary for the effective execution of the functions in terms of this Act. 35

Delegation

- 32.** (1) The Provincial Minister may delegate any power conferred on or assign any duty imposed on him or her in terms of this Act, except the power to make regulations, to the Head of the Department. 40
- (2) The Head of the Department may delegate any power conferred on or assign any duty imposed on him or her in terms of this Act, to—
- (a) an employee of the Department; or
 - (b) the holder of a specific office or position in the Department.
- (3) A delegation or assignment referred to in subsection (1) or (2)— 45
- (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) may be withdrawn or amended in writing by the Provincial Minister or the Head of the Department, as the case may be;
 - (d) may include the power to subdelegate or further assign that power or duty; 50
 - (e) does not prevent the Provincial Minister or the Head of the Department, as the case may be, from exercising that power or performing that duty; and
 - (f) does not divest the Provincial Minister or the Head of the Department, as the case may be, of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty. 55

Short title and commencement

- 33.** This Act is called the Western Cape Community Safety Act, 2012, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

MEMORANDUM ON THE OBJECTIVES OF THE WESTERN CAPE COMMUNITY SAFETY BILL, 2012

1. Background

The Western Cape Community Safety Bill seeks to develop and introduce provincial oversight models in respect of the police in compliance with the constitutional mandate of provinces to monitor police conduct and to oversee the effectiveness and efficiency of the South African Police Service (“SAPS”) and municipal police services in the Province. An effective and efficient police service will achieve increased levels of safety and an open society that is free from fear of crime. The functions of oversight are, in terms of the Bill, focussed on detecting patterns and practices of police conduct, identifying systemic failures in the police system and making recommendations on how best to improve policing in the Western Cape Province.

The oversight functions in respect of the monitoring of police conduct and assessment of the police service are also addressed in this Bill.

The manner in which the Province addresses complaints received from communities about police inefficiency will be significantly enhanced through the introduction of the Provincial Police Ombudsman, who is duly empowered by the Bill to effectively address such complaints. The Ombudsman will also be tasked to investigate any breakdown in the relations between the police and the community.

The introduction of an integrated information system will enable the Province to collect information to be considered by the Provincial Executive in determining the Province’s policing needs and priorities. The intention is to move away from the current practice of determining policing needs primarily on the basis of crime statistics and to follow a more holistic approach to determine policing needs based on information obtained in partnership with communities, civil society, other spheres of government, business and the like.

The Bill supports the development and establishment of partnerships with the business community and other role-players, and the accreditation and support of neighbourhood watches aimed at increasing capacity for innovation, cooperation and the development of safety initiatives to promote good relations between the police and communities.

The Bill will address other aspects such as the reporting to the Provincial Minister by the Provincial Commissioner of the SAPS and the various executive heads of municipal police services.

The legislative mandate given to the Provincial Minister in section 19(1), 20(1) and 21(1) of the South African Police Service Act, 1995 (Act 68 of 1995), enabling the Provincial Minister to issue directives for the establishment of community police forums and boards, is amplified in the Bill in order to promote good relations between the SAPS and communities.

In the spirit of the Constitution the Bill reiterates the principles of cooperative government and intergovernmental relations in general and more specifically between the Civilian Secretariat and the Province.

The Bill also establishes a Provincial Safety Advisory Committee to advise the Provincial Minister on functions, strategies, policies, etc.

2. Legislative framework

Section 104(1), read with Schedule 4A of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), provides that the Province has legislative competence in the functional area of “police” to the extent that Chapter 11 (ss 205—208) confers such legislative power on the Province. Provincial legislative competence in respect of policing is further shared with the national sphere of government.

Section 206 of the Constitution and sections 66 and 67 of the Constitution of the Western Cape, 1997 (Act 1 of 1998), empowers the Province to exercise oversight over the effectiveness, efficiency and conduct of the police in the Province, to promote good relations between the police and communities and to legislate in this regard.

Section 66(1) and (2) of the Constitution of the Western Cape, 1997, provides:

“The Western Cape government is entitled—

- (a) to monitor police conduct;*
- (b) to assess the effectiveness of visible policing;*
- (c) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;*
- (d) to promote good relations between the police and the community; and*

(2) In order to perform the functions set out in subsection (1), the Western Cape government —

- (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and*
- (b) must make recommendations to the national Cabinet member responsible for policing.”*

Section 67(1) of the Constitution of the Western Cape further empowers the Provincial Parliament to “pass legislation necessary to carry out the functions listed in section 66(1)”. Section 68 of the Constitution of the Western Cape, 1997 provides that the Provincial Cabinet must determine the Province’s policing needs and priorities.

3. Purpose of the Bill

The purpose of the Bill is therefore to give effect to the Province’s constitutional mandate and to regulate the Western Cape Government’s powers and functions with regard to its oversight function over the police.

4. Contents of the Bill

Clause 1

This is the definition clause.

Clause 2

This clause states the purpose of the Bill namely, to regulate and provide for the carrying out of the functions of the Province and the Provincial Department of Community Safety (“the Provincial Department”) as provided for in sections 206(1), (3), (4), (5) and (9) and section 207(5) and (6) of the Constitution and in the corresponding provisions of the Constitution of the Western Cape, 1997. These functions allow the Province to determine the policing needs and priorities of the Province, monitor police conduct; assess the effectiveness of visible policing; oversee the effectiveness and efficiency of the police service, including receiving reports on the police service, promote good relations between the police and communities, investigate any complaints of police inefficiency or a breakdown in relations between the police and any community, require the Provincial Commissioner or executive head of a municipal police to report and appear before the Provincial Parliament and to institute proceedings for the removal or transfer of, or disciplinary action against the Provincial Commissioner. The Bill also seeks to support the civilian oversight of police under the direction of the Minister of Police by the Civilian Secretariat and Provincial Secretariat established in terms of the Civilian Secretariat for Police Service Act, 2011 (Act 2 of 2011). The Bill further clarifies and defines the provincial sphere of government’s oversight over national policing functions.

Clause 3

This clause deals with the functions of the Provincial Minister for Community Safety (“Provincial Minister”). These functions are derived from the

abovementioned constitutional powers referred to in section 206(1), (3) to (5), read with section 104 and Schedule 4 of the Constitution and sections 66, 67 and 68 of the Constitution of the Western Cape, 1997.

Clause 4

This clause provides for the Provincial Minister to authorise employees of the Provincial Department and other persons to monitor police conduct, including conduct in respect of persons held in police custody, to oversee and assess the police service and to evaluate the relations between the police and the community.

Clause 5

This clause provides for the issuing of directives for the establishment of community police forums and boards as referred to in sections 19, 20 and 21 of the South African Police Services Act, 1995. This Act provides that the Provincial Commissioner may establish community police forums and boards subject to the Provincial Minister's directives.

Clause 6

This clause provides for the voluntary accreditation and support of neighbourhood watches in the Western Cape in order to promote good relations between the police and communities.

The Provincial Minister may also provide funding, training or resources to neighbourhood watches. This clause also provides for neighbourhood watches to submit reports to the Provincial Minister on:

- the activities of the neighbourhood watches; and
- safety concerns and incidents of crime in the areas in which neighbourhood watches operate.

In order to monitor the police's efficiency and effectiveness and to determine the Province's policing needs and priorities, as required by the Constitution, these requirements seek to create a database on the safety situation in the Province.

Clause 7

This clause provides for the maintenance of a database of community organisations that are involved in policing, support of victims of crime, crime prevention or community safety in the Province and to provide support to these organisations. It also provides for the entering into partnerships with community organisations to achieve the Bill's objectives, to improve the relations between the police and communities. Community organisations on the database must also report to the Head of Department on safety concerns and incidents of crime, to assist in the determination of the Province's policing needs and priorities.

Clause 8

This clause provides for the establishment, administration and maintenance of an integrated information system by the Provincial Minister and the Provincial Department. This information system will enable the Provincial Minister to oversee the effectiveness and efficiency of the police service and to determine the Province's policing needs and priorities.

This clause also provides for the Provincial Minister to request security service providers to register on the database of community organisations and to submit information on safety concerns and incidents of crime in their areas of operation. It is foreseen that this will improve the relations between the police and communities and will assist in the determination of the Province's policing needs and priorities.

Clause 9

This clause provides measures to ensure the confidentiality of personal information obtained from neighbourhood watches, security service providers and other organisations through the integrated information system.

Clauses 10 to 18

These clauses provide for the establishment of the Office of the Western Cape Provincial Police Ombudsman and the appointment of the Ombudsman by the Premier after consultation with the Provincial Minister, the Provincial Commissioner and the executive heads of municipal police services, subject to the concurrence of the Provincial Parliament's standing committee responsible for community safety.

The Ombudsman's primary functions are to investigate complaints regarding inefficiency of the police (SAPS and the municipal police services) or a breakdown in relations between the police and communities. The Province is authorised to perform these functions in terms of section 206(5) of the Constitution and section 66(2) of the Constitution of the Western Cape, 1997.

The Ombudsman may also refer complaints to any other competent authority if the complaints can be more appropriately dealt with by that authority.

Clause 18 also provides for the Ombudsman or designated investigators to direct any person to submit an affidavit or affirmed declaration, or to appear before him or her to give evidence, or to produce any document that has a bearing on a matter under investigation.

The Ombudsman must make recommendations to the Provincial Minister regarding any complaint under investigation, which may include that a commission of inquiry must be appointed by the Premier. The Provincial Minister must make a recommendation on any investigated complaint that could not be resolved by the Ombudsman, to the national Minister and inform the complainant of the recommendation made.

Clause 19

This clause provides for various mandatory reports to be submitted by the Provincial Commissioner of the SAPS to the Provincial Minister.

Among others, the reports address the loss or theft of official firearms in the possession of SAPS members, any deaths of police officials in the execution of their duties, any deaths caused by police officials in the execution of their duties, any persons that have died while in police custody and the circumstances of their death, statistics regarding the number of persons arrested, the number of cases referred to court, the number of cases prosecuted and the conviction rate, the number of complaints received and recorded, and any other matter relating to police conduct, efficiency or effectiveness or relations between the police and communities.

This clause also requires the Provincial Commissioner to submit an annual report regarding policing in the Province.

Clause 20

This clause refers to the power of the Provincial Cabinet in terms of section 69(2) of the Constitution of the Western Cape, 1997, to require the Provincial Commissioner to appear before it or any of its committees, if the Provincial Cabinet has lost confidence in the Provincial Commissioner.

Clause 21

This clause provides for similar reporting requirements to those referred to in clause 19, but in relation to a municipal police service established in terms of section 64A of the South African Police Services Act. It requires that the various executive heads of the municipal police services in the Province submit certain regular mandatory reports to the Provincial Minister.

Clause 22

This clause provides for the Provincial Minister to keep a register recording written reports and recommendations made to the Minister of Police, written requests for information directed to the Provincial Commissioner or any executive head of a

municipal police service and any written comment or response received in respect thereof.

Clause 23

This clause provides for the determination of the Province's policing needs and priorities. Section 206(1) of the Constitution provides that the national Minister responsible for policing must "determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the Provinces as determined by the provincial executives.". Section 66(1)(e) of the Constitution of the Western Cape, 1997 provides that the Provincial Minister may liaise with the national Minister responsible for policing "with respect to crime and policing in the Western Cape". Section 68(2) of the Constitution of the Western Cape, 1997, provides that the Provincial Cabinet must determine the Province's policing needs and priorities.

In order for the Provincial Cabinet to determine the policing needs and priorities of the Province, this clause provides for the Provincial Minister to report to the Western Cape Provincial Parliament.

The Provincial Parliament's standing committee responsible for community safety must debate the report and may hold public hearings to receive comments from stakeholders. The findings and comments will then be considered by the Provincial Cabinet in its report on the Province's policing needs and priorities to the National Minister.

Clause 24

This clause provides for the exercise of provincial oversight of police in accordance with the principles of cooperative government and intergovernmental relations referred to in Chapter 3 of the Constitution.

Clauses 25 to 28

These clauses provide for the establishment of the Provincial Safety Advisory Committee, the Committee's composition, the terms of office of Committee members, and Committee meetings.

The Committee's purpose is to advise the Provincial Minister on the functions regarding the monitoring and oversight of the police's efficiency and effectiveness in the Province. It will also advise on strategies, policies, budgets and annual performance plans regarding the oversight functions, and on any other matters arising from the Bill's application.

Clause 29

This clause provides for the making of appropriate awards (including monetary awards) to any community member or other person for meritorious service in furthering the purpose of the Bill and for the recording and reporting in respect of those rewards.

Clause 30

This clause creates offences for hindering or obstructing the Ombudsman in exercising his or her functions in terms of this Act, in respect of a failure to adhere to a direction or request under clause 18(1) or (2) and for the contravention of the confidentiality measures in respect of personal information.

Clause 31

This clause authorises the Provincial Minister to make regulations on various aspects of the Bill.

Clause 32

This clause provides for the delegation of any power conferred or duty imposed on the Provincial Minister to the Head of the Provincial Department, who may, if authorised to do so, further delegate those powers and duties to employees of the Provincial Department. Provision is also made for the Head of Department to

delegate or assign any power or duty conferred or imposed on him or her in terms of the Bill to any other employee of the Provincial Department.

Clause 33

This clause contains the Bill's short title and provides for the proclamation of the date of its coming into operation.

5. Financial implications

The financial implications in respect of the implementation of the Bill will be incrementally budgeted for in forthcoming financial years.

6. Consultation

A draft Bill was published in the *Provincial Gazette* for public comment and was also submitted to:

The Minister of Police

The Provincial Commissioner

The Civilian Secretariat

Community Police Forums and Boards

The Independent Police Investigative Directorate

The Security Industry Regulating Authority

Local Government

All Provincial Departments

Various public consultation sessions were held with members of community police forums and boards and other members of the public.

7. Legislative competence

The Provincial Minister for Community Safety is satisfied that all the provisions of the Bill fall within the legislative competence of the Province.

WETSONTWERP

Om voorsiening te maak vir die uitvoer en regulering van die funksies van die Provinsie en die Departement van Gemeenskapsveiligheid kragtens Hoofstuk 11 van die Grondwet van die Republiek van Suid-Afrika, 1996, en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997; om voorsiening te maak vir die ondersteuning van en samewerking met die Burgerlike Sekretariaat en die Provinsiale Sekretariaat ingestel ingevolge die “Civilian Secretariat for Police Service Act”, 2011; om voorsiening te maak vir voorskrifte vir die instelling van gemeenskaps-polisieforums en -rade ingevolge die Wet op die Suid-Afrikaanse Polisie, 1995; om voorsiening te maak vir die akkreditering van organisasies en verenigings as buurtwagte; om voorsiening te maak vir vennootskappe met gemeenskapsorganisasies; om ’n geïntegreerde inligtingstelsel en ’n databasis van organisasies in te stel en in stand te hou; om voorsiening te maak vir die vrywillige registrasie van sekuriteitsdiensverskaffers op die databasis van organisasies; om die Kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman in te stel om klagtes oor die polisie te ondersoek; om verslagdoening oor die polisie te reguleer; om die Provinsiale Veiligheidsadvieskomitee in te stel; en om vir aangeleenthede wat daarmee verband hou, voorsiening te maak.

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

Woordomskrywings

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
 - “**Burgerlike Sekretariaat**” die Burgerlike Sekretariaat vir die Polisie, ingestel by artikel 4 van die Wet op die Burgerlike Sekretariaat vir die Polisie, 2011; 5
 - “**buurtwag**” ’n organisasie of vereniging beoog in artikel 6(1) en geakkrediteer ingevolge artikel 6(5);
 - “**Departement**” die provinsiale Departement van Gemeenskapsveiligheid verantwoordelik vir die funksies bedoel in Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998), en ingestel kragtens artikel 3A van die Staatsdienswet, 1994, soos aangedui in Bylae 2 van daardie Wet; 10
 - “**Departementshoof**” die hoof van die provinsiale Departement van Gemeenskapsveiligheid; 15
 - “**gemeenskapspolisieforums en -rade**” gemeenskapspolisieforums en -rade ingestel ingevolge artikels 19 tot 21 van die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 van 1995);
 - “**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996; 20

“ hierdie Wet ” ook die regulasies kragtens artikel 31 en enige voorskrifte wat kragtens artikels 3(f) en 5 uitgevaardig is;	
“ Komitee ” die Provinsiale Veiligheidsadvieskomitee wat by artikel 25 ingestel is;	
“ Minister ” die nasionale kabinetslid verantwoordelik vir polisiëring;	
“ munisipale polisie ” ’n munisipale polisie ingestel in die Provinsie	5
ingevolge artikel 64A van die Wet op die Suid-Afrikaanse Polisie, 1995;	
“ Ombudsman ” die Wes-Kaapse Provinsiale Polisie-ombudsman aangestel ingevolge artikel 11;	
“ Onafhanklike Polisie Onderzoek-direktoraat ” die Onafhanklike Polisie Onderzoek-direktoraat ingestel by artikel 3(1) van die Wet op die Onafhanklike Polisie Onderzoek-direktoraat, 2011;	10
“ polisie ” polisiebeamptes van die polisie;	
“ polisiebeampte ” ’n lid van die Suid-Afrikaanse Polisie wat in die Provinsie ontplooi is of ’n lid van ’n munisipale polisie;	
“ polisie ” die Suid-Afrikaanse Polisie wat in die Provinsie ontplooi is of ’n munisipale polisie;	15
“ polisiëring ” die funksies uitgevoer deur polisiebeamptes;	
“ Provinsiale Kabinet ” die Provinsiale Kabinet bedoel in artikel 42 van die Grondwet van die Wes-Kaap, 1997;	
“ Provinsiale Kommissaris ” die provinsiale kommissaris wat vir die Provinsie aangestel is ingevolge artikel 207(3) van die Grondwet;	20
“ Provinsiale Minister ” die provinsiale minister verantwoordelik vir die funksies bedoel in Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997;	
“ Provinsiale Sekretariaat ” die provinsiale sekretariaat vir die Provinsie ingestel ingevolge artikel 16 van die Wet op die Burgerlike Sekretariaat vir die Polisie, 2011;	25
“ Provinsie ” die Provinsie Wes-Kaap;	
“ regulasie ” ’n regulasie wat kragtens artikel 31 uitgevaardig is;	
“ sekuriteitsdiensverskaffer ” ’n sekuriteitsdiensverskaffer soos omskryf in artikel 1 van die Wet op die Regulering van die Private Sekuriteitsbedryf, 2001 (Wet 56 van 2001);	30
“ Suid-Afrikaanse Polisie ” die Suid-Afrikaanse Polisie, wat deur artikel 5(1) van die Wet op die Suid-Afrikaanse Polisie, 1995, ingestel is en wat in die Provinsie ontplooi is; en	35
“ voorskryf ” by regulasie voorskryf.	
“ Wet op die Burgerlike Sekretariaat vir die Polisie, 2011 ” die “Civilian Secretariat for Police Service Act”, 2011 (Wet 2 van 2011); en	
“ Wet op die Onafhanklike Polisie Onderzoek-direktoraat, 2011 ” die “Independent Police Investigative Directorate Act”, 2011 (Wet 1 van 2011).	40

Doelstelling van Wet

2. Hierdie Wet het ten doel om—

- (a) die funksies van die Provinsie bedoel in artikels 206(1), (3), (4), (5) en (9) en 207(5) en (6) van die Grondwet en artikels 66, 67, 68(1), (2)(a) en (b) en 69(2) van die Grondwet van die Wes-Kaap, 1997, te reguleer en voorsiening te maak vir die verrigting daarvan, om—
 - (i) polisiëringsbehoefte en -prioriteite te bepaal;
 - (ii) polisie-optrede te monitor;
 - (iii) toesig te hou oor die doeltreffendheid en bevoegdheid van die polisie, waarby inbegrepe is die ontvangs van verslae oor die polisie;
 - (iv) goeie betrekkinge tussen die polisie en die gemeenskap te bevorder;
 - (v) die doeltreffendheid van sigbare polisiëring te bepaal;
 - (vi) enige klagtes van polisie-onbevoegdheid of ’n verbokkeling in betrekkinge tussen die polisie en enige gemeenskap te ondersoek;
 - (vii) die Provinsiale Kommissaris te versoek om verslag te doen aan, en te verskyn voor, die Provinsiale Parlement; en
 - (viii) verrigtinge vir die verwydering of oorpasing van, of tugstappe teen, die Provinsiale Kommissaris in te stel; en
- (b) die oogmerke van die Burgerlike Sekretariaat en die Provinsiale Sekretariaat te ondersteun.

Funksies van Provinsiale Minister

3. Die Provinsiale Minister kan die volgende bevoegdhede uitoefen en funksies verrig om die oogmerke van artikel 206(1), (3), (4) en (5) van die Grondwet en artikels 66 en 68(1), (2)(a) en (b) van die Grondwet van die Wes-Kaap, 1997, te bereik—
- (a) monitering van polisie-optrede; 5
 - (b) toesighouding oor die doeltreffendheid en die bevoegdheid van die polisie-diens;
 - (c) toesighouding oor die doeltreffendheid van beleid en voorskrifte geïmplementeer deur die polisie-diens oor aanstellings, opleiding en polisieëring;
 - (d) bevordering van goeie betrekkinge tussen die polisie en die gemeenskap; 10
 - (e) identifisering van oorsake van enige verbroekeling in betrekkinge tussen die polisie en enige gemeenskap en die inwerkingstelling van maatreëls om die betrekkinge te verbeter;
 - (f) uitvaardiging van voorskrifte vir die instelling en ondersteuning van gemeenskapspolisieforums en -rade en die fasilitering van hulle behoorlike werking om goeie betrekkinge tussen die polisie en die gemeenskap te bevorder; 15
 - (g) sluit van vennootskappe met enige gemeenskap om goeie betrekkinge tussen die polisie en die gemeenskap te bevorder;
 - (h) instandhouding van 'n databasis van gemeenskapsorganisasies wat betrokke is op die gebied van polisieëring en verwante gebiede; 20
 - (i) bepaling van die doeltreffendheid van sigbare polisieëring;
 - (j) instelling en instandhouding van geïntegreerde inligtingstelsels om toesig te hou oor die polisie-diens se doeltreffendheid en bevoegdheid en om die Provinsie se polisieëringse behoeftes en -prioriteite te bepaal; 25
 - (k) skakeling met die Minister oor misdaad en polisieëring in die Provinsie;
 - (l) rekordhouding van klagtes oor polisie-onbevoegdheid of 'n verbroekeling in betrekkinge tussen die polisie en die gemeenskap;
 - (m) ontvangs en ontleding van verslae, waaronder kwantitatiewe en kwalitatiewe inligting oor die polisie-diens; 30
 - (n) versameling van empiriese inligting oor prestasie-aanwysers en die verspreiding van hulpbronne;
 - (o) identifikasie van aanwysers om die doeltreffendheid en bevoegdheid van die polisie-diens te monitor en te bepaal;
 - (p) ontvangs en ontleding van inligting oor die befondsing, besteding, aktiwiteite, uitsette en uitkomst van polisieëring; 35
 - (q) ontleding van die bevoegdheid en vermoë van die polisie-diens, en patrone en praktyke van polisie-optrede, en die identifikasie van probleme en tekortkominge in die polisieëringstelsel en die voorlegging van aanbevelings aan die Minister oor hoe om dit reg te stel; 40
 - (r) advisering van die Provinsiale Kabinet oor die Provinsie se polisieëringse behoeftes en -prioriteite, soos beoog in artikel 23;
 - (s) skakeling met, en voorlegging van aanbevelings aan, die Minister oor die Provinsie se polisieëringse behoeftes en -prioriteite, soos deur die Provinsiale Kabinet bepaal; 45
 - (t) evaluering van hoe die polisieëringse behoeftes en -prioriteite weerspieël word in nasionale polisieëringse beleid;
 - (u) identifisering en hantering van spesifieke aangeleenthede rakende polisie-toesighouding wat ander liggame betrokke by polisie-toesighouding nie hanteer nie; 50
 - (v) voorlegging van 'n jaarverslag aan die Provinsiale Parlement oor die uitvoering en verrigting van die bevoegdhede en funksies ingevolge hierdie Wet;
 - (w) die onderneem van navorsing, wanneer nodig;
 - (x) skakeling met en fasilitering van samewerking tussen rolspelers met 'n belang by die uitvoering en verrigting van die bevoegdhede en funksies ingevolge hierdie Wet; 55
 - (y) toesighouding oor die funksionering van die Provinsiale Sekretariaat;
 - (z) monitering van klagtes wat deur die Provinsiale Kabinet na die Onafhanklike Polisie Onderzoek-direktoraat verwys is;
 - (aa) fasilitering van noue samewerking tussen die Departement en die Burgerlike Sekretariaat, die Provinsiale Sekretariaat, die Onafhanklike Polisie Onder-

soek-direktoraat en die polisie by die verrigting van die funksies ingevolge hierdie Wet.

Monitering, toesig en evaluering van polisiëring

4. (1) Die Provinsiale Minister kan op die voorgeskrewe wyse, behoudens artikel 13(11) van die Wet op die Suid-Afrikaanse Polisie, 1995, werknemers van die Departement magtig om— 5

- (a) betogings, misdaadtonele en enige ander toneel van polisie-aktiwiteit by te woon om die wisselwerking tussen die polisie en die gemeenskap waar te neem en aan te teken;
- (b) die toewysing, verspreiding en aanwending van mense- en ander hulpbronne vir polisiëring te monitor en te evalueer; 10
- (c) polisiestasies of ander polisiepersele te inspekteer om—
 - (i) polisie-optrede te monitor;
 - (ii) toesig te hou oor die doeltreffendheid en bevoegdheid van die polisie in die gebied; 15
 - (iii) toesig te hou oor die doeltreffendheid en bevoegdheid van die polisie om klagtes van die gemeenskap oor polisiëring in die gebied te hanteer;
 - (iv) betrekkinge tussen die polisie en die gemeenskap te evalueer;
 - (v) die behandeling en omstandighede van persone wat in polisieaanhouding is, te monitor ten einde die erkenning deur die polisie van die regte van persone in aanhouding ingevolge artikel 35(2) van die Grondwet te bepaal. 20

(2) Die Provinsiale Minister kan enige ander persoon op die voorgeskrewe wyse magtig om die funksies wat in subartikel (1) bedoel word, te verrig teen die vergoeding wat die Provinsiale Minister met die instemming van die Provinsiale Minister verantwoordelik vir finansies bepaal. 25

(3) Om die funksies ingevolge hierdie Wet te verrig, kan die Provinsiale Minister of enige werknemer of persoon wat ingevolge subartikel (1) of (2) daartoe gemagtig is—

- (a) inligting en dokumente onder beheer van die polisie of 'n betrokke munisipaliteit aanvra en verkry; 30
- (b) 'n gebou, perseel, voertuig of eiendom onder beheer van die polisie of 'n betrokke munisipaliteit betree;
- (c) op ondersteuning deur 'n lid van die polisie aanspraak maak.

(4) Enige geskil oor 'n versoek, toegang of bystand beoog in subartikel (3) moet aan die Provinsiale Minister gerapporteer word. 35

Voorskrifte vir instelling van gemeenskapspolisieforums en -rade

5. (1) Om goeie betrekkinge tussen die Suid-Afrikaanse Polisie en die gemeenskap te bevorder, kan die Provinsiale Minister voorskrifte uitvaardig vir die instelling van gemeenskapspolisieforums en -rade ingevolge artikels 19(1), 20(1) en 21(1) van die Wet op die Suid-Afrikaanse Polisie, 1995, met inbegrip van voorskrifte oor— 40

- (a) die vereistes vir die identifisering van toepaslike gemeenskapsorganisasies, instellings en belangegroepes om deel van 'n gemeenskapspolisieforum of -raad te vorm; 45
- (b) die prosedures vir die instelling van 'n gemeenskapspolisieforum of -raad;
- (c) die ampstermyn van lede van 'n gemeenskapspolisieforum of -raad;
- (d) die aanvaarding van 'n grondwet vir 'n gemeenskapspolisieforum of -raad, en die minimum inhoud daarvan;
- (e) geskilbeslegtingsprosedures wat van toepassing is op 'n geskil oor die instelling van 'n gemeenskapspolisieforum of -raad. 50

(2) Die Departementshoof moet—

- (a) die funksionaliteitsvlak van gemeenskapspolisieforums en -rade en die betrekkinge tussen die polisie en die gemeenskapspolisieforums en -rade evalueer; 55
- (b) gereeld die vergaderings van die gemeenskapspolisieforums en -rade bywoon om die oogmerke van artikel 18(1) van die Wet op die Suid-Afrikaanse Polisie, 1995, te bevorder; en

- (c) jaarliks aan die Provinsiale Minister verslag doen oor sy of haar bevindinge oor paragrawe (a) en (b).
- (3) Die Departementshoof kan gemeenskapspolisieforums of -rade ondersteun deur befondsing, opleiding of hulpbronne te voorsien.

Akkreditering en ondersteuning van buurtwagte

5

6. (1) Enige organisasie of vereniging wat—
- (a) as 'n vrywillige organisasie of vereniging sonder winsoogmerk werksaam is;
- (b) uit lede bestaan wat inwoners, huurders of eienaars van onroerende eiendom is of wat enige ander toepaslike belang het in die gebied waarin die organisasie of vereniging werksaam is; en 10
- (c) ten doel het om sy lede en hul onroerende en roerende eiendom te beskerm teen misdaad en ander veiligheidskwellings in die gebied waarin die organisasie of vereniging werksaam is,
- kan op die voorgeskrewe vorm by die Provinsiale Minister aansoek doen om akkreditasie as 'n buurtwag. 15
- (2) Die Provinsiale Minister—
- (a) moet die polisiebeampte in beheer van die polisiestasie in die gebied waarin die buurtwag werksaam is; en
- (b) kan enige ander organisasie,
- versoek om kommentaar te lewer, binne die tydperk aangedui in die versoek, oor die 20
voorgenome akkreditasie van die organisasie of vereniging as 'n buurtwag in daardie gebied.
- (3) Indien die polisiebeampte of 'n organisasie versuim om kommentaar te lewer binne die aangeduide tydperk bedoel in subartikel (2), word die polisie of die organisasie geag geen kommentaar oor die voorgenome akkreditasie van die organisasie of 25
vereniging te hê nie.
- (4) Die Provinsiale Minister kan ter ondersteuning van die aansoek verdere inligting van die organisasie of vereniging vereis.
- (5) Die Provinsiale Minister kan 'n organisasie of vereniging as 'n buurtwag akkrediteer na oorweging, binne die voorgeskrewe tydperk, van— 30
- (a) 'n aansoek;
- (b) enige verdere inligting wat deur die aansoeker verstrekk is;
- (c) enige kommentaar wat ontvang is van die polisie of 'n organisasie soos beoog in subartikel (2);
- (d) of die organisasie of vereniging sy aktiwiteite volgens die voorgeskrewe 35
standaarde uitvoer met betrekking tot—
- (i) kriteria vir lidmaatskap van 'n buurtwag en die optrede van lede;
- (ii) die strukture van 'n buurtwag; en
- (iii) die beheer oor en aanwending van fondse van die buurtwag; en
- (e) of die organisasie of vereniging met die gemeenskapspolisieforum in die 40
gebied saamwerk.
- (6) Indien die Provinsiale Minister besluit om—
- (a) 'n organisasie of vereniging as 'n buurtwag te akkrediteer, moet die Provinsiale Minister— 45
- (i) die buurtwag se naam op die register van buurtwagte aanbring;
- (ii) 'n akkreditasiesertifikaat op naam van die buurtwag uitreik wat die tydperk van akkreditasie, die gebied waarin die buurtwag werksaam is en ander voorwaardes van akkreditasie aandui; en
- (iii) die akkreditasiesertifikaat aan die buurtwag, gemeenskapspolisieforum en polisiebeampte in beheer van die polisiestasie in die gebied stuur; of 50
- (b) nie 'n organisasie of vereniging as 'n buurtwag te akkrediteer nie, moet die Provinsiale Minister die onsuksesvolle aansoeker skriftelik van sy of haar besluit en die redes vir die besluit verwittig.
- (7) Die Provinsiale Minister moet jaarliks 'n lys van buurtwagte in die *Provinsiale Koerant* publiseer. 55
- (8) Die Provinsiale Minister kan 'n buurtwag van befondsing, opleiding of hulpbronne voorsien.
- (9) Die Provinsiale Minister moet 'n register van buurtwagte hou en die register op versoek ter insae beskikbaar stel aan enige belanghebbende persoon, na betaling van die voorgeskrewe bedrag. 60

- (10) 'n Buurtwag moet—
- (a) sy akkreditasie elke twee jaar op die voorgeskrewe wyse hernu, by gebrek waarvan die akkreditasie sal verval;
 - (b) op die voorgeskrewe wyse en binne die voorgeskrewe tydperk aan die Provinsiale Minister verslag doen oor— 5
 - (i) veiligheidskwellings en misdaadvoorvalle in die gebied waarin die buurtwag werksaam is;
 - (ii) die buurtwag se aktiwiteite; en
 - (iii) enige voorgeskrewe aangeleentheid wat deur die Provinsiale Minister vereis word om polisiëringsbehoefte en -prioriteite en die polisediens se doeltreffendheid en bevoegdheid te bepaal; 10
 - (c) rekord hou van die aangeleentheid beoog in paragraaf (b)(i) tot (iii); en
 - (d) die rekords beoog in paragraaf (c) vir minstens vyf jaar na die rekordhoudingsdatum bewaar.
- (11) 'n Werknemer van die Departement wat deur die Provinsiale Minister daartoe gemagtig is, het toegang tot enige rekord wat deur of namens 'n buurtwag gehou word en kan die rekord ondersoek of uittreksels of afskrifte daarvan maak om verdere inligting oor 'n verslag wat ingevolge subartikel (10)(b) opgestel is, in te win en om te bepaal of die buurtwag voldoen aan die standaard wat in subartikel (5)(d) en (e) beoog word. 20
- (12) Indien 'n buurtwag versuim om aan die standaard wat in subartikel (5)(d) en (e) beoog word of aan subartikel (10)(b), (c) of (d) te voldoen, kan die Provinsiale Minister die buurtwag by skriftelike kennisgewing gelas om binne die tydperk in die kennisgewing aangedui, aan daardie bepalings te voldoen.
- (13) Indien die buurtwag versuim om aan die kennisgewing uitvoering te gee binne die tydperk daarin aangedui, kan die Provinsiale Minister die akkreditasie van die buurtwag terugtrek. 25

Databasis en vennootskappe met gemeenskapsorganisasies

7. (1) Om goeie betrekkinge tussen die polisie en gemeenskappe in die Provinsie te bevorder, kan die Provinsiale Minister— 30
- (a) 'n databasis in stand hou van gemeenskapsorganisasies wat betrokke is op die gebied van polisiëring, ondersteuning van slagoffers van misdaad, misdaadvoorkoming of gemeenskapsveiligheid;
 - (b) gemeenskapsorganisasies op die databasis bystaan deur ondersteuning, inligting, opleiding of hulpbronne te voorsien; 35
 - (c) behoudens enige wetgewing wat die bestaan van kontrakte deur die Provinsiale Regering reguleer en met die instemming van die Provinsiale Minister verantwoordelik vir finansies, met enige party 'n kontrak sluit vir die ontwerp, finansiering of bedryf van enige gemeenskapsveiligheidsinisiatief of -vennootskap om die doelstelling van hierdie Wet te bereik; 40
 - (d) die instelling van spesiale eenhede gemik op spesifieke misdaadkategorieë fasiliteer.
- (2) 'n Gemeenskapsorganisasie wat op die databasis gelys is, moet op die voorgeskrewe wyse aan die Departementshoof verslag doen oor veiligheidskwellings en misdaadvoorvalle wat deur die organisasie hanteer is. 45

Geïntegreerde inligtingstelsel

8. (1) Om toesig te hou oor die polisediens se doeltreffendheid en bevoegdheid en om die Provinsie se polisiëringsbehoefte en -prioriteite te bepaal, moet die Provinsiale Minister 'n geïntegreerde inligtingstelsel tot stand bring en in stand hou.
- (2) Die Departementshoof moet werknemers van die Departement magtig om inligting in te win en die geïntegreerde inligtingstelsel te administreer en in stand te hou. 50
- (3) Die Provinsiale Minister kan die Burgerlike Sekretariaat en die Provinsiale Sekretariaat oor die geïntegreerde inligtingstelsel raadpleeg om die integrasie van inligting met enige veiligheidsmodelle en moniteringsinstrumente wat deur die Provinsiale Sekretariaat ontwikkel is, soos beoog in artikel 17(2) van die Wet op die Burgerlike Sekretariaat vir die Polisediens, 2011, te verseker. 55

- (4) Die geïntegreerde inligtingstelsel moet voorsiening maak vir—
- (a) die insameling van data vanaf relevante staatsorgane of instellings, sekuriteitsdiensverskaffers wat ingevolge subartikel (6) geregistreer is en die polisie diens;
 - (b) die ontleding van die data; 5
 - (c) die rekordhouding van veiligheidskwellings in gemeenskappe in die Provinsie;
 - (d) die byvoeging van inligting in 'n verslag beoog in artikels 6(10)(b), 7(2) en 8(7)(a); en
 - (e) die ontleding van die aantal en aard van klagtes wat met die polisie verband hou, wat deur die Ombudsman ingevolge artikel 16, staatsorgane, gemeenskapspolisieforums en ander instellings ontvang is. 10
- (5) Die Departementshoof mag inligting wat betrekking het op misdaad of misdadige aktiwiteite wat deur middel van die geïntegreerde inligtingstelsel ontvang is, na die Provinsiale Kommissaris verwys. 15
- (6) Die Provinsiale Minister kan 'n sekuriteitsdiensverskaffer wat in die Provinsie werksaam is, versoek om op die databasis in artikel 7 bedoel te registreer.
- (7) 'n Geregistreerde sekuriteitsdiensverskaffer moet—
- (a) op die voorgeskrewe wyse en binne die voorgeskrewe tydperk aan die Provinsiale Minister verslag doen oor— 20
 - (i) veiligheidskwellings en misdaadvoorvalle in die gebied waarin die sekuriteitsdiensverskaffer werksaam is;
 - (ii) vuurwapens wat weggeraak het of gesteel is terwyl dit in die sekuriteitsdiensverskaffer se besit was; en
 - (iii) enige ander aangeleentheid wat deur die Provinsiale Minister vereis word om polisiëringsbehoefte en -prioriteite te bepaal en om toesig te hou oor die polisie diens se doeltreffendheid en bevoegdheid; 25
 - (b) rekord hou van die aangeleenthede beoog in paragraaf (a)(i) tot (iii); en
 - (c) die rekords beoog in paragraaf (b) vir minstens vyf jaar na die rekordhoudingsdatum bewaar. 30
- (8) 'n Werknemer van die Departement wat deur die Provinsiale Minister daartoe gemagtig is, het toegang tot enige rekords wat ingevolge subartikel (7)(b) deur of namens 'n sekuriteitsdiensverskaffer gehou word, en kan die rekords ondersoek of uittreksels of afskrifte daarvan maak om verdere inligting in te win oor 'n verslag wat ingevolge subartikel (7)(a) gelewer is. 35

Vertroulikheid en bekendmaking

- 9.** (1) Geen persoonlike inligting wat vir die doel van hierdie Wet deur die Provinsiale Minister, die Departementshoof of 'n werknemer of persoon ingevolge hierdie Wet gemagtig, versamel is en betrekking het op— 40
- (a) 'n individu;
 - (b) 'n huishouding;
 - (c) 'n besigheid; of
 - (d) 'n privaat organisasie,
- mag, behoudens die wette wat staatsinligting reguleer en subartikels (2) en (3), aan enige ander persoon bekend gemaak word nie. 45
- (2) Behoudens artikel 8(5) mag die inligting beoog in subartikel (1) bekend gemaak word—
- (a) aan enige staatsorgaan—
 - (i) vir 'n doel wat verband hou met die funksies van hierdie Wet;
 - (ii) in ooreenstemming met die voorskrifte van die Provinsiale Minister; 50
 - (iii) op voorwaarde dat die naam, adres of enige ander wyse waardeur 'n bepaalde individu, huishouding, besigheid of privaat organisasie geïdentifiseer kan word, geskrap word;
 - (iv) indien daar nie redelikerwys verwag word dat die bekendmaking daarvan 'n bedreiging vir die lewe of fisiese veiligheid van 'n individu sal inhou of die sekuriteit van eiendom sal benadeel of verswak nie; en 55
 - (v) indien die Provinsiale Minister oortuig is dat die vertroulikheid van daardie inligting of data nie aangetas sal word nie; of
 - (b) aan die persoon van wie die inligting versamel is of sy of haar verteenwoordiger; 60

- (c) met die vooraf verkreë skriftelike toestemming van die persoon van wie die inligting versamel is of sy of haar verteenwoordiger;
 - (d) waar die inligting reeds aan die publiek beskikbaar is van die betrokke individu, huishouding, besigheid of privaat organisasie; of
 - (e) indien dit nodig of dienstig geag word in belang van geregtigheid. 5
- (3) Ondanks die vertroulikheidsbeperkings van toepassing op die Provinsiale Minister, die Departementshoof en gemagtigde werknemers of persone is die Ombudsman geregtig op inligting of insae in dokumentasie bedoel in subartikel (1) en wat in die Provinsiale Minister se besit is, wat by die oorweging van 'n klag tersaaklik kan wees. 10
- (4) Die Provinsiale Minister, die Departementshoof en elke werknemer of persoon gemagtig ingevolge hierdie Wet—
- (a) moet all redelike stappe doen om te verseker dat—
 - (i) inligting wat vir die doeleindes van hierdie Wet versamel is, akkuraat, bygewerk en so volledig moontlik is; 15
 - (ii) die vertroulikheid van daardie inligting beskerm word; en
 - (iii) die inligting beveilig is teen ongemagtigde toegang; en
 - (b) mag nie inligting bedoel in subartikel (1) aanteken of hanteer vir 'n ander doel as vir die doeleindes van hierdie Wet en in ooreenstemming met hierdie artikel nie. 20
- (5) Die Provinsiale Minister moet verseker dat die vertroulikheid van inligting bedoel in subartikel (1) wat in 'n rekord van die Departement weerspieël word, bewaar word wanneer daardie rekord vernietig word.

Instelling van Kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman

10. (1) Die Kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman word in die Departement ingestel. 25
- (2) Die personeel wat vir die verrigting van die Ombudsman se funksies nodig is, word ingevolge die Staatsdienswet, 1994, aangestel.
- (3) Die polisie en werknemers van die Departement en van enige ander staatsorgaan moet met die Ombudsman en die personeel van die Ombudsman saamwerk en hul bystaan by die verrigting van hul funksies ingevolge hierdie Wet, wat die voorsiening van redelike toegang tot enige gebou, perseel, voertuig, eiendom, inligting of dokument onder beheer van die betrokke staatsorgaan insluit. 30

Aanstelling van Ombudsman

11. (1) Die Premier moet 'n toepaslik gekwalifiseerde persoon met regservaring of ervaring in polisiëring as die Wes-Kaapse Provinsiale Polisie-ombudsman aanstel. 35
- (2) Die Ombudsman word deur die Premier aangestel—
- (a) na oorleg met die Provinsiale Minister, die Provinsiale Kommissaris en die uitvoerende hoofde van munisipale polisdienste; en
 - (b) behoudens die goedkeuring van die Provinsiale Parlement se staande komitee verantwoordelik vir gemeenskapsveiligheid deur 'n besluit wat in ooreenstemming met sy reëls aangeneem is. 40
- (3) Die vergoeding en ander aanstellingsvoorwaardes van die Ombudsman word deur die Premier bepaal met die instemming van die Provinsiale Minister verantwoordelik vir finansies. 45
- (4) Die Ombudsman word vir 'n nie-hernubare termyn van hoogstens vyf jaar aangestel.
- (5) Die Ombudsman kan te eniger tyd bedank deur 'n skriftelike bedanking minstens drie maande voor die beoogde datum van ampsontruiming by die Premier in te dien, tensy die Premier 'n korter tydperk toelaat. 50
- (6) Die Premier kan by aanvoering van gegronde redes—
- (a) na oorlegpleging met die persone bedoel in subartikel (2)(a); en
 - (b) behoudens die goedkeuring van die Provinsiale Parlement se staande komitee verantwoordelik vir gemeenskapsveiligheid deur 'n besluit wat in ooreenstemming met sy reëls aangeneem is, 55
- die Ombudsman uit sy of haar amp verwyder op grond van wangedrag, onvermoë of onbekwaamheid nadat hy of sy 'n redelike geleentheid gebied is om aangehoor te word.

(7) Die Ombudsman kan by die verrigting van sy of haar funksies ook bygestaan word deur 'n persoon of liggaam wie se diens die Ombudsman vir die doel van 'n bepaalde ondersoek vereis.

Finansies van Ombudsman

12. (1) Uitgawes in verband met die funksies van die Ombudsman moet befonds word uit geld wat die Provinsiale Parlement vir daardie doel bewillig, as deel van die begrotingspos van die Departement. 5

(2) Die Departement moet, behoudens die wette wat die staatsdiens beheer, menslike en ander hulpbronne beskikbaar stel om die Ombudsman in staat te stel om sy of haar funksies te verrig. 10

Verslagdoening deur Ombudsman

13. (1) Die Ombudsman moet jaarliks aan die Provinsiale Minister verslag doen oor die aktiwiteite van die Ombudsman gedurende die vorige finansiële jaar, waaronder—

- (a) die aantal klagtes wat ondersoek is;
- (b) die aantal klagtes wat bevind is beuselagtig of kwelsugtig te wees kragtens artikel 17(1);
- (c) die uitslag van ondersoeke na die klagtes; en
- (d) die aanbevelings oor die klagtes wat ondersoek is.

(2) Die Ombudsman moet aan die Provinsiale Minister verslag doen oor sy of haar aktiwiteite ingevolge hierdie Wet soos en wanneer die Provinsiale Minister dit versoek. 20

(3) Die Provinsiale Minister moet die verslag beoog in subartikel (1) by die Provinsiale Parlement indien.

Onafhanklikheid en onpartydigheid van Ombudsman

14. (1) Die Ombudsman en personeel van die Ombudsman moet onafhanklik en onpartydig dien en hul funksies in goeie trou en sonder vrees, begunstiging, 25 partydigheid of vooroordeel verrig onderworpe aan die Grondwet en die reg.

(2) Die Ombudsman en personeel van die Ombudsman moet vertroulikheid handhaaf ten opsigte van inligting wat ingevolge hierdie Wet verkry is.

Funksies van Ombudsman

15. Die Ombudsman moet— 30

- (a) klagtes wat ingevolge artikel 16 oor polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge tussen die polisie en enige gemeenskap ingedien word, ontvang en mag dit ondersoek; en
- (b) die ander funksies verrig wat kragtens hierdie Wet aan hom of haar opgedra is.

Indiening van klagtes 35

16. (1) Enige persoon kan op die voorgeskrewe wyse en vorm 'n klagte oor beweerde polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge tussen die polisie en enige gemeenskap by die Ombudsman indien.

(2) Enige lid van die Provinsiale Parlement kan, wanneer hy of sy bewus word van 'n klagte oor beweerde polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge 40 tussen die polisie en enige gemeenskap, die klagte by die Ombudsman indien om dit te laat ondersoek.

(3) Die Ombudsman moet riglyne wat vir die publiek toeganklik is, uitvaardig oor die prosedures om 'n klag in te dien en die tipe klagtes wat by die Ombudsman ingedien kan word. 45

Ondersoeke deur Ombudsman

17. (1) Die Ombudsman kan, indien 'n klag ingedien is wat nie ooglopend beuselagtig of kwelsugtig is nie, enige nodige ondersoek onderneem na beweerde polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge tussen die polisie en enige gemeenskap. 50

- (2) Indien 'n lid van die Provinsiale Parlement 'n aangeleentheid beoog in subartikel (1) na die Ombudsman verwys, moet hy of sy die aangeleentheid ondersoek.
- (3) Die Ombudsman kan, by kennisgewing in die *Provinsiale Koerant*, 'n ondersoek wat hy of sy uitvoer openbaar maak en meld dat enige persoon binne 'n tydperk wat in die kennisgewing vermeld word, skriftelike vertoë aangaande die ondersoek tot die Ombudsman kan rig. 5
- (4) Indien die Ombudsman van mening is dat 'n ander bevoegde owerheid, waaronder 'n nasionale owerheid, 'n gemeenskapspolisieforum, 'n grondwetlike instelling of die Provinsiale Kommissaris, 'n klagte op 'n meer gepaste manier kan hanteer, kan hy of sy te eniger tyd 'n klagte of 'n aspek daarvan na daardie owerheid verwys. 10
- (5) Die Ombudsman kan na oorleg met die owerheid waarna die saak verwys is, en indien die saak nie deur daardie owerheid opgelos kon word nie, te eniger tyd die ondersoek van daardie aangeleentheid hervat.
- (6) Indien die Ombudsman van mening is dat 'n klagte van 'n ernstige aard is of dat 'n kommissie van ondersoek dit op 'n meer gepaste wyse kan hanteer, kan die Ombudsman by die Premier aanbeveel dat 'n kommissie van ondersoek ingevolge die Wes-Kaapse Provinsiale Kommissiewet, 1998 (Wet 10 van 1998), aangestel word om die klagte te ondersoek. 15
- (7) Indien die Ombudsman besluit om nie 'n ondersoek in te stel nie, moet hy of sy die klaer van sy of haar besluit en die redes daarvoor verwittig. 20
- (8) Na voltooiing van 'n ondersoek en indien die saak nie opgelos kon word nie, moet die Ombudsman 'n aanbeveling oor die ondersoek en sy of haar bevindinge aan die Provinsiale Minister voorlê en die klaer in kennis stel dat dit gedoen is.
- (9) Die Provinsiale Minister moet 'n aanbeveling aan die Minister doen oor enige klagte wat ondersoek is maar nie deur die Ombudsman opgelos kon word nie, en moet die klaer van die aanbeveling verwittig. 25
- (10) Die Ombudsman moet sy of haar funksies en aktiwiteite ingevolge hierdie Wet koördineer met ander owerhede wat jurisdiksie het ten opsigte van die ondersoek van klagtes teen die polisie, ten einde onnodige duplikasie te vermy.

Ondersoekbevoegdhede en -beamptes 30

- 18.** (1) Vir die doel van 'n ondersoek kan die Ombudsman enige persoon gelas om 'n beëdigde verklaring of plegtige verklaring in te dien, of om voor hom of haar te verskyn om getuienis af te lê, of om enige dokument wat op die ondersoek betrekking het en in daardie persoon se besit is of deur hom of haar beheer word, voor te lê, en die Ombudsman kan die persoon daarvoor ondervra. 35
- (2) Die Ombudsman kan enige persoon wat na sy of haar redelike vermoede oor inligting beskik wat betrekking het op die saak wat ondersoek word of ondersoek gaan word, om 'n verduideliking vra.
- (3) Die Ombudsman kan personeel van die Ombudsman of ander geskikte persone as ondersoekbeamptes aanwys om die funksies bedoel in subartikels (1) en (2) uit te voer. 40
- (4) 'n Ondersoekbeampte wat nie voltyds in diens van die staat is nie, moet op die voorgeskrewe voorwaardes en teen die voorgeskrewe besoldiging aangestel word.
- (5) 'n Ondersoekbeampte moet voorsien word van 'n aanstellingsertifikaat wat namens of deur die Ombudsman onderteken is, waarin verklaar word dat hy of sy 'n ondersoekbeampte is wat ingevolge hierdie Wet aangestel is. 45
- (6) 'n Ondersoekbeampte moet 'n aanstellingsertifikaat by hom of haar dra wanneer hy of sy 'n funksie ingevolge hierdie Wet verrig.

Verslag deur Provinsiale Kommissaris

- 19.** (1) Om die Provinsiale Minister in staat te stel om oor die polisie diens se doeltreffendheid en bevoegdheid toesig te hou en polisie-optrede te monitor, moet die Provinsiale Kommissaris binne en ten opsigte van die voorgeskrewe tydperk skriftelik oor die volgende aangeleenthede aan die Provinsiale Minister verslag doen: 50
- (a) in verband met die Suid-Afrikaanse Polisie diens—
- (i) hoeveel vuurwapens wat aan polisiebeamptes uitgereik is, weggeraak het of gesteel is en die omstandighede waaronder dit weggeraak het of gesteel is; 55
- (ii) hoeveel persone deur die polisie diens gearresteer is, hoeveel sake met betrekking tot daardie arrestasies na die hof verwys is, hoeveel van

- daardie sake vervolg is en hoeveel skuldigbevindings daar met betrekking tot daardie sake was;
- (iii) hoeveel fondse en hulpbronne aan veiligheidsoogmerke toegewys is, die metodes wat gebruik is om hierdie oogmerke te bereik en die meetbare uitkomst wat bereik is; 5
 - (iv) hoeveel dissiplinêre en strafregtelike sake teen polisiebeamptes aanhangig gemaak is, die name van daardie beamptes, die saakverwysingnommers, die aanklagte wat ten opsigte daarvan ingedien is en die uitkomst van daardie sake; 10
 - (v) die aantal en aard van klagtes wat die polisie oor swak dienslewering en polisiewangedrag ontvang het en hoe daardie klagtes opgelos is; 10
 - (vi) statistiese inligting oor die aantal en aard van die misdaad wat aan die polisie gerapporteer is; 15
 - (vii) die omstandighede rakende voorvalle waar die polisie 'n wapen afvuur, toelaat dat 'n wapen afgevuur word of bevel gee dat 'n wapen afgevuur word; 15
 - (viii) die getal sake wat gerapporteer is ingevolge artikel 29 van die Wet op die Onafhanklike Polisie Onderzoek-direktoraat, 2011 en die uitslag van die ondersoeke in daardie sake; en 20
 - (ix) enige ander aangeleentheid, soos voorgeskryf word, wat verband hou met polisie-optrede, die doeltreffendheid en bevoegdheid van die polisie diens of betrekkinge tussen die polisie en die gemeenskap; en 20
- (b) in verband met 'n munisipale polisie diens, hoeveel persone deur die munisipale polisie diens gearresteer is, hoeveel sake met betrekking tot daardie arrestasies na die hof verwys is, hoeveel van daardie sake vervolg is en hoeveel skuldigbevindings daar met betrekking tot daardie sake was. 25
- (2) Die Provinsiale Kommissaris moet die Provinsiale Minister onverwyld in kennis stel van enige sterftes van polisiebeamptes tydens die uitvoer van hulle pligte, enige sterftes wat deur polisiebeamptes veroorsaak is tydens die uitvoer van hulle pligte, enige persone wat gesterf het terwyl hul in polisie-aanhouding was en die omstandighede waarin daardie persone gesterf het. 30
- (3) Die Provinsiale Kommissaris moet aan die Provinsiale Parlement verslag doen oor polisie diens en die aangeleentheid in hierdie artikel beoog.
- (4) Die Provinsiale Minister kan die Provinsiale Kommissaris versoek om enige ander verslag te verstrek wat die Provinsiale Minister nodig het om sy of haar funksies ingevolge hierdie Wet te verrig. 35
- (5) Die Provinsiale Parlement kan vereis dat die Provinsiale Kommissaris voor hom of voor enige van sy komitees verskyn om vrae te beantwoord.
- (6) Indien die Provinsiale Kommissaris versuim om te voldoen aan enige versoek vir inligting van die Provinsiale Minister, moet die versuim deur die Provinsiale Minister aan die Provinsiale Parlement gerapporteer word, wat op sy beurt van die Provinsiale Kommissaris moet vereis om voor hom te verskyn om die versuim om aan die versoek te voldoen, te verduidelik. 40

Verlies van vertroue in Provinsiale Kommissaris

20. Indien die Provinsiale Kabinet vertroue verloor in die Provinsiale Kommissaris, moet die Provinsiale Kabinet, behalwe in uitsonderlike gevalle, van die Provinsiale Kommissaris vereis om voor hom of voor 'n komitee van sy lede te verskyn soos beoog in artikel 69(2) van die Wes-Kaapse Grondwet, 1997, voordat hy verrigtinge vir die verwydering of oorpasing van, of tugstappe teen, die Provinsiale Kommissaris instel. 45

Verslag deur uitvoerende hoof van munisipale polisie diens 50

21. (1) Om die Provinsiale Minister in staat te stel om toesig te hou oor die munisipale polisie diens se doeltreffendheid en bevoegdheid en die optrede van die munisipale polisie te monitor, moet die uitvoerende hoof van 'n munisipale polisie diens binne en ten opsigte van die voorgeskryfde tydperk skriftelik oor die volgende aangeleentheid ten opsigte van die munisipale polisie diens onder sy of haar beheer aan die Provinsiale Minister verslag doen— 55

- (a) die aangeleentheid bedoel in artikel 19(1)(a)(i) en (iii) tot (ix) gelees met die nodige veranderinge; en
- (b) die aantal persone wat deur die munisipale polisie diens gearresteer is.

(2) 'n Uitvoerende hoof van 'n munisipale polisie diens moet die Provinsiale Minister onverwyld in kennis stel van enige sterftes van munisipale polisiebeamptes tydens die uitvoer van hulle pligte, enige sterftes veroorsaak deur munisipale polisiebeamptes tydens die uitvoer van hulle pligte, enige persone wat gesterf het terwyl hul deur munisipale polisiebeamptes aangehou is en die omstandighede waarin daardie persone gesterf het. 5

(3) Die Provinsiale Minister kan 'n munisipale polisie diens se uitvoerende hoof versoek om enige ander verslag te verstrek wat die Provinsiale Minister nodig het om sy of haar funksies ingevolge hierdie Wet te verrig.

(4) Die Provinsiale Parlement kan vereis dat die uitvoerende hoof van 'n munisipale polisie diens voor hom of enige van sy komitees verskyn om vrae te beantwoord. 10

(5) Indien die Provinsiale Minister tevrede is dat 'n munisipale polisie diens versuim het om te voldoen aan die voorwaardes waarop die munisipale polisie diens ingestel is, of aan nasionale standaarde, kan die Provinsiale Minister die gepaste stappe doen wat in artikel 64N van die Wet op die Suid-Afrikaanse Polisie diens, 1995, beoog word. 15

Aantekening van versoeke en aanbevelings

22. (1) Die Provinsiale Minister moet 'n register byhou wat die volgende aanteken—

- (a) enige skriftelike verslag of aanbeveling gedoen aan die Minister ingevolge hierdie Wet;
- (b) enige skriftelike versoek vir inligting gerig aan die Provinsiale Kommissaris of 'n uitvoerende hoof van 'n munisipale polisie diens ingevolge hierdie Wet; en 20
- (c) enige skriftelike kommentaar of antwoord ontvang van die Minister, Provinsiale Kommissaris of 'n uitvoerende hoof van 'n munisipale polisie diens oor 'n verslag of aanbeveling bedoel in paragraaf (a) of 'n versoek bedoel in paragraaf (b). 25

(2) Die Provinsiale Minister moet jaarliks 'n gesertifiseerde afskrif van die register by die Provinsiale Parlement indien.

Polisiëringsbehoefte en -prioriteite

23. (1) Die Provinsiale Minister moet jaarliks aan die Provinsiale Parlement verslag doen oor sy of haar funksies ingevolge hierdie Wet en die bevindinge wat daarop betrekking het. 30

(2) Die Provinsiale Parlement moet die verslag bedoel in subartikel (1) na sy staande komitee verantwoordelik vir gemeenskapsveiligheid verwys.

(3) Die staande komitee moet hierdie verslag oorweeg en daaroor debatteer en kan openbare verhore hou en versoë versoek van belanghebbendes met 'n belang by die verslag. 35

(4) Die Provinsiale Parlement moet die Provinsiale Kommissaris en die uitvoerende hoof van munisipale polisie dienste 'n geleentheid gee om te antwoord op die verslag, die versoë en enige ander kommentaar wat ontvang is. 40

(5) Die Provinsiale Minister moet die staande komitee se bevindinge en kommentaar in ag neem wanneer hy of sy 'n aanbeveling oor die Provinsie se polisiëringsbehoefte en -prioriteite vir goedkeuring deur die Provinsiale Kabinet formuleer. 40

(6) Die Provinsiale Minister moet die Provinsie se goedgekeurde polisiëringsbehoefte en -prioriteite aan die Minister voorlê om in ag geneem te word wanneer die polisiëringsbeleid en -planne vir die Provinsie geformuleer word, soos beoog in artikel 206(1) en (2) van die Grondwet. 45

Samewerking en inter-regeringsbetrekkinge

24. (1) Die Provinsiale Minister, die Departementshoof, gemagtigde persone en werknemers van die Departement, ondersoekbeamptes en die Ombudsman moet hul funksies ingevolge hierdie Wet verrig in ooreenstemming met die beginsels van samewerkende regering en inter-regeringsbetrekkinge, bedoel in Hoofstuk 3 van die Grondwet. 50

(2) Die Provinsiale Minister mag aanbevelings oor die polisie en polisiëringsaangeleenthede aan die Burgerlike Sekretariaat doen of ooreenkomste sluit om die samewerking tussen die verskeie rolspelers, soos beoog in artikel 6(1)(g) van die Wet op die Burgerlike Sekretariaat vir die Polisie diens, 2011, te versterk. 55

(3) Die Provinsiale Minister moet gereeld met die Burgerlike Sekretariaat en die Provinsiale Sekretariaat skakel en oorleg pleeg in verband met enige aangeleentheid rakende onderlinge administratiewe ondersteuning en die koördinerings van hul onderskeie funksies ten einde onnodige duplikasie te vermy.

Provinsiale Veiligheidsadvieskomitee 5

25. (1) Die Provinsiale Veiligheidsadvieskomitee word ingestel.

(2) Die Komitee adviseer en doen voorstelle aan die Provinsiale Minister op sy of haar versoek, oor—

- (a) die funksies van die Provinsie ingevolge Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997; 10
- (b) strategieë, beleid, begrotings en jaarlikse prestasieplanne met betrekking tot die funksies ingevolge Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997;
- (c) regulasies ingevolge hierdie Wet, soos benodig; of
- (d) enige ander aangeleentheid wat uit die toepassing van hierdie Wet voortspruit. 15

Samestelling van Komitee

26. (1) Die lede van die Komitee moet deur die Provinsiale Minister aangestel word en bestaan uit—

- (a) 'n verteenwoordiger van die sakegemeenskap;
- (b) 'n lid van die regbank, die Kaapse Balie of die Kaapse Wetsgenootskap; 20
- (c) 'n senior lid van 'n akademiese instelling met ervaring op die gebied van kriminologie;
- (d) 'n verteenwoordiger van 'n nie-regeringsorganisasie wat by polisiëring of verwante gebiede betrokke is; en
- (e) die Departementshoof, as 'n *ex officio*-lid. 25

(2) Werknemers van die Departement wat deur die Provinsiale Minister aangewys word, moet administratiewe steun aan die Komitee verleen.

(3) Die lede van die Komitee bedoel in subartikel (1)(a) tot (d), mag aangestel word slegs nadat die Provinsiale Minister, by kennisgewing in die *Provinsiale Koerant* en in ander media wat die Provinsiale Minister as geskik beskou, alle belanghebbende partye genooi het om binne die tydperk wat in die kennisgewing vermeld word, die name van gepaste en bevoegde persone om aldus aangestel te word, voor te lê. 30

Ampstermyn en diensvoorwaardes van lede van Komitee

27. (1) 'n Lid, behalwe die *ex officio*-lid, word aangestel vir 'n termyn van drie jaar, wat eenmalig hernubaar is. 35

(2) 'n Lid se amp raak vakant indien—

- (a) die lid sonder toestemming van die Komitee se voorsitter van twee opeenvolgende komiteevergaderings afwesig is;
- (b) die lid sy of haar skriftelike bedanking by die Komitee se voorsitter indien;
- (c) die lid uit die Komitee afgedank word kragtens subartikel (3); of 40
- (d) die lid sterf.

(3) Die Provinsiale Minister kan 'n lid van die Komitee afdank indien die Provinsiale Minister van mening is dat daar genoegsame redes vir sy of haar afdanking bestaan.

(4) Die Provinsiale Minister moet 'n vakature in die Komitee wat ingevolge subartikel (2) ontstaan, ingevolge artikel 26(1) en (3) vul. 45

(5) 'n Lid wat uit hoofde van subartikel (4) aangestel word, se termyn duur vir die onverstreke gedeelte van die tydperk waarvoor die lid wat sy of haar amp ontruim het, aangestel is.

(6) Die Provinsiale Minister moet een van die lede van die Komitee as voorsitter aanwys. 50

(7) Die Provinsiale Minister kan enige ander aanstellingsvoorwaardes waarvoor daar nie in hierdie artikel voorsiening gemaak word nie, bepaal.

(8) Lede van die Komitee wat in artikel 26(1)(a) tot (d) bedoel word, kan die toelaes ontvang en vir die uitgawes vergoed word soos die Provinsiale Minister met die instemming van die Provinsiale Minister verantwoordelik vir finansies bepaal. 55

Vergaderings van Komitee

28. (1) Die Komitee kan, behoudens goedkeuring van die Provinsiale Minister, reëls maak oor besluitneming deur die Komitee en die hou van en die prosedure tydens vergaderings van die Komitee.

(2) Komiteevergaderings moet gehou word op die tyd en plek wat die voorsitter van die Komitee in ooreenstemming met die Komitee se reëls bepaal. 5

Toekennings

29. (1) Die Provinsiale Minister kan ooreenkomstig die voorgeskrewe kriteria 'n toepaslike toekenning, wat 'n geldelike toekenning kan insluit, aan enige lid van 'n gemeenskap of ander persoon maak vir verdienstelike diens ter bevordering van die oogmerke van hierdie Wet. 10

(2) Die Provinsiale Minister moet 'n register hou van, en jaarliks aan die Provinsiale Parlement verslag doen oor, enige toekennings wat ingevolge subartikel (1) gemaak is.

Misdrywe

30. (1) Enige persoon wat— 15

(a) sonder redelike oorsaak weier of versuim om aan 'n lasgewing of versoek kragtens artikel 18(1) of (2) te voldoen of weier om 'n vraag aan hom of haar kragtens daardie artikel gestel, te beantwoord of wat op so 'n vraag 'n antwoord verstrekk wat na sy of haar wete onjuis is; of

(b) die Ombudsman of 'n ondersoekbeampte hinder of dwarsboom in die uitvoer of verrigting van sy of haar bevoegdhede of funksies ingevolge hierdie Wet, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf van hoogstens drie jaar of albei. 20

(2) Enige persoon wat artikel 9(1) of (4)(b) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf van hoogstens twee jaar of albei. 25

Regulasies

31. Die Provinsiale Minister kan regulasies uitvaardig oor—

(a) enige aangeleentheid ten opsigte waarvan hierdie Wet regulasies vereis of magtig; 30

(b) die funksies en pligte van die Provinsiale Minister of die Ombudsman;

(c) die ontvangs en verwerking van klagtes wat ingevolge artikel 16 ingedien word;

(d) die metode vir die hantering van 'n ondersoek na klagtes wat ingevolge artikel 16 ingedien word; 35

(e) die formaat en prosedure om persone te gelas kragtens artikel 18(1) of 'n verduideliking te versoek kragtens artikel 18(2);

(f) vereistes vir verslagdoening deur die Provinsiale Kommissaris of 'n uitvoerende hoof van 'n munisipale polisie diens ingevolge hierdie Wet;

(g) die formaat van enige verslag wat ingevolge hierdie Wet vereis word; 40

(h) die bepaling van sleutelaanwysers en empiriese datatipes wat ingesluit moet word in 'n verslag wat ingevolge hierdie Wet vereis word;

(i) maatreëls om die vertroulikheid van, beheer oor en toegang tot inligting wat deur die geïntegreerde inligtingstelsel ingewin is, te verseker;

(j) die vereistes vir magtiging en klaring van werknemers, ondersoekbeamptes en ander persone wat deur die Provinsiale Minister gemagtig is om funksies ingevolge hierdie Wet te verrig; 45

(k) aanwysers om oor die polisie diens se doeltreffendheid en bevoegdheid toesig te hou en dit te bepaal; of

(l) enige ander aangeleentheid wat nodig is vir die doeltreffende uitvoering van die funksies ingevolge hierdie Wet. 50

Delegering

- 32.** (1) Die Provinsiale Minister kan enige bevoegdheid of plig, behalwe die bevoegdheid om regulasies uit te vaardig, wat ingevolge hierdie Wet aan hom of haar verleen of opgedra is, aan die Departementshoof delegeer of opdra.
- (2) Die Departementshoof kan enige bevoegdheid of plig wat ingevolge hierdie Wet aan hom of haar verleen of opgedra is, delegeer of opdra aan— 5
- (a) 'n werknemer van die Departement; of
 - (b) die bekleër van 'n spesifieke amp of posisie in die Departement.
- (3) 'n Delegasie of opdraging in subartikel (1) of (2) bedoel— 10
- (a) moet skriftelik wees;
 - (b) kan aan voorwaardes onderworpe gemaak word;
 - (c) kan skriftelik teruggetrek of gewysig word deur die Provinsiale Minister of die Departementshoof, na gelang van die geval;
 - (d) kan die bevoegdheid om daardie bevoegdheid of plig te subdelegeer of verder op te dra, insluit; 15
 - (e) verhinder nie die Provinsiale Minister of die Departementshoof, na gelang van die geval, om die bevoegdheid uit te voer of die plig te verrig nie; en
 - (f) onthef nie die Provinsiale Minister of die Departementshoof, na gelang van die geval, van die verantwoordelikheid betreffende die uitoefening van die gedelegeerde bevoegdheid of die verrigting van die opgedraagde plig nie. 20

Kort titel en inwerkingtreding

33. Hierdie Wet heet die Wes-Kaapse Wet op Gemeenskapsveiligheid, 2012, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

MEMORANDUM OOR DIE OOGMERKE VAN DIE WES-KAAPSE WETSONTWERP OP GEMEENSKAPSVEILIGHEID, 2012

1. Agtergrond

Die doel van die Wes-Kaapse Wetsontwerp op Gemeenskapsveiligheid is om provinsiale toesigmodelle ten opsigte van die polisie te ontwikkel en in te stel ter nakoming van die grondwetlike mandaat van provinsies om polisie-optrede te monitor en toesig te hou oor die doeltreffendheid en bevoegdheid van die Suid-Afrikaanse Polisiediens (“SAPD”) en munisipale polisie-dienste in die Provinsie. ’n Doeltreffende en bevoegde polisiediens sal verhoogde vlakke van veiligheid en ’n oop gemeenskap bewerkstellig waarin daar geen vrees vir misdaad heers nie. Die funksies van toesighouding ingevolge die Wetsontwerp fokus daarop om patrone en praktyke van polisie-optrede te bepaal, sistemiese tekortkominge in die polisie-stelsel te identifiseer en aanbevelings te doen oor hoe polisieëring in die Provinsie Wes-Kaap verbeter kan word.

Die toesigfunksies ten opsigte van die monitering van polisie-optrede en die evaluering van die polisiediens word ook in hierdie Wetsontwerp gedek.

Die wyse waarop die Provinsie klagtes oor polisie-ondoeltreffendheid uit die gemeenskap hanteer, sal aansienlik verbeter word deur die instelling van die Provinsiale Polisie-ombudsman, wat deur die Wetsontwerp gemagtig word om sulke klagtes doeltreffend te hanteer. Die Ombudsman sal ook verbrokkelings in die betrekkinge tussen die polisie en die gemeenskap moet ondersoek.

Die instel van ’n geïntegreerde inligtingstelsel sal die Provinsie in staat stel om inligting in te samel wat deur die Provinsiale Uitvoerende Gesag in ag geneem moet word wanneer die Provinsie se polisieëring-behoefte en -prioriteite bepaal word. Die bedoeling is om weg te beweeg van die huidige praktyk waarvolgens polisieëring-behoefte bepaal word hoofsaaklik op grond van misdaadstatistieke en om ’n meer holistiese benadering tot die bepaling van polisieëring-behoefte te volg wat gebaseer is op inligting wat verkry is uit vennootskappe met gemeenskappe, die burgerlike samelewing, ander regeringsfere, die sakegemeenskap en dies meer.

Die Wetsontwerp ondersteun die ontwikkeling en sluiting van vennootskappe met die sakegemeenskap en ander rolspelers en die akkreditering en steun van buurtwagte ten einde die kapasiteit vir innovering, samewerking en die ontwikkeling van veiligheidsinisiatiewe om goeie betrekkinge tussen die polisie en gemeenskappe te bevorder, te verhoog.

Die Wetsontwerp dek ander aspekte soos verslagdoening aan die Provinsiale Minister deur die Provinsiale Kommissaris van die SAPD en die verskillende uitvoerende hoofde van munisipale polisie-dienste.

Die wetgewende mandaat wat by artikels 19(1), 20(1) en 21(1) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet 68 van 1995) aan die Provinsiale Minister gegee word, wat die Provinsiale Minister in staat stel om voorskrifte uit te reik vir die instelling van gemeenskapspolisieforums en -rade, word in die Wetsontwerp versterk ten einde goeie betrekkinge tussen die SAPD en gemeenskappe te bevorder.

In die gees van die Grondwet beklemtoon die Wetsontwerp die beginsels van samewerkende regering en inter-regeringsbetrekkinge oor die algemeen en meer spesifiek tussen die Burgerlike Sekretariaat en die Provinsie.

Die Wetsontwerp stel ook ’n Provinsiale Veiligheidsadvieskomitee in om die Provinsiale Minister te adviseer oor funksies, strategie, beleid, ens.

2. Wetgewende raamwerk

Artikel 104(1), saamgelees met Bylae 4A van die Grondwet van die Republiek van Suid-Afrika, 1996 (“die Grondwet”), bepaal dat die Provinsie oor wetgewende

bevoegdheid beskik op die funksionele gebied van “polisie” in die mate dat Hoofstuk 11 (artikels 205-208) sodanige wetgewende bevoegdheid aan die Provinsie verleen. Provinsiale wetgewende bevoegdheid ten opsigte van polisiëring word voorts met die nasionale regeringsfeer gedeel.

Artikel 206 van die Grondwet en artikels 66 en 67 van die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998), magtig die Provinsie om toesig te hou oor die doeltreffendheid, bevoegdheid en optrede van die polisie in die Provinsie, om goeie betrekkinge tussen die polisie en gemeenskappe te bevorder en om in hierdie verband wetgewing uit te vaardig.

Artikel 66(1) en (2) van die Grondwet van die Wes-Kaap, 1997, bepaal:

- “(1) Die Wes-Kaapse regering is geregtig om—*
- (a) polisie-optrede te monitor;*
 - (b) die doeltreffendheid van sigbare polisiëring te bepaal;*
 - (c) toesig te hou oor die doeltreffendheid en bevoegdheid van die polisie, waarby inbegrepe is die ontvangs van verslae oor die polisie;*
 - (d) goeie betrekkinge tussen die polisie en die gemeenskap te bevorder; en ...*
- (2) Ten einde die funksies in subartikel (1) uiteengesit, te verrig—*
- (a) kan die Wes-Kaapse regering enige klagtes oor polisieonbevoegdheid of ’n verbod in betrekkinge tussen die polisie en enige gemeenskap ondersoek of ’n kommissie van ondersoek in dié verband aanstel; en*
 - (b) moet die Wes-Kaapse regering aanbevelings doen aan die nasionale Kabinetslid wat verantwoordelik vir polisiëring is.”*

Artikel 67(1) van die Grondwet van die Wes-Kaap magtig verder die Provinsiale Parlement om “wetgewing aan [te] neem wat nodig is om die funksies in artikel 66(1) gelys, te verrig”. Artikel 68 van die Grondwet van die Wes-Kaap, 1997, bepaal dat die Provinsiale Kabinet die Provinsie se polisiëringsbehoefte en -prioriteite moet bepaal.

3. Doel van Wetsontwerp

Die doel van die Wetsontwerp is dus om uitvoering te gee aan die Provinsie se grondwetlike mandaat en om die Wes-Kaapse Regering se bevoegdhede en werksaamhede te reguleer met betrekking tot sy toesigfunksie oor die polisie.

4. Inhoud van Wetsontwerp

Klousule 1

Hierdie klousule bevat die woordomskrywings.

Klousule 2

Hierdie klousule stel die oogmerk van die Wetsontwerp, naamlik om te reguleer en voorsiening te maak vir die uitvoering van die funksies van die Provinsie en die Provinsiale Departement van Gemeenskapsveiligheid (“die Provinsiale Departement”) soos bepaal in artikel 206(1), (3), (4), (5) en (9) en artikel 207(5) en (6) van die Grondwet en in die ooreenstemmende bepalings van die Grondwet van die Wes-Kaap, 1997. Hierdie funksies stel die Provinsie in staat om die polisiëringsbehoefte en -prioriteite van die Provinsie te bepaal; polisie-optrede te monitor; die doeltreffendheid van sigbare polisiëring te bepaal; oor die doeltreffendheid en bevoegdheid van die polisie toesig te hou, waarby ingesluit is die ontvangs van verslae oor die polisie; goeie betrekkinge tussen die polisie en gemeenskappe te bevorder, enige klagtes van polisie-ondoeltreffendheid of die verbod in betrekkinge tussen die polisie en ’n gemeenskap te ondersoek; van die Provinsiale Kommissaris of die uitvoerende hoof van ’n munisipale polisie te vereis om verslag te doen en voor die Provinsiale Parlement te verskyn, en om verrigtinge in te stel vir die ontslag of verplasing van, of tugstappe teen, die Provinsiale Kommissaris. Die Wetsontwerp beoog ook steun vir die burgerlike toesig oor die polisie onder leiding van die Minister van Polisie deur die Burgerlike

Sekretariaat en die Provinsiale Sekretariaat, wat ingevolge die Wet op die Burgerlike Sekretariaat vir die Polisie diens, 2011 (Wet 2 van 2011), ingestel is. Die Wetsontwerp verduidelik en omskryf voorts die provinsiale regeeringsfeer se toesig oor nasionale polisiëringfunksies.

Klousule 3

Hierdie klousule handel oor die funksies van die Provinsiale Minister van Gemeenskapsveiligheid (“Provinsiale Minister”). Hierdie funksies spruit voort uit bogenoemde grondwetlike bevoegdhede wat in artikel 206(1), (3) tot (5) genoem word, saamgelees met artikels 104 en Bylae 4 van die Grondwet, en artikels 66, 67 en 68 van die Grondwet van die Wes-Kaap, 1997.

Klousule 4

Hierdie klousule bepaal dat die Provinsiale Minister werknemers van die Provinsiale Departement en ander persone kan magtig om polisie-optrede te monitor, insluitende optrede ten opsigte van persone wat in polisieaanhouding is, oor die polisie toesig te hou en die polisie diens en die betrekkinge tussen die polisie en die gemeenskap te evalueer.

Klousule 5

Hierdie klousule maak voorsiening vir die uitreiking van voorskrifte vir die stigting van gemeenskapspolisieforums en -rade, soos bedoel in artikels 19, 20 en 21 van die Wet op die Suid-Afrikaanse Polisie diens, 1995. Hierdie Wet bepaal dat die Provinsiale Kommissaris gemeenskapspolisieforums en -rade mag stig, behoudens die Provinsiale Minister se voorskrifte.

Klousule 6

Hierdie klousule maak voorsiening vir die vrywillige akkreditering en ondersteuning van buurtwagte in die Wes-Kaap om goeie betrekkinge tussen die polisie en gemeenskappe te bevorder.

Die Provinsiale Minister kan ook befondsing, opleiding of hulpbronne aan buurtwagte verskaf.

Hierdie klousule bepaal ook dat buurtwagte verslae aan die Provinsiale Minister moet voorlê oor:

- die aktiwiteite van die buurtwagte; en
- veiligheidskwellings en misdadvoorvalle in die gebiede waarin buurtwagte werksaam is.

Ten einde die polisie se doeltreffendheid en bevoegdheid te monitor en om die Provinsie se polisiëringbehoefte en -prioriteite te bepaal, soos die Grondwet vereis, beoog hierdie vereistes om ’n databasis oor die veiligheidsituasie in die Provinsie te skep.

Klousule 7

Hierdie klousule maak voorsiening vir die instandhouding van ’n databasis van gemeenskapsorganisasies wat betrokke is by polisiëring, ondersteuning van misdadslagoffers, misdadvoorkoming of gemeenskapsveiligheid in die Provinsie en die ondersteuning van hierdie organisasies. Dit maak ook voorsiening vir die sluit van vennootskappe met gemeenskapsorganisasies om die oogmerke van die Wetsontwerp te bereik om betrekkinge tussen die polisie en gemeenskappe te verbeter. Gemeenskapsorganisasies op die databasis moet ook aan die Departementshoof verslag doen oor veiligheidskwellings en misdadvoorvalle ten einde te help met die bepaling van die Provinsie se polisiëringbehoefte en -prioriteite.

Klousule 8

Hierdie klousule maak voorsiening vir die daarstel, administrasie en instandhouding van ’n geïntegreerde inligtingstelsel deur die Provinsiale Minister en die Provinsiale Departement. Hierdie inligtingstelsel sal die Provinsiale

Minister in staat stel om oor die polisdien se doeltreffendheid en bevoegdheid toesig te hou en om die Provinsie se polisiëringsbehoefte en -prioriteite te bepaal.

Die klousule maak ook daarvoor voorsiening dat die Provinsiale Minister sekuriteitsdiensverskaffers kan versoek om op die databasis van gemeenskapsorganisasies te registreer en om inligting te verskaf oor veiligheidskwellings en misdaadvoorvalle in hulle operasionele gebiede. Daar word voorsien dat dit betrekkinge tussen die polisie en gemeenskappe sal verbeter en sal help met die bepaling van die Provinsie se polisiëringsbehoefte en -prioriteite.

Klousule 9

Hierdie klousule verskaf maatreëls om die vertroulikheid te verseker van persoonlike inligting wat van buurtwagte, sekuriteitsdiensverskaffers en ander organisasies verkry is deur die geïntegreerde inligtingstelsel.

Klousules 10 tot 18

Hierdie klousules maak voorsiening vir die instelling van die Kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman en die aanstelling van die Ombudsman deur die Premier na oorleg met die Provinsiale Minister, die Provinsiale Kommissaris en die uitvoerende hoofde van munisipale polisdienste, behoudens die instemming van die Provinsiale Parlement se staande komitee verantwoordelik vir gemeenskapsveiligheid.

Die Ombudsman se hoof funksies is die ondersoek van klagtes ten opsigte van polisie-ondoeltreffendheid (SAPD en die munisipale polisdienste) of 'n verbrokkeling van die verhouding tussen die polisie en gemeenskappe. Die Provinsie word deur artikel 206(5) van die Grondwet en artikel 66(2) van die Grondwet van die Wes-Kaap, 1997, gemagtig om hierdie funksies uit te voer.

Die Ombudsman kan ook klagtes na enige ander bevoegde owerheid verwys indien daardie owerheid die klagtes op 'n meer toepaslike wyse kan hanteer.

Klousule 18 bepaal voorts dat die Ombudsman of aangewese ondersoekers 'n persoon kan gelas om 'n beëdigde verklaring of 'n plegtige verklaring in te dien, of om voor hom of haar te verskyn om getuie af te lê, of om enige ander dokument voor te lê wat betrekking het op die saak wat ondersoek word.

Die Ombudsman moet aanbevelings aan die Provinsiale Minister maak ten opsigte van enige klagte wat ondersoek word, wat kan behels dat 'n kommissie van ondersoek deur die Premier aangestel moet word. Die Provinsiale Minister moet 'n aanbeveling aan die nasionale Minister doen oor enige klagte wat deur die Ombudsman ondersoek is maar nie deur die Ombudsman opgelos kon word nie, en moet die klaer verwittig van die aanbeveling.

Klousule 19

Hierdie klousule maak voorsiening vir verskeie verpligte verslae wat deur die Provinsiale Kommissaris van die SAPD aan die Provinsiale Minister voorgelê moet word.

Die verslae het onder andere betrekking op die verlies of diefstal van amptelike vuurwapens in die besit van lede van die SAPD, enige sterftes van polisiebeamptes in die uitvoering van hulle pligte, enige sterftes wat deur polisiebeamptes veroorsaak is tydens die uitvoer van hulle pligte, enige persone wat gesterf het terwyl hulle in polisie-aanhouding was en die omstandighede waarin daardie persone dood is, statistieke oor hoeveel persone gearresteer is, hoeveel sake na die hof verwys is, hoeveel van hierdie sake vervolgd is en hoeveel skuldigbevindings daar was, hoeveel klagtes ontvang en aangeteken is, en enige ander saak wat betrekking het op die polisie se optrede, doeltreffendheid of bevoegdheid of die betrekkinge tussen die polisie en gemeenskappe.

Hierdie klousule vereis ook dat die Provinsiale Kommissaris 'n jaarverslag oor polisiëring in die Provinsie voorlê.

Klousule 20

Hierdie klousule handel oor die bevoegdheid van die Provinsiale Kabinet ingevolge artikel 69(2) van die Grondwet van die Wes-Kaap, 1997, om van die Provinsiale Kommissaris te vereis om voor hom of enige van sy komitees te verskyn indien die Provinsiale Kabinet vertrou in die Provinsiale Kommissaris verloor het.

Klousule 21

Hierdie klousule maak voorsiening vir soortgelyke verslaggewingsvereistes as in klousule 19, maar met betrekking tot 'n munisipale polisie diens wat ingevolge artikel 64A van die Wet op die Suid-Afrikaanse Polisie diens ingestel is. Dit vereis dat die onderskeie uitvoerende hoofde van die munisipale polisie diens in die Provinsie sekere gereelde verpligte verslae aan die Provinsiale Minister moet voorlê.

Klousule 22

Hierdie klousule bepaal dat die Provinsiale Minister 'n register moet hou van skriftelike verslae en aanbevelings aan die Minister van Polisie, skriftelike versoeke vir inligting gerig aan die Provinsiale Kommissaris of enige uitvoerende hoof van 'n munisipale polisie diens en enige skriftelike kommentaar of antwoord wat ten opsigte daarvan ontvang is.

Klousule 23

Hierdie klousule maak voorsiening vir die bepaling van die Provinsie se polisieeringsbehoefte en -prioriteite. Artikel 206(1) van die Grondwet bepaal dat die nasionale Minister verantwoordelik vir polisieering "na oorleg met die provinsiale regering en met inagneming van die polisieeringsbehoefte en -prioriteite van die provinsies soos deur die provinsiale uitvoerende gesagte bepaal, die nasionale polisieeringsbeleid [moet] bepaal." Artikel 66(1)(e) van die Grondwet van die Wes-Kaap, 1997, bepaal dat die Provinsiale Minister met die nasionale Minister verantwoordelik vir polisieering mag skakel "met betrekking tot misdaad en polisieering in [die] Wes-Kaap". Artikel 68(2) van die Grondwet van die Wes-Kaap, 1997, bepaal dat die Provinsiale Kabinet die Provinsie se polisieeringsbehoefte en -prioriteite moet bepaal.

Die Provinsiale Minister moet ingevolge hierdie klousule aan die Wes-Kaapse Provinsiale Parlement verslag doen om die Provinsiale Kabinet in staat te stel om die polisieeringsbehoefte en -prioriteite te bepaal.

Die Provinsiale Parlement se staande komitee verantwoordelik vir gemeenskapsveiligheid moet oor die verslag debatteer en kan ook openbare verhore hou om kommentaar van belanghebbendes te ontvang. Die bevindinge en kommentaar sal dan deur die Provinsiale Kabinet oorweeg word in sy verslag aan die nasionale Minister oor die Provinsie se polisieeringsbehoefte en -prioriteite.

Klousule 24

Hierdie klousule maak voorsiening vir die uitoefening van provinsiale toesig oor die polisie ooreenkomstig die beginsels van samewerkende regering en inter-regeringsbetrekkinge in Hoofstuk 3 van die Grondwet bedoel.

Klousules 25 tot 28

Hierdie klousules maak voorsiening vir die instelling van die Provinsiale Veiligheidsadvieskomitee, die samestelling van die Komitee, die ampstermyn van lede van die Komitee en vergaderings van die Komitee.

Die doel van die Komitee is om die Provinsiale Minister te adviseer oor die funksies rakende die monitering van en toesig houing oor die doeltreffendheid en bevoegdheid van die polisie in die Provinsie. Die Komitee sal ook advies gee oor strategie, beleid, begrotings en jaarlikse prestasieplanne met betrekking tot die toesig houdingsfunksies, en oor enige ander sake wat uit die toepassing van die Wetsontwerp voortspuit.

Klousule 29

Hierdie klousule maak voorsiening vir die maak van toepaslike toekennings (wat geldelike toekennings kan insluit) aan enige lid van die gemeenskap of ander persoon vir verdienstelike diens wat verrig is om die oogmerke van die Wetsontwerp te bevorder, en vir die aantekening en verslagdoening ten opsigte van sulke toekennings.

Klousule 30

Hierdie klousule skep misdrywe ten opsigte van die verhinderende of dwarsboming van die Ombudsman om sy of haar funksies ingevolge hierdie Wet uit te voer, ten opsigte van versuim om uitvoering te gee aan 'n lasgewing of versoek ingevolge klousule 18(1) of (2) en vir die oortreding van die vertroulikheidsmaatreëls ten opsigte van persoonlike inligting.

Klousule 31

Hierdie klousule magtig die Provinsiale Minister om regulasies oor verskeie aspekte van die Wetsontwerp uit te vaardig.

Klousule 32

Hierdie klousule maak voorsiening vir die delegering van enige bevoegdheid of plig wat aan die Provinsiale Minister verleen of opgedra is, aan die Departementshoof, wat sodanige bevoegdhede en pligte verder aan werknemers van die Provinsiale Departement kan delegeer indien hy of sy aldus gemagtig is. Daar word ook voorsiening gemaak dat die Departementshoof enige bevoegdheid of plig wat aan hom of haar verleen of opgedra is ingevolge die Wetsontwerp, aan enige ander werknemer van die Provinsiale Departement kan delegeer.

Klousule 33

Hierdie klousule bevat die Wetsontwerp se kort titel en maak voorsiening vir die proklamasie van die datum van inwerkingtreding daarvan.

5. Finansiële implikasies

Daar sal in komende finansiële jare inkrementeel begroot word vir die finansiële implikasies ten opsigte van die implementering van die Wetsontwerp .

6. Oorlegpleging

'n Konsepswetsontwerp is in die *Provinsiale Koerant* gepubliseer vir kommentaar deur die publiek en is ook voorgelê aan:

Die Minister van Polisie

Die Provinsiale Kommissaris

Die Burgerlike Sekretariaat

Gemeenskapspolisieforums en -rade

Die Onafhanklike Polisie Ondersoekdirektoraat

Die Reguleringsowerheid vir die Sekuriteitsbedryf

Plaaslike regering

Alle provinsiale departemente

Verskeie openbare oorlegssessies is gehou met lede van die gemeenskaps-polisieforums, raadslede en ander lede van die publiek.

7. Wetgewende bevoegdheid

Die Provinsiale Minister vir Gemeenskapsveiligheid is tevrede dat al die bepalings van die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie val.

UMTHETHO OSAYILWAYO

Wokubonelela ngokwenziwa nokulawulwa kwemisebenzi yePhondo neSebe loKhuseleko loLuntu yeKhabhinethi yePhondo ngokwemiqathango yeSahluko 11 soMgaqo-siseko seRiphabhliki yoMzantsi Afrika ka-1996, neyeSahluko 8 soMgaqo-siseko weNtshona Koloni ka-1997; onika inkxaso nentsebenziswano kwiButho looNobhala boLuntu nabePhondo elasekwa ngokwemiqathango yoMthetho oyi*Civilian Secretariat for Police Service Act* ka-2011, nokubonelela ngentsebenziswano neButho looNobhala boLuntu eliyi*Civilian Secretariat* neButho looNobhala bePhondo elasekwa ngokwemiqathango yaloo Mthetho; ukubonelela ngezikhokelo zokusekwa kwamaqonga ezobupolisa asekuhlaleni neebhodi ngokwemiqathango yoMthetho oyi*South African Police Service Act, 1995*; ukubonelela ngoqinisekiso lwemibutho njengamabutho oosolomzi beengingqi (neighbourhood watches); ukubonelela ngokusekwa kobuhlakani nemibutho yasekuhlaleni; ukuseka nokulondoloza inkqubo yengcaciso emanyanisiweyo kunye novimba weenkukacha zemibutho; ukubonelela ubhaliso ngokuzithandela lwabaniki beenkonzo zokhuseleko kuvimba weenkukacha zemibutho; ukuseka iOfisi kaNozikhalazo wezaMapolisa wePhondo leNtshona Koloni (*Office of the Western Cape Provincial Police Ombudsman*) kuphandwe ngezikhazazo eziphathelele namapolisa; ukulawula iingxelo eziphathelele kwinkonzo yamapolisa; ukuseka iKomiti yePhondo yeeNgcebiso ngoKhuseleko; kwakunye nokubonelela ngayo nayiphi na eminye imiba ephathelele kwezi zinto.

NGAKO OKO KE KUWISWA UMTHETHO yiPalamente yePhondo leNtshona Koloni, ngolu hlobo lulandelayo:—

Iinkcazo-magama

1. Kulo Mthetho, ngaphandle kwalapho indlela elisetyenziswe ngayo igama ilinika enye intsingiselo—
 - “iqonga lezobupolisa lasekuhlaleni” lithetha amaqonga ezobupolisa asekuhlaleni neebhodi ezisekwe ngokwemiqathango yecandelo 19-21 loMthetho oyi*South African Police Service Act, 1995* (uMthetho 68 ka-1995);
 - “uMgaqo-siseko” uthetha uMgaqo-siseko weRiphabhliki yoMzantsi Afrika ka-1996;
 - “iButho looNobhala boLuntu” lithetha neButho looNobhala boLuntu leeNkonzo zaMapolisa elisekwe kulandelwa icandelo 4 loMthetho oyi *Civilian Secretariat for Police Service Act, 2011* (uMthetho 2 ka 2011);
 - “iKomiti” ithetha iKomiti yePhondo yeeNgcebiso ngoKhuseleko emiselwe kulandelwa icandelo 25;
 - “iSebe” lithetha isebe lephondo elisingathe imisebenzi echazwe kwiSahluko 11 soMgaqo-siseko neyeSahluko 8 soMgaqo-siseko weNtshona Koloni ka-1997 (uMthetho 1 ka-1998) nelimiselwe phantsi kwecandelo 3A lomthetho iPublic Service Act, 1994 njengoko kuchaziwe kwiShedyuli 2 yala Mthetho;
 - “INTloko yeSebe” ithetha intloko yeSebe loKhuseleko loLuntu lePhondo;
 - “Icandelo loLawulo loPhando IwaMapolisa oluZimeleyo” luthetha iCandelo loLawulo loPhando IwaMapolisa oluZimeleyo elimiselwe ngokwecandelo 3(1)

lomthetho i-Independent Police Investigative Directorate Act, 2011 (UMthetho 1 ka-2011);

“**uMphathiswa**” uthetha ilungu lekhabhinethi lesizwe elisingathe ezobupolisa;

“**inkonzo yamapolisa kamasipala**” ithetha inkonzo yamapolisa esekwe kwiphondo eli ngokwemiqathango yecandelo 64A yoMthetho oyi*South African Police Service Act* ka-1995; 5

“**usolomzi wengingqi**” uthetha umbutho okhankanywe kwicandelo 6(45) waza waqinisekiswa ngokwemiqathango yecandelo;

“**uNozikhhalazo**” uthetha uNozikhhalazo wezaMapolisa wePhondo leNtshona Koloni obekwe ngokwemiqathango yecandelo 11; 10

“**ipolisa**” lithetha igosa elililungu leNkonzo yaMapolisa oMzantsi Afrika (SAPS) kwiphondo eli okanye igosa elililungu lenkonzo yamapolisa kamasipala;

“**inkonzo yamapolisa**” ithetha iNkonzo yaMapolisa oMzantsi Afrika (SAPS) esebenza kwiphondo eli okanye inkonzo yamapolisa kamasipala;

“**amapolisa**” abhekisele kwiNkonzo yaMapolisa oMzantsi Afrika kwiphondo eli okanye inkonzo yamapolisa kamasipala; 15

“**imisebenzi yobupolisa**” ithetha imisebenzi eyenziwa ngamalungu ngamapolisa;

“**ukumisela**” kuthetha ukumisela ngomgaqo;

“**iPhondo**” lithetha iPhondo leNtshona koloni;

“**iKhabhinethi yePhondo**” ithetha iKhabhinethi yePhondo, njengoko ikhankanywa kwicandelo 42 loMgaqo-siseko weNtshona Koloni, 1997; 20

“**uMkhomishinala wePhondo**” uthetha umkhomishinala wephondo obekelwe iphondo eli ngokwemiqathango yecandelo 207(3) loMgaqo-siseko;

“**uMphathiswa wePhondo**” uthetha uMphathiswa wePhondo owongamele imisebenzi yamapolisa kwiphondo eli echazwe kwiSahluko 11 soMgaqo-siseko woMzantsi Afrika ka-1996, neyeSahluko 8 soMgaqo-siseko weNtshona Koloni, ka-1997; 25

“**iButho looNobhala bePhondo**” lithetha ibutho loonobhala bephondo eli elisekwe ngokwemiqathango yecandelo 16 loMthetho oyi*Civilian Secretariat for Police Service Act*, 2011; 30

“**umgaqo**” uthetha umgaqo owenziwe phantsi kwecandelo 31;

“**umniki-zinkonzo zokhuseleko**” uthetha umniki wenkonzo yokhuseleko njengoko echazwa kwicandelo 1 loMthetho oyi*Private Security Industry Regulation Act*, 2001 (uMthetho 56 ka-2001);

“**iNkonzo yaMapolisa oMzantsi Afrika**” ithetha iNkonzo yaMapolisa oMzantsi Afrika eyasekwa ngokwemiqathango yecandelo 5(1) loMthetho oyi*South African Police Service Act*, 1995 esebenza kwiPhondo; kwaye 35

“**lo Mthetho**” ubandakanya imigaqo eyenziwe phantsi kwecandelo 31 kunye nazo naziphi na izikhokelo ezenziwe phantsi kwecandelo 3(f) nele-5.

Iinjongo zalo Mthetho 40

2. Iinjongo zalo Mthetho—

- (a) kukunika isikhokelo ngokuqhutywa kwemisebenzi yePhondo njengoko ikhankanywa kwicandelo 206 (1), (3), (4), (5) no-(9) nelama-207(5) no-(6) loMgaqo-siseko ngokunjalo nakumacandelo 66 nele-67, 68(1), (2)(a) no-(b) nele-69(2) loMgaqo-siseko weNtshona Koloni, 1997,— 45
- (i) ukujonga izidingo zomsebenzi wobulungisa nolandelelwaniso lwemiba ngokokubaluleka kwayo;
- (ii) ukubeka iliso kwindlela yokuziphatha kwamapolisa;
- (iii) ukongamela impumelelo nocikizeko lwenkonzo yamapolisa, kubandakanya nokwamkela iingxelo ngenkonzo yamapolisa; 50
- (iv) ukukhuthaza ubudlelane obuhle phakathi kwamapolisa nabahlali;
- (v) ukuvandlakanya impumelelo yokubonakala kwamapolisa ekwenzeni imisebenzi yawo;
- (vi) ukuphanda ngazo naziphi na izikhhalazo ezimalunga nokusilela kwamapolisa emsebenzini wawo okanye ngokuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali; 55
- (vii) ukunyanzelisa uMkhomishinala wePhondo ukuba anikeze ingxelo kwiPalamente yePhondo ngokwakhe siqu; yaye
- (viii) kuthathwe amanyathelo okususwa okanye okubekwa kwenye indawo koMkhomishinala wePhondo; kunye 60

- (b) nokunika inkxaso kwiinjongo zeButho loNobhala loLuntu neButho loNobhala bePhondo.

Imisebenzi yoMphathiswa wePhondo

3. UMphathiswa wePhondo usenokuthi enze le misebenzi ilandelayo ekufezekiseni iinjongo zecandelo 206(1), (3), (4) nele (5) loMgaqo-siseko ngokunjalo nezamacandelo 66 nele-68(1), (2)(a) no-(b) loMgaqo-siseko weNtshona Koloni, 1997: 5
- (a) ukubeka iliso kwindlela yokuziphatha kwamapolisa;
- (b) ukongamela ukusebenza ngempumelelo nangemfezeko kwenkonzo yamapolisa;
- (c) ukongamela impumelelo yemigaqo-nkqubo nezikhokelo zokwenziwa kwemisebenzi ekusetyenzisweni kwazo yinkonzo yamapolisa ekuqesheni, ekuqesheni nakwinkonzo yamapolisa; 10
- (d) ukukhuthaza ubudlelane obuhle phakathi kwamapolisa nabahlali;
- (e) ukufumanisa izizathu zokuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali, nokuqulunqa amanyathelo okuphucula obu budlelane; 15
- (f) ukukhupha izikhokelo zokusekwa nokuqiniswa kwamaqonga ezobupolisa lasekuhlaleni kwakunye neebhodi nokuququzelela indlela efanelekileyo yokusebenza kwawo khona ukuze kukhuthazeke ubudlelane obuhle phakathi kwamapolisa nabahlali; 20
- (g) ukudala ubuhlakani nabahlali ngeenjongo zokukhuthaza ubudlelane obulungileyo phakathi kwabahlali namapolisa;
- (h) ukulondoloza uvimba weenkukacha zemibutho yasekuhlaleni ethatha inxaxheba ebonakalayo kwinkalo yokwenziwa komsebenzi wamapolisa nemisebenzi enxulumene noko; 25
- (i) ukuvandlakanya impumelelo yokubonakala kwamapolisa ekwenzeni imisebenzi yawo;
- (j) ukuseka nokulondoloza iinkqubo zeenkukacha ezimanyanisiweyo khona ukuze kukwazeke ukubeka iliso impumelelo nocikizeko lwenkonzo yamapolisa nokubona iimfuno zephondo eli kwimisebenzi neendawo eziphambili ngokubaluleka; 30
- (k) ukuqhagamshelana noMphathiswa malunga nolwaphulo-mthetho nokwenziwa kwemisebenzi yamapolisa kwiphondo eli;
- (l) ukubhala phantsi izikhazelo ezimalunga nokusilela kwamapolisa emsebenzini wawo okanye ngokuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali; 35
- (m) ukwamkela nokuhlalutya iingxelo, kubandakanya ubungakanani nomgangatho wenkonzo yamapolisa;
- (n) ukuqokelela iinkukacha zobungcali malunga neziphumo zomsebenzi kwakunye nolwabiwo lwezancedisi; 40
- (o) ukubeka iziphumo eziya kusetyenziswa ekubekweni kweliso nasekuvandlakanyweni kwempumelelo nocikizeko lwenkonzo yamapolisa;
- (p) ukwamkela nokuhlalutya iinkukacha malunga nenkxaso-mali, inkcitho, izinto ezenziweyo neziphumo zomsebenzi wamapolisa;
- (q) ukuqwalasela ukukwazi ukwenza umsebenzi nobungakanani babasebenzi abakwinkonzo yamapolisa, iipatheni nokwenzekayo ngakwicala lendlela yokuziphatha kwamapolisa, ukufumanisa iingxaki kwinkqubo yesipolisa nokwenza izindululo kuMphathiswa malunga nokulungiswa kolo silelo; 45
- (r) ukucebisa iKhabhinethi yePhondo malunga neemfuno zePhondo eli ngakwicala lomsebenzi wamapolisa neendawo eziphambili ngokubaluleka njengoko kukhankanywa kwicandelo 23; 50
- (s) ukuqhagamshelana noMphathiswa nokwenza izindululo malunga neemfuno zephondo eli ngakwicala lomsebenzi wamapolisa neendawo eziphambili ngokubaluleka, njengoko zibekiwe yiKhabhinethi yePhondo;
- (t) ukuqwalasela indlela izidingo neemfuno eziphambili zamapolisa ezivezwe ngayo kumgaqonkqubo wesipolisa wesizwe; 55
- (u) ukuchonga nokujongana nemiba yolongamelo lwemiba yamapolisa engaqwalaselwayo ngamanye amaqumrhu ajongene nemicimbi yamapolisa;
- (v) ukunika ingxelo kwiPalamente yePhondo ngokuphathelele kwindlela eyenziwa ngayo imisebenzi equlathwe ngulo Mthetho 60
- (w) ukuqhuba uphando olunokuthi lube yimfuneko;

- (x) Ukusebenzisana nokuququzelela intsebenziswano phakathi kwabachaphazelekayo ukuze kuphunyezwe imisebenzi kuthotyelwe nemigaqo ekhankanywe kulo Mthetho;
- (y) ukongamela ukusebenza ngempumelelo kweButho looNobhala bePhondo;
- (z) ukubeka iliso kwizikhalazo ezithunyelwe yiKhabhinethi yePhondo kwi-Candelo loLawulo loPhando lwamaPolisa eliziMeleyo; 5
- (aa) ukuququzelela intsebenziswano enkulu phakathi kweSebe eli, iButho looNobhala boLuntu, iCandelo loLawulo loPhando lamaPolisa eliziMeleyo namapolisa ekwenziweni kwemisebenzi ebekwa ngulo Mthetho.

Ukubeka iliso, ukongamela nokuvandlakanya imisebenzi yamapolisa 10

4. (1) UMphathiswa wePhondo usenokuthi ngendlela ebekiweyo, agunyazise abasebenzi beSebe eli, kodwa oko kuxhomekeke kwicandelo 13(11) lomthetho *iSouth African Police Service Act, 1995* ukuba:

- (a) baye apho kukho uqhankqalazo, apho kwenzeka ulwaphulo-mthetho nakweziphithi na ezinye iindawo asebenza kuzo amapolisa bahlole ze babhale abakubonileyo malunga noqhagamshelwano phakathi kwamapolisa naba-hlali; 15
- (b) babeke iliso bavandlakanye ulwabiwo, ukuhanjiswa nokusetyenziswa kwabasebenzi nezinye izibonelelo zomisebenzi wamapolisa ;
- (c) bahlole izikhululo zamapolisa okanye amanye amasango amapolisa ngeenjongo: 20
 - (i) zokubeka iliso kwindlela yokuziphatha kwamapolisa;
 - (ii) ukongamela impumelelo nocikizeko lwenkonzo yamapolisa kuloo ndawo;
 - (iii) ukongamela ucikizeko nempumelelo yamapolisa ekuqwalaseleni izikhalazo zabahlali malunga nokusebenza kwamapolisa kwezo ndawo; 25
 - (iv) ezokuvandlakanya ubudlelane phakathi kwabahlali namapolisa;
 - (v) ukubeka iliso kwindlela ekuphathwa ngayo abantu abaseziseleni nemeko yabo ukuze kujongwe ukuba ngaba amapolisa ayawaqonda na amalungelo abantu ababanjiweyo akwicandelo 35(2) loMgaqosiseko. 30

(2) UMphathiswa wePhondo usenokugunyazisa nawuphi na omnye umntu, ngendlela ebekiweyo, ukuba enze le misebenzi ichazwe kwicandelwana (1) oya kuthi ahlawulwe umvuzo oya kugqitywa nguMphathiswa wePhondo emva kokuthethana noMphathiswa wePhondo ojongene nezimali.

(3) Ukuze akwazi ukwenza le misebenzi iqulathwe kulo Mthetho, uMphathiswa wePhondo okanye nawuphi na umsebenzi okanye umntu othe wagunyaziswa ngokwemiqathango yecandelwana (1) okanye (2): 35

- (a) usenokuthi acele afumane iinkcukacha neempepha eziphantsi kolawulo lwenkonzo yamapolisa okanye lwaloo masipala uchaphazelekayo;
- (b) usenokuthi angene kuso nasiphi na isakhiwo, amasango, inqwelo-mafutha okanye amasango aphantsi kolawulo lwenkonzo yamapolisa okanye lwakhe nawuphi na umasipala; kwaye 40
- (c) uselungelweni lokuba anikwe uncedo lilo naliphi na ilungu lenkonzo yamapolisa.

(4) Nayiphi na imbambano emalunga nesicelo, ukufikelela okanye uncedo oluchazwe kwicandelwana (3) kufuneka aziswe uMphathiswa wePhondo ngayo. 45

Izikhokelo malunga nokusekwa kwamaqonga ezobupolisa asekuhlaleni neebhodi

5. (1) Ukuze kukhuthazwe ubudlelane obububo phakathi kweNkonzo yesiPolisa yoMzantsi Afrika nabahlali, uMphathiswa wePhondo usenokuthi akhuphe izikhokelo malunga nokusekwa kwamaqonga ezobupolisa asekuhlaleni neebhodi ngokwemi-qathango yamacandelo 19(1), 20(1) nelama-21(1) loMthetho oyi*South African Police Service Act*, kubandakanya nezikhokelo ezimalunga: 50

- (a) neemfuneko zokufumanisa imibutho yasekuhlaleni efanelekileyo, amaziko namaqela achaphazelekayo anokuthi aseke iqonga lezamapolisa lasekuhlaleni okanye ibhodi; 55
- (b) neenkqubo zomisele lweqonga lezobupolisa lasekuhlaleni okanye ibhodi;
- (c) nesithuba sobulungu kwiqonga lezobupolisa lasekuhlaleni okanye ibhodi;
- (d) nolwamkelo lomgaqo siseko weqonga lezobupolisa lasekuhlaleni okanye ibhodi, nobuncinane omabuculathwe kuwo; kwakunye

- (e) nosombululo lweembambano oluphathelele kuyo nayiphi na imbambano malunga nokusekwa kweqonga lezobupolisa lasekuhlaleni okanye ibhodi.
- (2) INTloko yeSebe kufuneka—
- (a) ivandlakanye izinga lokusebenza kwamaqonga ezobupolisa asekuhlaleni neebhodi kwakunye nobudlelane phakathi kwamapolisa namaqonga ezobupolisa asekuhlaleni neebhodi; 5
- (b) izimase qho iintlanganiso zamaqonga ezobupolisa asekuhlaleni neebhodi ukuze ikhuthaze iinjongo zecandelo 18(1) lomthetho i*South African Police Service Act, 1995*; yaye
- (c) qho ngonyaka kufuneka yenzele uMphathiswa wePhondo ingxelo ngoko ikufumanisileyo ngezinto ezikhankanywe kwimihlathi (a) no-(b). . 10
- (3) INTloko yeSebe isenokuthi iwancedise amaqonga ezobupolisa asekuhlaleni neebhodi ngokuthi ibonelele ngenkxasomali, ngoqeqesho nangezibonelelo.

Uqinisekiso nenkxaso koosolomzi beengingqi

6. (1) Nawuphi na umbutho— 15
- (a) ongasebenzeli nzuzo koko usenza umsebenzi wobuvolontiya;
- (b) onamalungu angabahlali, abaqeshi okanye abanini bezinto ezingahambisekiyo okanye abanomdla koku kwingingqi leyo osebenza kuyo; kunye nalowo
- (c) unjongo yawo ikukukhusela amalungu awo, izinto zawo ezingahambisekiyo nezinye izinto eziziimpahla zawo, kulwaphulo-mthetho nezinye iinkxalabo zawo ngokhuseleko kuloo ngingqi isebenza kuyo; 20
- usenokuthi ufake isicelo kuMphathiswa wePhondo, ngefomu emiselweyo sokuba uqinisekise njengongusolomzi wengingqi.
- (2) UMphathiswa wePhondo— 25
- (a) makacele igosa lezobupolisa eliphethe isitishi samapolisa kuloo ngingqi ukuyo loo mbutho; yaye
- (b) angacela nawuphi na omnye umbutho, ukuba, kwixesha elibekiweyo, uphefumle uvakalisa izimvo zawo, malunga nesicelo eso sokunikwa igunya kombutho lowo ukuba ube lisolomzi kuloo ngingqi. 30
- (3) Ukuba ngaba ipolisa okanye umbutho awuphefumlanga ngeloo xesha libekiweyo elichazwe kwicandelwana (2), ipolisa okanye umbutho uthathwa njengokuba awunaluvo ekuvunyelweni nasekunikweni igunya kombutho.
- (4) UMphathiswa wePhondo usenokuthi afune ezinye iinkcukacha kumbutho ezixhasa eso sicelo. 35
- (5) UMphathiswa wePhondo usenokuthi awuqinisekise umbutho njengosolomzi wengingqi asakuba ethe wasiqwalasela, ngexesha elibekiweyo—
- (a) isicelo;
- (b) nazo naziphi na ezinye iinkcukacha ezithe zanikwa ngumfaki-sicelo; 40
- (c) nazo naziphi na ezinye iinkcukacha ezingeniswe lipolisa okanye umbutho njengoko kuchaziwe kwicandelwana (2),
- (d) kwanokuba ngaba—
- umbutho izinto ozenzayo uzenza ngokwemigangatho ebekiweyo ephathelele— 45
- (i) kwimiqathango yobulungu kwisolomzi lengingqi neyokuziphatha kwamalungu;
- (ii) kwizigqeba zesolomzi lengingqi;
- (iii) kulawulo nokusetyenziswa kweemali zesolomzi lengingqi;
- (iv) umbutho usebenza ngobuhlakani neqonga lezobupolisa lasekuhlaleni; 50
- nokuba ngaba
- (6) Ukuba ngaba uMphathiswa wePhondo ugqiba kwelokuba—
- (a) awuqinisekise umbutho lowo njengosolomzi wengingqi, kufuneka ukuba uMphathiswa wePhondo—
- (i) afake igama lesolomzi lengingqi elo kwirejista yoosolomzi bengingqi; 55
- (ii) akhuphe isiqinisekiso soqinisekiso olo ngegama lesolomzi elo echaza isithuba soqinisekiso olo, ingingqi elisebenza kuyo kunye neminye imiqathango yoqinisekiso; kanaanjalo
- (iii) alithumelele isolomzi lengingqi elo eso siqinisekiso, athumelele neqonga lezobupolisa lasekuhlaleni kunye nepolisa elongamelelo iofisi yamapolisa kuloo ndawo okanye; 60

- (b) kwelokuba angaliqinisekisi isolomzi lengingqi elo, uMphathiswa wePhondo kufuneka alazise ngento ebhaliweyo ngesigqibo sakhe eso, anike nezizathu zaso.
- (7) UMphathiswa wePhondo kufuneka ukuba qho ngonyaka apapashe uluhlu loosolomzi beengingqi *kwiGazethi yePhondo*. 5
- (8) UMphathiswa wePhondo usenokuthi abonelele isolomzi lengingqi ngenkxaso noqeqesho okanye nangezibonelelo.
- (9) UMphathiswa wePhondo kufuneka agcine irejista yoosolomzi beengingqi ekufuneka bakwazi ukufumaneka kuye nawuphi na umntu ochaphazelekayo onqwenela ukubahlola, asakuba enze isicelo sokwenza oko waza wayihlawula nentlawulo ebekiweyo. 10
- (10) Isolomzi lengingqi kufuneka:
- (a) liluhlaziye uqinisekiso lwalo qho emva kweminyaka emibini ngendlela ebekiweyo, kwaye ke ukuba lithe lasilela ukukwenza oko, luya kuphelelwa olo qinisekiso; 15
- (b) linike uMphathiswa wePhondo ingxelo ngendlela ebekiweyo lingadlulanga futhi elo xesha libekelwe oko malunga:
- (i) neenkxalabo zokhuseleko nezehlo zolwaphulo-mthetho kuloo ndawo lisebenza kuyo isolomzi lengingqi elo;
- (ii) nezinto ezenziweyo lisolomzi; kunye 20
- (iii) nawo nawuphi na umba omiselweyo ofunwa nguMphathiswa wePhondo ekuhloleni iimfuno zomsebenzi wamapolisa kunye nezinto eziphambili ngokubaluleka kwakunye nempumelelo nocikizeko lwenkonzo yamapolisa;
- (c) ligcine amarekhodi ezinto ezikhankanywe kumhlathi (b)(i) ukuya-(iii); 25
nokuba
- (d) la marekhodi akhankanywe kumhlathi (d) liwagcine isithuba seminyaka emihlanu ubuncinane ukusukela kumhla wokubhalwa kwawo.
- (11) Umsebenzi weSebe eli ogunyaziswe nguMphathiswa wePhondo ufikelela kuwo nawaphi na amarekhodi agcinwe lisolomzi lengingqi okanye egameni lalo kwaye 30 usenokuthi awahlole, athathe izicatshulwa kuwo okanye enze iikopi ukuze afumane ezinye iinkcukacha ezizezinye ngokumalunga nengxelo ethe yenziwa ngokwemiqathango yecandelwana (8)(b) nezokuqinisekisa ukuba ngaba isolomzi lengingqi elo liyayithobela na imigangatho ekhankanywe kwicandelwana (5)(d) no (e).
- (12) Ukuba ngaba isolomzi lengingqi liyasilela ekuyithobeleni le migangatho 35 ichazwe ku-(5)(d) no-(e) okanye necandelwana (10)(b), (c) okanye (d), uMphathiswa wePhondo usenokuthi, emva kokuba elinike inothi ebhaliweyo ayalele isolomzi ukuba lithobele amacandelo omthetho kwixesha okanye kwisithuba esikhankanywe kweso saziso.
- (13) Ukuba ngaba isolomzi lengingqi liyasilela ukwenza oko likuyalelwe kwisaziso 40 ngexesha elikhankanywe kweso saziso, uMphathiswa wePhondo usenokuthi, emva kokuba elinike isaziso esibhaliweyo isolomzi lengingqi elo, alurhoxise uqinisekiso lwelo solomzi lengingqi.

Uvimba weenkukacha nobuhlakani nemibutho yasekuhlaleni

7. (1) Ngeenjongo zokukhuthaza ubudlelane obuphilileyo phakathi kwamapolisa nabahlali kweli phondo, uMphathiswa wePhondo usenokuthi— 45
- (a) agcine uvimba weenkukacha zemibutho yasekuhlaleni ethatha inxaxheba kwinkalo yomsebenzi wamapolisa, kwinkxaso yamakhoba olwaphulo-mthetho, kukhuselo lolwaphulomthetho okanye kukhuselo loluntu;
- (b) ayincedise imibutho yasekuhlaleni ekulo vimba weenkukacha ngokuthi ayinike inkxaso, ulwazi, uqeqesho okanye kunye nezibonelelo; 50
- (c) ethathele ingqalelo nawo nawuphi na umthetho olawula ukunikwa kwee-khontrakthi liPhondo, ngovumelwano noMphathiswa wePhondo owongamele ezemali, angene kwikhontrakthi naye nabani na yokuba aqulunqe, anike inkxaso-mali okanye aqhube nalo naliphi na ilinge labahlali elijoliswe kukhuseleko okanye kubo nabuphi na ubuhlakani obujoliswe ekufezekiseni iinjongo zalo Mthetho; 55
- (d) Aququzelele ukusungulwa kwecandelo elilodwa elijongene neentlobo ezithile zolwaphulo-mthetho
- (2) Umbutho wasekuhlaleni okuvimba weenkukacha kufuneka wenze ingxelo 60 kwiNtloko yeSebe, ngefomu ebekiweyo, ngazo naziphi na izinto eziphathelele kukhuseleko neziganeko zolwaphulo-mthetho ezithe zaqwalaselwa nguloo mbutho.

Inkqubo yeenkcukacha emanyanisiweyo

8. (1) Ngeenjongo zokubeka iliso kucikizeko nempumelelo yamapolisa neyokuqinisekisa ngeemfuno zephondo eli kumsebenzi wamapolisa nangezinto eziphambili ngokubaluleka, uMphathiswa wePhondo kufuneka aseke alondolozwe inkqubo yeenkcukacha emanyanisiweyo. 5

(2) INtloko yeSebe mayigunyanzise abasebenzi beSebe eli ukuba baqokelele iinkcukacha balawule kwaye balondolozwe le nkqubo yeenkcukacha imanyanisiweyo.

(3) UMphathiswa wePhondo usenokuthi adlane iindlebe neButho looNobhala boLuntu neButho looNobhala bePhondo malunga nenkqubo yeenkcukacha emanyanisiweyo ngeenjongo zokuqinisekisa umanyaniso lweenkcukacha kunye nazo naziphi na izikhokelo zokhuseleko nezixhobo zokubekwa kweliso ezithe zaqulunqwa liButho looNobhala bePhondo, njengoko kuchazwa kwicandelo 17(2) loMthetho oyi*Civilian Secretariat for Police Service Act, 2011*. 10

(4) Inkqubo yeenkcukacha kufuneka ukuba ibonelele—

(a) ngoqokelelo oludityanisiweyo lweenkcukacha kwizigqeba zikarhulumente ezinxulumene noko, kubaniki beenkonzo zokhuseleko ababhaliswe kulandelwa imiqathango yecandelwana (6), kwinkonzo yamapolisa nakwamanye amaziko anxulumene nomsebenzi wamapolisa; 15

(b) uhlalutyo lweenkcukacha;

(c) ukubhalwa kweenkxalabo zabahlali ngezokhuseleko kwiphondo eli; 20

(d) ukudityaniswa kweenkcukacha ezikhankanywe kumacandelo 6(10)(b), 7(2), and 8(7)(a); kwaye

(e) uhlalutyo lwenani nohlobo lwezikhalazo eziphathelele kwezomsebenzi wamapolisa ezifunyenwe nguNozikhhalazo ngokwemiqathango yecandelo 26, zizigqeba zikarhulumente, amaqonga ezobupolisa asekuhlaleni nawo nawaphi na amanye amaziko. 25

(5) INtloko yePhondo idlulisele iinkcukacha eziphathelele kulwaphulo-mthetho ezithe zafunyanwa ngenkqubo yeenkcukacha ngabasebenzi beSebe eli kuMkhomishinala wePhondo.

(6) UMphathiswa wePhondo angacela umniki wenkonzo yokhuseleko osebenza kwiphondo eli ukuba abhalise ngendlela ebekiweyo kwicandelo 7. 30

(7) Umniki wenkonzo yokhuseleko kufuneka ukuba:

(a) enzele uMphathiswa wePhondo ingxelo ngendlela ebekiweyo lingadlulanga futhi ixesha elimiselwe oko, malunga—

(i) neenkxalabo zokhuseleko nezehlo zolwaphulo-mthetho kuloo ndawo asebenza kuyo umniki wenkonzo lowo; 35

(ii) nemipu elahlekileyo okanye ebiweyo ngexesha ibisezandleni zomniki wenkonzo yokhuseleko; kunye

(iii) nawo nawuphi na umba omiselweyo ofunwa nguMphathiswa wePhondo ekuqwalaseleni iimfuno zomsebenzi wamapolisa nezinto eziphambili ngokubaluleka kwakunye nokubeka esweni impumelelo nocikizeko lwenkonzo yamapolisa; kunye 40

(b) agcine amarekhodi emiba ekhankanywe kumhlathi (a)(i) ukuya ku-(iii); kwaye

(c) la marekhodi akhankanywe kumhlathi (b) awagcine isithuba seminyaka emihlanu ubuncinane ukusukela kumhla wokubhalwa kwawo. 45

(8) UMphathiswa wePhondo usenokukhulula nawuphi na umniki weenkonzo zokhuseleko kwizibophelelo ezichazwe kwicandelwana (7)(a), (b) nakwicandelwana (c).

(9) Umsebenzi weSebe eli ogunyaziswe nguMphathiswa wePhondo ufikelela kuwo nawaphi na amarekhodi agciniweyo omniki wenkonzo yokhuseleko ngokwemiqathango yecandelwana (7)(b), kwaye usenokuthi awahlole, athathe izicatshulwa kuwo okanye enze iikopi ngeenjongo zokuba afumane ezinye iinkcukacha ezizezinye ngokumalunga nengxelo ethe yenziwa ngokwemiqathango yecandelwana (7)(a). 50

Ukugcinwa kweenkcukacha eziyimfihlo nokuchazwa kwazo

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9. (1) Akukho zinkcukacha eziya kuthi, emva kokuba ziqokelelelwe lo Mthetho nguMphathiswa wePhondo, iNtloko yeSebe okanye ngumsebenzi okanye nguloo mntu ugunyazisiweyo ngokwalo Mthetho ezimalunga—

(a) nomntu;

(b) usapho;

60

- (c) ishishini; okanye
 (d) umbutho wabucala, zichazelwe omnye umntu, noxa oko kuya kuthathela ingqalelo iinkcukacha ngorhulumente namacandelwana (2), no- (3).
- (2) Kuxhomekeke kwicandelo 8(5), ulwazi olukhankanywe kwicandelwana (1) 5 lungachazelwa—
- (a) naliphi iziko likarhulumente—
- (i) ukulungiselela umsebenzi omawenziwe ngokwalo Mthetho;
 (ii) ngokomyalelo ovela kuMphathiswa wePhondo;
 (iii) ukuba ngaba igama, idilesi okanye naluphi na uhlobo abizwa ngalo 10 umntu, ishishini losapho, okanye umbutho wabucala lisusiwe;
 (iv) ukuba ngaba ukuchazwa kwezo nkcukacha akuzi kumbeka mngciphekweni wokwenzakala okanye acalulwe okanye kubekwe emngciphekweni ukhuseleko lwepropati yakhe; yaye
 (v) UMphathiswa wePhondo wanelisekile ukuba olo lwazi luya kuhlala 15 luyimfihlo; okanye
- (b) lungachazwa nakumntu lowo ebelufunyenwe kuye okanye ummeli wakhe;
 (c) naxa kufunyenwe imvume ebhaliweyo yaloo mntu ebelufunyenwe kuye okanye ummeli wakhe;
 (d) apho ezi nkcukacha sele zifikelele eluntwini, kumashishini osapho okanye 20 kwimibutho yabucala echaphazelekayo; okanye
 (e) ukuba oko kubonwa kuyimfuneko kwingalo yomthetho.
- (3) Noxa kukho imiqathango yokufihlwa kolwazi emayithotyelwe nguMphathiswa wePhondo, iNtloko yeSebe kunye nabasebenzi okanye abantu, abagunyazisiweyo, uNozikhhalazo unelungelo lokufikelela kwiinkcukacha okanye aboniswe amaxwebhu 25 ekubhekiswe kuwo kwicandelwana (1) nalawo akuMphathiswa wePhondo anokuthi awafune xa eqwalasela isikhhalazo somntu.
- (4) UMphathiswa wePhondo, iNtloko yeSebe kunye naye wonke umsebenzi okanye umntu ogunyazisiweyo-
- (a) mabathabathe amanyathelo ayimfuneko ukuqinisekisa ukuba— 30
- (i) iinkcukacha eziqokelelelwe lo Mthetho ziyinyani, zezamvanje yaye ziphelele kangangoko;
 (ii) ezo nkcukacha ziyakhuselwa; yaye
 (iii) akukho mntu ungenalungelo lakufikelela kuzo ofanele ukuba azibone; 35 yaye
- (b) abanakurekhoda okanye basebenze ngolu lwazi ngaphandle kokwenza umsebenzi ohambelana nalo Mthetho nangokweli candelo.
- (5) UMphathiswa wePhondo makaqinisekise ukuba xa ezi nkcukacha zikwicandelwana (1) ezibonakalayo kwirekhodi lesebe ziyakhuselwa xa ezo rekhodi 40 zilahlwa.

Ukusekwa kweOfisi kaNozikhhalazo wezaMapolisa wePhondo leNtshona Koloni

- 10.** (1) Kusekwe iofisi kweli Sebe ebizwa ngokuba yiOfisi kaNozikhhalazo zezaMapolisa wePhondo leNtshona Koloni.
- (2) Abasebenzi ekufuneka ukuba basebenze ngokufanelekileyo kwimisebenzi kaNozikhhalazo baqeshwa ngokwemiqathango yomthetho oyi *Public Service Act*, 1994. 45
- (3) AMapolisa kunye nabasebenzi beSebe kunye naso nasiphi na isigqeba sikarhulumente kufuneka zisebenzisane yaye zancedise uNozikhhalazo neofisi yakhe ekwenzeni kwayo umsebenzi wayo ngokwemiqathango yalo Mthetho ebandakanya ukuba bavunyelwe ukuba bangene nakusiphi na isakhiwo, isithuthi, ipropati, kwiinkcukacha okanye uxwebhu olukwiziko likarhulumente elichaphazelekayo. 50

Ukubekwa kukaNozikhhalazo

- 11.** (1) INkulumbuso kufuneka ibeke umntu ofanelekileyo onamava kwingalo yomthetho okanye kwezobupolisa njengoNozikhhalazo wezaMapolisa weNtshona Koloni.
- (2) UNozikhhalazo ubekwa yiNkulumbuso— 55
- (a) isakuba ithethene noMphathiswa wePhondo, noMkhomishinala wePhondo, neentloko zesigqeba seenkonzo zamapolisa kamasipala;

- (b) ukuba ngaba iKomiti eSisigxina ejongene nezamapolisa ePalamente iyakwamkela oko kubekwa kwakhe ngokuthi yamkele isigqibo ilandela imigaqo yayo.
- (3) Umvuzo nemigaqo yokusebenza kaNozikhhalazo kufuneka ibekwe yiNkulumbuso isebenzisana noMphathiswa wePhondo ophethe imicimbi yezimali. 5
- (4) UNozikhhalazo uqeshwa iminyaka engekho ngaphezu kwesihlanu nengenakuhlaziywa.
- (5) UNozikhhalazo angazibeka phantsi iintambo nanini na ngokuthi abhalele iNkulumbuso kwiinyanga ezintathu phambi kokuba ayeke ngaphandle kokuba iNkulumbuso iyamvumela ukuba angayeka phambi kwezo nyanga zintathu. 10
- (6) xa kukho isizathu esivakalayo, iNkulumbuso—
- (a) emva kokubonisana nabantu abakhankanywe kwicandelwana (2)(a); yaye
- (b) xa kuvume iKomiti esisigxina ejongene nezamapolisa ePalamente ngokwenza isigqibo ilandela imigaqo yayo;
- ingamsusa uNozikhhalazo emsebenzini wakhe xa engaziphethanga kakuhle, 15
engawenzi kakuhle umsebenzi wakhe, emva kokuba ethe wanikwa ithuba lokuba aziphendulele.
- (7) UNozikhhalazo usenokuthi ekwenzeni kwakhe imisebenzi yakhe, ancediswe ngumntu okanye ngumbutho anokuthi uNozikhhalazo afune inkonzo yakhe okanye yawo ngeenjongo zophando oluthile. 20

Izimali zeOfisi kaNozikhhalazo

- 12.** (1) Inkcitho yokusebenza kweofisi kaNozikhhalazo kufuneka iphume kwinkxasomali yeemali ezabiwe yiPalamente yePhondo ezabelwe lo msebenzi, ibe yinxalenye yevoti yolwabiwomali lweSebe.
- (2) Isebe kufuneka liqinisekise ukuba iofisi kaNozikhhalazo inabasebenzi abaza 25
kumncedisa ekwenzeni umsebenzi wakhe, lilandela imithetho elawula ukuqeshwa kwabasebenzi kwinkonzo karhulumente.

Ukunikwa kweNgxelo nguNozikhhalazo

- 13.** (1) UNozikhhalazo kufuneka anike ingxelo qho ngonyaka kuMphathiswa wePhondo ngemisebenzi yakhe kunyakamali odlulileyo, loo ngxelo kufuneka 30
ibandakanye—
- (a) inani lezikhhalazo eziphandiweyo;
- (b) inani lezikhhalazo ebeziyinkcitha-xesha nje ngokwecandelo 17(1);
- (c) iziphumo zophando kwizikhhalazo; kunye
- (d) nezindululo malunga nezikhhalazo eziphandiweyo. 35
- (2) UNozikhhalazo kufuneka anike ingxelo kuMphathiswa wePhondo ngemisebenzi yakhe elawulwa ngulo Mthetho xa ecelwe ukuba enze njalo nguMphathiswa wePhondo.
- (3) UMphathiswa wePhondo kufuneka andlale le ngxelo ichazwe kwicandelwana (1), kwiPalamente yePhondo.

Inkululeko nokungathathi cala kukaNozikhhalazo 40

- 14.** (1) UNozikhhalazo nabasebenzi bakaNozikhhalazo kufuneka basebenze ngokukhululeka yaye bangakhethi xa besenza umsebenzi wabo yaye kufuneka benze umsebenzi wabo ngokuthembeka, nokungoyiki, nokungacaluli bethobela uMgaqo-siseko nemithetho.
- (2) UNozikhhalazo nabasebenzi bakaNozikhhalazo mabangahambi bethetha ngazo 45
naziphi iinkcukacha abazifumeneyo ngokwemiqathango yalo Mthetho.

Imisebenzi kaNozikhhalazo

- 15.** (1) UNozikhhalazo—
- (a) kufuneka amkele aphande izikhhalazo ezingeniswe ngokwemiqathango yecandelo 12, ngokuphathelele kusilelo lwamapolisa okanye kukuqhawuka 50
kwamakhonkco obudlelwane phakathi kwamapolisa nabahlali; kananjalo
- (b) kufuneka enze neminye imisebenzi athe wayinikwa phantsi kwalo Mthetho.

Ukungeniswa kwezikhhalazo

16. (1) Nawuphi na umntu angangenisa isikhhalazo ngohlobo olubekiweyo nangefomu ebekiweyo kuNozikhhalazo malunga noko kubonwa kulusilelo lwamapolisa okanye ukuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali.
- (2) Naliphi na ilungu lePalamente yePhondo lisenokuthi lisakuba lazile ngesikhhalazo malunga noko kubonwa kulusilelo lwamapolisa okanye ukuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali bayo nayiphi na indawo, lisingenise eso sikhhalazo kuNozikhhalazo ukuze kuphandwe ngaso. 5
- (3) UNozikhhalazo kufuneka akhuphe izikhokelo uluntu olunokufikelela ezimalunga nenkqubo yokufakwa kwezikhhalazo nohlobo lwezikhhalazo kuNozikhhalazo. 10

Uphando lukaNozikhhalazo

17. (1) UNozikhhalazo usenokuthi xa kuthe kwangeniswa isikhhalazo esibonakala singeyomfeketho okanye singekokuchukusha nje, aqalise naluphi na uphando oluyimfuneko malunga noko kubonwa kulusilelo lwamapolisa okanye ukuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali bayo nayiphi na indawo. 15
- (2) Ukuba ilungu lePalamente yePhondo liwudlulisela kwi-ofisi kaNozikhhalazo lo mba ukhankanywe kwicandelwana (1), uNozikhhalazo kufuneka aqhube uphando ngalo mcimbi.
- (3) UNozikhhalazo usenokuthi, ngesaziso asikhuphe kwi*Gazethi yePhondo* azise ngaso nasiphi na isikhhalazo enza uphando ngaso, achaze ukuba nawuphi na umntu usenokuthi, lingadlulanga elo xesha lixelwe kwisaziso eso, avakalise izimvo zakhe e-ofisini ngento ebhaliweyo ngolo phando. 20
- (4) Ukuba ngaba uNozikhhalazo unoluvo lokuba isikhhalazo singaqwalaselwa bhetele nangokufanelekileyo sesinye isiphathamandla esinegunya, kubandakanya nesiphathamandla sesizwe, iqonga lezobupolisa lasekuhlaleni, iziko elimiselwe ngokomgaqo-siseko okanye nguMkhomishinala wePhondo, usenokuthi nanini na awudlulisele kwesinye isiphathamandla esinegunya eso loo mcimbi okanye inxenywe yawo ethile, kuqondakale ke kambe ukuba uNozikhhalazo usenokuthi asakuba ethethene neso siphathamandla awudlulisele kuso umcimbi waza awasambululeka, usenokuthi nanini na aluqale phantsi uphando ngawo. 25
- (5) UNozikhhalazo, emva kokuthethana nabasemagunyeni apho umba lowo usingiswe khona, kwanokuba umba lowo awunakusonjululwa na ngabasemagunyeni, angathi nangaliphi na ixesha aqalise uphando lwakhe ngaloo mba. 30
- (6) Ukuba ngaba uNozikhhalazo unoluvo lokuba isikhhalazo simandla kakhulu okanye singaqwalaselwa bhetele nangokufanelekileyo yikhomishoni yophando, usenokuthi enze isindululo kwiNkulumbuso yePhondo sokuba makumiselwe ikhomishoni yophando yokuba iqwalasele eso sikhhalazo ngokwemiqathango yoMthetho oyi*Western Cape Provincial Commissions Act, 1998* (uMthetho 10 ka-1998). 35
- (7) Ukuba uNozikhhalazo ugqiba ekusunguleni uphando, kufuneka ukuba uNozikhhalazo amazise umfaki-sikhhalazo ngeso sigqibo sakhe nangezizathu zaso. 40
- (8) Lusakuba lugqityiwe uphando kwaye ukuba ngaba umcimbi lowo awukwazanga ukusombululeka, uNozikhhalazo kufuneka angenise isindululo ngophando olo nangoko akufumanisileyo kuMphathiswa wePhondo, kwaye kufuneka amazise umfaki-sikhhalazo ukuba wenze njalo.
- (9) UMphathiswa wePhondo kufuneka enze isindululo kuMphathiswa ngaso nasiphi na isikhhalazo ekwenziwe uphando ngaso saza asakwazi ukusonjululwa nguNozikhhalazo, aze ke amazise umfaki-sikhhalazo ngeso sindululo asenzileyo. 45
- (10) Ukuthintela uphindaphindo olungeyomfuneko, uNozikhhalazo makaququzelele imisebenzi yakhe ngokwalo Mthetho athathele ingqalelo nemisebenzi yabanye oogunyaziwe abanegunya lokuphanda izikhhalazo ezichaphazela amapolisa. 50

Amagunya okwenza uphando namagosa

18. (1) Ngeenjongo zokwenziwa kophando uNozikhhalazo usenokuthi ayalele nawuphi na umntu ukuba makangenise inkcazo efunyelweyo okanye inkcazo eyenziwe uqinisekiso (*affirmation*), okanye ukuba aye kuvela phambi kwakhe aze kunika ubungqina, okanye ukuba makangenise naluphi na uxwebhu olukuye loo mntu okanye oluphantsi kolawulo lwakhe, olunento yokwenza nomcimbi lowo uphandwayo, kwaye ke usenokumfaka imibuzo lo mntu ngoxwebhu olo. 55

(2) UNozikhalazo usenokuthi acele inkcazo kuye nawuphi na umntu anemihlaba yokukrokrela ukuba unazo iinkcukacha ezinxulumene nomcimbi lowo kwenziwa uphando ngawo.

(3) UNozikhalazo usenokuthi abeke abantu abasebenza kwiofisi le njengamagosa enza uphando enza le misebenzi ethunyelwe kuwo ikumacandelwana (1) nele-(2). 5

(4) Igosa lophando elingasebenzeli urhulumente isigxina kufuneka libekwe ngokwemiqathango nangentlawulo ebekiweyo.

(5) UNozikhalazo okanye igosa lophando kufuneka linikwe isiqinisekiso sokubekwa esisayinwe nguNozikhalazo okanye egameni likaNozikhalazo xa ingumphandi, sisayiniwe yiNkulumbuso yePhondo xa inguNozikhalazo, ekuchazwayo kuso ukuba uligosa lophando elibekwe ngokwemiqathango yalo Mthetho. 10

(6) Igosa lophando kufuneka libe nesiqinisekiso apha kulo xa lisenza umsebenzi ngokwemiqathango yalo Mthetho.

Ukunikwa kwengxelo nguMkhomishinala wePhondo

19. (1) Ukuze uMphathiswa wePhondo akwazi ukongamela nokubeka iliso kucikizeko nempumelelo yenkonzo yamapolisa, kufuneka ukuba uMkhomishinala wePhondo, lingadlulanga yaye malunga nelo xesha libekiweyo, anike uMphathiswa wePhondo ingxelo ngento ebhaliweyo ngale miba ilandelayo: 15

(a) malunga neNkonzo yamaPolisa oMzantsi Afrika—

(i) inani lemipu enikwe amapolisa ethe yalahleka okanye yabiwa kunye neemeko ethe yalahleka okanye yabiwa phantsi kwazo; 20

(ii) inani labantu ababanjiweyo ngamapolisa, inani lamatyala aphaathelele koko kubanjwa athe adluliselwa enkundleni, inani labo bathe batshutshiswa nenani labo bathe bafunyaniswa benetyala;

(iii) ulwabiwo lohlahlo-mali nezibonelelo kwiinjongo zokhuseleko ezithile kwakunye neziphumo ezingqinisekayo ezithe zafikelelwa; 25

(iv) inani lamatyala oluleko namatyala olwaphulo-mthetho athe angeniswa malunga namapolisa, amagama ala mapolisa, inombolo zala matyala, izityholo abekwa zona neziphumo zaloo matyala;

(v) inani lezikhalazo neentlobo zazo ezo zikhalazo zithe zafunyanwa malunga nokunikwa kwenkonzo yesipolisa; 30

(vi) ulwazi lweenkcukacha-manani malunga nenani kunye neentlobo zolwaphulomthetho oluchazwe kumapolisa;

(vii) iimeko ezimalunga neziganeko apho ipolisa lithi lidubule ngompu, livumele ukuba kudutyulwe ngemipu okanye liyalele ukuba kudutyulwe; 35

(viii) inani lamatyala achazwe ngokwecandelo 29 lomthetho i- Independent Police Investigative Directorate Act kunye neziphumo zophando kuloo matyala; kunye

(ix) nayo nayiphi na imiba, njengoko inokuthi imiselwe, enxulumene nendlela yokuziphatha kwamapolisa, ucikizeko nempumelelo okanye nobudlelane phakathi kwamapolisa nabahlali. 40

(b) kwinkonzo yamapolisa kamasipala, makunikwe ingxelo malunga nenani labantu ababanjwe ngamapolisa kamasipala, inani lamatyala ahambelana noko kubanjwa athe adluliselwa ezinkundleni, amatyala ekuthe kwakhutshwa isigwebo kuwo nenani labantu ababanjiweyo ngaloo matyala. 45

(2) UMkhomishinala wePhondo kufuneka akhawuleze azise uMphathiswa wePhondo ngako nakuphi na ukufa kwamapolisa xa esenza imisebenzi yawo, ngako nakuphi na ukufa okuthe kwabangwa ngamapolisa xa esenza imisebenzi yawo, nangaye nawuphi na umntu othe wafa eselugcinweni lwamapolisa neemeko athe wafa phantsi kwazo. 50

(3) UMkhomishinala wePhondo kufuneka ukuba enzele iPalamente yePhondo ingxelo ngomsebenzi wamapolisanangemiba echazwe kweli candelo.

(4) UMphathiswa wePhondo usenocela uMkhomishinala wePhondo ukuba angenise iingxelo azifunayo ekwenzeni umsebenzi wakhe ngokwemiqathango yalo Mthetho.

(5) IPalamente yePhondo isenokufuna ukuba uMkhomishinala wePhondo aye kuvela phambi kwayo okanye phambi kwayo nayiphi na kwiikomiti zayo aye kuphendula imibuzo. 55

(6) Ukuba uMkhomishinala wePhondo uyasilela ukuthobela nasiphi na isicelo sokunikeza iinkcukacha kuMphathiswa wePhondo, olo silelo kufuneka luye kuxelwa kwiPalamente yePhondo ekufuneka ukuba inyanzelise uMkhomishinala wePhondo ukuba aze kuvela kuyo ukuze aze kucacisa ukuba kutheni esilele ukuthobela isicelo eso. 60

Ukuphelelwa lithemba kweKhabhinethi yePhondo kuMkhomishinala wePhondo

20. Ukuba iKhabhinethi yePhondo ayisamthembanga uMkhomishinala wePhondo, iKhabhinethi yePhondo, ngaphandle kwakwiimeko ezizodwa, mayinyanzelise uMkhomishinala wePhondo ukuba aze kuvela kuyo okanye kwikomiti yamalungu ayo njengoko kuchaziwe kwicandelo 69(2) loMgaqosiseko weNtshona Koloni, 1997, phambi kokuqala ngeenkqubo zokumsusa okanye zokumsa kwelinye icandelo okanye phambi kokuthathwa kwamanyathelo oluleko ngakuMkhomishinala wePhondo. 5

Ukunikwa kwengxelo yintloko elawulayo yenkonzo yamapolisa kamasipala

21. (1) Ukuze uMphathiswa wePhondo akwazi ukubeka iliso kwimpumelelo yenkonzo yamapolisa kamasipala kunye nendlela aziphatha ngayo, kufuneka ukuba intloko elawulayo yenkonzo yamapolisa kamasipala, lingadlulanga elo xesha libekiweyo, anike uMphathiswa wePhondo ingxelo ngento ebhaliweyo yamapolisa kamasipala aphantsi kwakhe ngale miba ilandelayo—

(a) imiba echazwe kwicandelo 19(1)(a)(i) no-(iii) ukuya kuma ku-(ix) emalifundwe nezilungiso ezenziweyo neziyimfuneko; kunye; 15

(b) nenani labantu ababanjwe ngamapolisa kamasipala.

(2) Intloko elawulayo yenkonzo yamapolisa kamasipala kufuneka ikhawuleze yazise uMphathiswa wePhondo ngako nakuphi na ukufa kwamapolisa kamasipala xa esenza imisebenzi yawo, ngako nakuphi na ukufa okuthe kwabangwa ngamapolisa xa esenza imisebenzi yawo, nangabo nabaphi na abantu abathe bafa beselugcinweni lwamapolisa kamasipala neemeko abathe bafa phantsi kwazo. 20

(3) UMphathiswa wePhondo usenokucela intloko elawulayo yenkonzo yamapolisa kamasipala ukuba ingenise iingxelo azifunayo ekwenzeni umsebenzi wakhe ngokwemiqathango yalo Mthetho.

(4) IPalamente yePhondo isenokuthi makacele intloko elawulayo yamapolisa kamasipala ukuba iye kuvela phambi kwakhe okanye phambi kwayo nayiphi na kwiikomiti zakhe aye kuphendula imibuzo. 25

(5) Ukuba uMphathiswa wePhondo wanelisekile ukuba amapolisa kamasipala akathobelanga imiqathango emiselwe inkonzo kamasipala okanye imigangatho yesizwe, uMphathiswa wePhondo unokuthatha amanyathelo afanelekileyo elandela icandelo 64N, lomthetho i*South African Police Service Act*, 1995. 30

Ukurekhodwa kwezicelo nezindululo

22. (1) UMphathiswa wePhondo kufuneka agcine irejista apho arekhoda ezi zinto zilandelayo—

(a) nayiphi na ingxelo ebhaliweyo okanye isindululo esenziwe kuMphathiswa ngokwalo Mthetho; 35

(b) nasiphi isicelo seenkcukacha esibhaliweyo esinikwe uMkhomishinala wePhondo okanye intloko yesigqeba samapolisa kamasipala kulandelwa lo Mthetho; kunye

(c) naluphi na uluvo olubhaliweyo okanye impendulo efunyenwe kuMphathiswa, uMkhomishinala wePhondo okanye intloko yesigqeba samapolisa kamasipala malunga nengxelo okanye isindululo ekubhekiswe kuso kumhlathi (a) okanye isicelo ekubhekiswe kuso kumhlathi (b). 40

(2) UMphathiswa wePhondo kufuneka qho ngonyaka andlale ikopi eqinisekiswa ngokusemthethweni yerejista kwiPalamente yePhondo. 45

Iimfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka

23. (1) UMphathiswa wePhondo kufuneka ukuba qho ngonyaka enzele iPalamente yePhondo ingxelo ngemisebenzi yakhe ngokwemiqathango yecandelo 3 lalo Mthetho kwakunye noko akufumanisileyo ngayo.

(2) IPalamente yePhondo kufuneka ukuba le ngxelo ikhankanywe kwicandelwana (1) iyidlulisela kwiKomiti yayo eSisigxina ejongene nomsebenzi wamapolisa. 50

(3) Le Komiti iSisigxina kufuneka iyiqwalasele le ngxelo kwaye ixoxe ngayo kwaye isenokubamba iindibano zoluntu zovakaliso lwezimvo lwabo bachaphazelekayo abanomdla kule ngxelo.

(4) IPalamente yePhondo kufuneka imnike uMkhomishinala wePhondo kunye neentloko zesigqeba samapolisa kamasipala ithuba lokuba aphenndule ngoko 55

kuqulathwe yingxelo leyo, kwiinkcazelo ezenziweyo nangazo naziphi na izimvo ezithe zavakaliswa.

(5) UMphathiswa wePhondo kufuneka akuthathele ingqalelo oko kuthe kwafunyaniswa yikomiti esisigxina kwakunye nezimvo ezivakalisileyo xa equlunqa isindululo malunga neemfuno zomsebenzi wamapolisa nezinto eziphambili ngokubaluleka kwiphondo eli eziza kuthi zifune ukwamkelwa yiKhabhinethi yePhondo. 5

(6) Kufuneka uMphathiswa wePhondo angenise kuMphathiswa wezaMapolisa ezi mfuno nezi ndawo ziphambili ngokubaluleka zephondo eli ezivunyiweyo khona ukuze zize kubandakanywa xa kusenziwa izicwangciso zomsebenzi wamapolisa zephondo, njengoko kuchaziwe kwicandelo 206(1) loMgaqo-siseko. 10

Intsebenziswano nobudlelane bamanqanaba oburhulumente

24. (1) UMphathiswa wePhondo, iNtloko yeSebe, abantu abagunyazisayo nabasebenzi beSebe, abaphandi kunye noNozikhhalazo kufuneka benze imisebenzi yabo phantsi kwalo Mthetho ngokwezimiselo zoburhulumente bentsebenziswano nobudlelane bamanqanaba oburhulumente njengoko ziqulathiwe kwiSahluko 3 soMgaqo-siseko. 15

(2) UMphathiswa wePhondo usenokuthi enze izindululo malunga namapolisa nemicimbi yezamapolisa okanye angene kwisivumelwano ngeenjongo zokuqinisa intsebenziswano phakathi kwamaqela athabatha inxaxheba, njengoko kuchaziwe kwicandelo 6(1)(g) loMthetho oyi*Civilian Secretariat for Police Service Act*, 2011. 20

(3) UMphathiswa wePhondo makasebenzisane yaye athethane neButho looNobhala boLuntu nooNobhala bePhondo malunga nayo nayiphi na imicimbi emalunga nenkxaso kwimisebenzi yolawulo nentsebenziswano kwimisebenzi yabo ukuphepha ukuphindwa komsebenzi omnye okungeyomfuneko.

IKomiti yePhondo yeeNgcebiso ngoKhuseleko 25

25. (1) Kumiselwa iKomiti yePhondo yeeNgcebiso ngoKhuseleko.

(2) Imisebenzi yale Komiti kucebisa uMphathiswa wePhondo xa ecelile nokwenza izindululo malunga:

(a) nemisebenzi yePhondo ngokwemiqathango yeSahluko 11 soMgaqo-siseko neSahluko 8 soMgaqo-siseko weNtshona Koloni, 1997; 30

(b) nezicwangciso eziliqili, imigaqo-nkqubo, uhlahlo-mali kunye nezicwangciso zokwenziwa komsebenzi zonyaka ngokuphathelele kwimisebenzi eyenziwa ngokwemiqathango yeSahluko 11 soMgaqo-siseko neyeSahluko 8 soMgaqo-siseko weNtshona Koloni, 1997;

(c) nemigaqo yalo Mthetho enokuthi ifunke; okanye 35

(d) nayo nayiphi na eminye imicimbi esukela ekusetyenzisweni kwalo Mthetho.

Amalungu eKomiti

26. (1) Amalungu eKomiti anyulwa nguMphathiswa wePhondo kwaye kufuneka abandakanye—

(a) ummeli osuka kwicandelo loshishino; 40

(b) ilungu ezijajini, kumbutho weejaji oyi*Cape Bar* okanye kumbutho wamaqgwetha entshona Koloni oyi*Cape Law Society*;

(c) ilungu leziko lemfundo ephakamileyo elikwinqanaba eliphezulu nelinamava kwinkalo yezifundo zolwaphulo-mthetho, i*Criminology*;

(d) ummeli osuka kumbutho ongengowakwarhulumente onenxaxheba kumsebenzi wamapolisa okanye ezinxulumene nawo; 45

(e) iNtloko yeSebe njengelungu *elingene ngokwesikhundla salo*.

(2) Abasebenzi beSebe abagunyaziswe nguMphathiswa wePhondo mababonelele ngenkxaso yolawulo nemisebenzi yobunobhalane kwikomiti.

(3) La malungu eKomiti akhankanywe kumacandelwana (1)(a) ukuya ku-(d), aya kunyulwa kuphela emva kokuba uMphathiswa wePhondo, ethe, ngenothisi kwi*Gazethi yePhondo* nakulo naliphi na ijelo anokulibona lifanelekile, wamema onke amaqela achaphazelekayo ukuba, lingadlulanga elo xesha likhankanywe kwisaziso eso, angenise amagama abantu abasempilweni befanelekile ukuba banganyulwa. 50

Isithuba sokuba sezikhundleni samalungu eBhodi nemiqathango yale nkonzo

- 27.** (1) Ilungu, ngaphandle kwelungu *elinobulungu ngenxa yesikhundla salo*, linyulelwa isithuba seminyaka emithathu enokuthi ihlaziye kube kanye.
- (2) Isikhundla selungu siyavuleka ukuba—
- (a) ilungu liye langabikho kwiintlanganiso zeKomiti ezimbini zilandelelana ngaphandle kwemvume kasihlalo weKomiti; 5
 - (b) ilungu liye lazicelela ukuyeka ebulungwini ngento ebhaliweyo ethunyelwe kusihlalo weKomiti;
 - (c) ilungu liye lasuswa eKomitini phantsi kwecandelwana (3); okanye
 - (d) lithe labhubha ilungu elo. 10
- (3) UMphathiswa wePhondo usenokuthi alisuse naliphi na ilungu leKomiti, ukuba ngaba ngokokubona kwakhe uMphathiswa wePhondo kukho izizathu ngokwaneleyo zokuba lisuswe ilungu elo ebulungwini.
- (4) UMphathiswa wePhondo kufuneka asivale isikhewu esiye savuleka eKomitini phantsi kwecandelwana (2) ngokwemiqathango yamacandelo 26(1) nele-(3). 15
- (5) Ilungu elithe lanyulwa ngenxa yecandelwana (4) liba sesikhundleni sobulungu ngeso sithuba besisele kwisithuba elalinyulelwe sona eli lungu limkileyo.
- (6) UMphathiswa wePhondo kufuneka abeke ilungu leKomiti njengosihlalo.
- (7) UMphathiswa wePhondo usenokuthi abeke nayiphi na eminye imiqathango yokunyulwa engekho apha kweli candelo. 20
- (8) La malungu eKomiti akhankanywe kwicandelo 21(1)(a) ukuya ku-(d) asenokuthi ahlawulwe izithabathaba, kwaye abuyekwezwe nangeenkitho angene kuzo ngokolo hlobo lubekwe nguMphathiswa wePhondo ngemvamo noMphathiswa wePhondo osingathe ezemali.

Iintlanganiso zeKomiti 25

- 28.** (1) IKomiti isenokuthi, ngokuvunyelwa nguMphathiswa wePhondo, yenze imithetho ephathelele ekuthathweni kwezigqibo yiBhodi, ukuhlalwa kweentlanganiso nenkqubo yeentlanganiso zeKomiti.
- (2) Iintlanganiso zeKomiti kufuneka zihlalwe ngelo xesha nakuloo ndawo anokuthi aqgibe kuyo usihlalo weKomiti ehamba ngokwemithetho yeKomiti. 30

Amabhaso

- 29.** (1) UMphathiswa wePhondo usenokuthi, elandela imiqathango ebekiweyo, akhuphe amabhaso (anokubandakanya namabhaso ayimali) aya kuye nawuphi na umhlali okanye omnye umntu othe wabonakalisa inkonzo eqaqambileyo ekufezekiseni iinjongo zalo Mthetho. 35
- (2) UMphathiswa wePhondo makagcine irejista yamabhaso akhutshwe kulandelwa icandelwana (1) yaye anike ingxelo qho ngonyaka kwiPalamente yePhondo.

Izigqitho

- 30.** (1) Nawuphi na umntu—
- (a) ngaphandle kwesizathu, umntu owalayo okanye ongaphumelelanga ukuthobela phantsi kwecandelo 18(1) okanye (2) okanye ale ukuphendula nawuphi umbuzo awubuziweyo ngokwemiqathango yeli candelo okanye anike impendulo ayaziyo ukuba asiyonyani; okanye 40
 - (b) othintela okanye ophazamisana noNozikalazo okanye igosa lophando okanye elikuloo msebenzi ekwenzeni umsebenzi wakhe ngokwamagunya awanikwa ngulo Mthetho, 45
- unetyala lesigqitho kwaye usenokuwiselwa isigwebo sefayini okanye sokuvallelwa entolongweni isithuba esingadlulanga kwiminyaka emithathu okanye zombini.
- (2) Nabani na owaphula imiqathango yecandelo 9(1) okanye 9(4)(b) unetyala lesigqitho kwaye usenokuwiselwa isigwebo sefayini okanye sokuvallelwa entolongweni isithuba esingadlulanga kwiminyaka emibini okanye zombini. 50

Imigaqo

- 31. UMphathiswa wePhondo usenokwenza imigaqo enxulumene—**
- (a) nayo nayphi na imicimbi eyimfuneko okanye egunyazisa ukwenziwa kwemigaqo ngokwalo Mthetho
 - (b) imisebenzi yoMphathiswa wePhondo okanye yeofisi kaNozikhhalazo; 5
 - (c) ukwamkela, ukuqwalasela nokuphanda ngezikhhalazo ezingenisweyo ngokwemiqathango yalo Mthetho;
 - (d) indlela yokuqhuba uphando lwezikhhalazo ezingeniswe kulandelwa imiqathango yecandelo 16;
 - (e) ubume kunye nenkqubo yokukhokela abantu ngendlela emakuqhutywe ngayo elandela imiqathango yecandelo 18(1) okanye acele ingcaciso elandela imiqathango yecandelo 18(2); 10
 - (f) iimfuneko zokungeniswa kwengxelo nguMkhomishinala wePhondo okanye intloko elawulayo yenkonzo yamapolisa kamasipala ngokwemiqathango yalo Mthetho; 15
 - (g) indlela ecwangciswa ngayo ingxelo efunekayo ngokwemiqathango yalo Mthetho;
 - (h) ukuqulunqwa kweziphumo eziphambili ekujoliswa kuzo neentlobo zeenkukacha zophando lobungcali ekufuneka zibandakanyiwe kwengxelo efunekayo ngokwemiqathango yalo Mthetho; 20
 - (i) amanyathelo okuqinisekisa ukungadizwa kweenkcukacha eziyindaba yakwamkhozi, ulawulo kunye nofikeleleko leenkukacha ezithe zafunyanwa ngenkqubo yeenkcukacha emanyanisiweyo;
 - (j) iimfuno zogunyanziso nezokuhluzwa kwabasebenzi, abaphandi naye nawuphi na umntu ogunyaziswe nguMphathiswa wePhondo ukuba enze imisebenzi ngokwemiqathango yalo Mthetho; okanye 25
 - (k) iziphumo ekujoliswe kuzo ekongameleni nasekuvandlakanyeni impumelelo nocikizeko lwenkonzo yamapolisa;
 - (l) nayiphi na eminye imicimbi efunekayo ekuze kucikizeke ukwenziwa kwemisebenzi emiswe ngokwemiqathango yalo Mthetho. 30

Ugunyaziso

- 32. (1) UMphathiswa wePhondo usenokuthi anikezele nawaphi na amagunya agunyaziswe ngawo okanye anikezele nawuphi na umsebenzi awunikiweyo ngokwemiqathango yalo Mthetho, ngaphandle kwamagunya okwenza imigaqo, kwiNtloko yeSebe. 35**
- (2) INtloko yeSebe inganikeza igunya enalo okanye icele ukwenzelwa nawuphi umsebenzi omele ukwenziwa yiyo ngokwalo Mthetho,—
- (a) kumsebenzi weSebe; okanye
 - (b) kulowo okwisikhundla esithile kwiSebe.
- (3) Unikezo lwegunya okanye umsebenzi ekubhekiswe kuwo kwicandelwana (1) okanye (2)—
- (a) kufuneka lubhalwe;
 - (b) kufuneka kubhalwe nemiqathango;
 - (c) lusenokurhoxiswa okanye lutshintshwe ngento ebhaliweyo nguMphathiswa wePhondo okanye iNtloko yeSebe, lowo ebelunikile; 45
 - (d) lungabandakanya igunya lokuvumela ukuba umsebenzi wenziwe nangabanye abantu okanye aphinde awunike nabanye loo msebenzi;
 - (e) alumthinteli uMphathiswa wePhondo okanye iNtloko yeSebe, ekusebenziseni amagunya okanye loo msebenzi uyimfuneko; yaye
 - (f) aluyekisi uMphathiswa wePhondo okanye iNtloko yeSebe, uxanduva lomsebenzi afanele ukuba uwenzile nathe wawudlulisela komnye umntu yaye alumqandi ukuba angawenzi ngokwakhe. 50
- (2) Ugunyaziso okanye unikezelo lomsebenzi ngokwemiqathango yecandelwana (1)—
- (a) uMphathiswa wePhondo ekusebenziseni amagunya okanye loo msebenzi uyimfuneko; 55
 - (b) lusenokwenziwa phantsi kwemiqathango ethile;
 - (c) lusenokubandakanya igunya lokwenza olunye ugunyaziso; kwaye (d) *lusenokurhoxiswa nanini na.*

Isihloko esifutshane nomhla wokuqalisa

33. Lo Mthetho ubizwa ngokuba nguMthetho weNtshona Koloni woKhuseleko loLuntu, 2012, kwaye uqalisa ukusebenza ngaloo mhla ubekwe yiNkulumbuso yePhondo ngompoposho okwi*Gazethi yePhondo*.

IMEMORANDAM YEENJONGO ZOMTHETHO OSAYILWAYO WOKHUSELEKO LOLUNTU WENTSHONA KOLONI, 2012

1. Intsukaphi

UMthetho oSayilwayo woKhuseleko loLuntu weNtshona Koloni uzama ukuqulunqa izikhokelo zolongamelo ezihamba ngokogunyaziso lomgaqo-siseko olunikwa amaphondo lokuba ongamele umsebenzi wamapolisa (“SAPS”) namapolisa kamasipala. Inkonzo yesipolisa esebenza ngemfezeko iya kunceda ukufikelela kumazinga okhuseleko athe kratya, nasekuxhaseni uluntu olukhululekileyo kuloyiko lolwaphulo-mthetho. Imisebenzi yokongamela ngokwalo Mthetho kukubeka iliso kwiindlela zokuhamba kwesimo samapolisa, ukuqwalasela usilelo oluthe gqolo kwinkqubo yesipolisa nokwenza izindululo malunga nokuba buchule buni na obunokusetyenziswa ekuphuculweni komsebenzi wamapolisa kwiPhondo leNtshona Koloni.

Imisebenzi yokubeka iliso kwiindlela aziphethe ngayo amapolisa nokuvavanywa kwenkonzo yamapolisa nazo ziyaqwalaselwa kulo Mthetho uSayilwayo.

Indlela aziqwalasela ngayo aMaphondo izikhalazo zabahlali malunga nokungasebenzi kakuhle kwamapolisa ziya kuphuculwa kakhulu ngokuthi kusungulwe isikhundla sikaNozikhhalazo wezaMapolisa wePhondo, onikwa amagunya ngulo Mthetho uSayilwayo okuba aziqwalasele ngempumelelo ezo zikhalazo.

UNozikhhalazo uza kunikwa nomsebenzi wokuphanda ukuqhawuka kwabo nabuphi na ubudlelwane phakathi kwamapolisa noluntu.

Ukusungulwa kwenkqubo yeenkcukacha emanyanisiweyo kuya kuthi kuyandise kakhulu imihlaba yeenkcukacha ezithe zaqokelelwa zaza zaqwalaselwa yiKhabhinethi yePhondo xa kuqwalaselwa iimfuno zomsebenzi wamapolisa kwiPhondo kwakunye neendawo eziphambili ngokubaluleka kuwo. Oku ke kubandakanya ukumka kule nkqubo ikhoyo kungoku nje yokuqwalasela iimfuno zomsebenzi wamapolisa ngokuthi kujongwe kuphela iinkcukachamanani zolwaphulo-mthetho. Kuza kulandelwa inkqubo evela zonke iinkalo ngokuthi kufunyaniswe iimfuno zomsebenzi wamapolisa ngokusekelwe kwiinkcukacha ezithe zafunyanwa ngobuhlakani nabahlali, imibutho yokuhlala, namanye amanqanaba oburhulumente nabecandelo loshishino.

Lo Mthetho uSayilwayo uyakuxhasa ukuqulunqwa nokusekwa kobuhlakani nabezoshishino namanye amaqela abandakanyekayo, ngeenjongo zokunyusa izinga lesakhono sokuyila, intsebenziswano nokuqulunqwa kwamalinge okhuseleko ukwakha ubudlelwane obuhle phakathi kwamapolisa nabahlali.

UMthetho oSayilwayo uza kuqwalasela neminye imiba efana nokunika ingxelo kuMphathiswa wePhondo koMkhomishinala wePhondo waMapolisa neentloko zezigqeba zeenkonziso zamapolisa kamasipala.

Umsebenzi osemthethweni onikwe uMphathiswa wePhondo ngokwecandelo 19(1), 20(1) no-21(1) loMthetho i-*South African Police Service Act*, oncedisa uMphathiswa wePhondo ukuba akhuphe imiyalelo yokumiselwa kwamaqonga asekuhlaleni amapolisa neebhodi, uyanatyiswa kulo Mthetho uSayilwayo ukuze kugcinwe ubudlelwane obuhle phakathi kwe-SAPS noluntu ekuhlaleni.

Kuqhutyekwa neemfuno zoMgaqosiseko, lo Mthetho oSayilwayo ubethelela imithethosiseko yoorhulumente abasebenzisanayo nobudlelwane phakathi kwamanqwanqwa karhulumente, ingakumbi phakathi kweButho looNobhala nePhondo.

UMthetho oSayilwayo umisela iKomiti yePhondo yeeNgcebiso ngoKhuseleko eza kucebisa uMphathiswa wePhondo ngemisebenzi, izicwangciso zokusebenza, imigaqonkqubo, njl njl.

2. Isikhokelo somthetho

ICandelo 104(1), xa lifundwa neShedyuli 4A yoMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996 (“uMgaqo-siseko”), liyakulungiselela ukuba iPhondo eli malibe nalo igunya lokuwisa imithetho kwinkalo “yomsebenzi wamapolisa”, njengoko iSahluko 11 (ss 205-208) silinika iPhondo eli elo gunya. Elo gunya ke kwabelwana ngalo nenqanaba loburhulumente besizwe.

ICandelo 206 loMgaqo-siseko xa lifundwa necandelo 66 nele- 67 loMgaqo-siseko weNtshona Koloni, 1997 (uMthetho 1 ka-1998), linika iPhondo eli igunya lokuba longamele impumelelo, ucikizeko lomsebenzi wamapolisa nokuziphatha kwamapolisa kwiPhondo eli, elokukhuthaza ubudlelane obuhle phakathi kwamapolisa nabahlali kwakunye nelokuwisa imithetho kule nkalo.

ICandelo 66 loMgaqo-siseko weNtshona Koloni, 1997 kubandakanya:

“66 (1) *Urhulumente weNtshona Koloni uselungelweni—*

- (a) *lokubeka iliso kwindlela aziphatha ngayo amapolisa;*
- (b) *lokuvandlakanya impumelelo kumsebenzi obonakalayo wamapolisa;*
- (c) *lokongamela impumelelo nocikizeko lwenkonzo yamapolisa, kubandakanya nokufumana iingxelo malunga nenkonzo yamapolisa;*
- (d) *lokukhuthaza ubudlelane obuhle phakathi kwamapolisa nabahlali; kwaye . . .*

(2) *ukuze ayenze kakuhle le misebenzi ichazwe kwicandelwana (1), urhulumente weNtshona Koloni—*

- (a) *usenokuthi aphande okanye amisele ikhomishini yephando, malunga nazo naziphi na izikhalazo eziphathelele kusilelo lwamapolisa okanye kuqhawuko lwamakhonkco obudlelane phakathi kwamapolisa nabahlali; kananjalo*
- (b) *kufuneka enzele ilungu leKhabhinethi yesizwe elongamele umsebenzi wamapolisa izindululo.”*

ICandelo 67(1) loMgaqo-siseko weNtshona Koloni kananjalo ligunyazisa iPalamente yePhondo ukuba “**iwise imithetho eyimfuneko edweliswe kwicandelo 66(1)**”. ICandelo 68 loMgaqo-siseko weNtshona Koloni, 1997 linomqathango wokuba iKhabhinethi yePhondo kufuneka ibeke iimfuno zomsebenzi wamapolisa kwiPhondo eli kwakunye neendawo eziphambili ngokubaluleka kuwo.

3. Iinjongo zalo Mthetho uSayilwayo

Umsebenzi walo Mthetho uSayilwayo ke kukufezekisa igunya lePhondo eli elilinkwa nguMgaqo-siseko kwaye nelokongamela nokulawula amagunya nemisebenzi kaRhulumente weNtshona Koloni ngokuphathelele kumsebenzi wakhe wokongamela amapolisa.

4. Iziqukatho zalo Mthetho uSayilwayo

Umhlathi 1

Le yinkcazo yomhlathi.

Umhlathi 2

Lo mhlathi uchaza iinjongo zalo Mthetho uSayilwayo, iinjongo ezo ezikukulawula nokulungiselela ukwenziwa kwemisebenzi yePhondo neSebe loKhuseleko loLuntu lePhondo (“iSebe lePhondo”) njengoko ichazwa kumacandelo 206(1), (3), (4), (5) no-(9) necandelo 207(5) no-(6) oMgaqo-siseko nakwimiqathango ejongene nale miba kuMgaqo-siseko weNtshona Koloni, 1997. Le misebenzi ivumela iPhondo ukuba liggqibe ngezidingo nezinto eziphambili ezichaphazela umsebenzi wamapolisa kwiphondo, ukubeka iliso kwindlela aziphatha ngayo amapolisa; ukuvandlakanya impumelelo kumsebenzi obonakalayo wamapolisa; ukongamela impumelelo nocikizeko lwenkonzo yamapolisa, kubandakanya nokufumana iingxelo malunga nenkonzo yamapolisa; nokukhuthaza ubudlelane obuhle phakathi kwamapolisa nabahlali, ukuphanda izikhalazo zokungasebenzi

kakuhle kwamapolisa okanye ukuqhawuka kwabo nabuphi na ubudlelwane phakathi kwamapolisa noluntu, ukunyanzelisa uMkhomishinala wePhondo okanye iintloko zezigqeba zamapolisa kamasipala ukuba anike ingxelo yaye avele phambi kwePalamente yePhondo kunye nokuqala iinkqubo zokususa okanye ukusiwa kwelinye icandelo okanye amanyathelo oluleko ngakuMkhomishinala wePhondo. Lo Mthetho ukwajolise nasekuxhaseni iinjongo zeButho looNobhala boLuntu nezeButho looNobhala bePhondo awasekwa ngokwemiqathango yoMthetho oyi *Civilian Secretariat for Police Service Act* (uMthetho 2 ka-2011).

Umhlathi 3

Lo mhlathi umalunga nemisebenzi yoMphathiswa wePhondo woKhuseleko loLuntu (“uMphathiswa wePhondo”). Le misebenzi isekeleke phezu kwala magunya anikwa ngumgaqo-siseko angentla apha nachazwe kwicandelo 206(1), (3) ukuya ku-(5), xa lifundwa necandelo 104 neShedyuli 4 yoMgaqo-siseko namacandelo 66, 67 nele- 68 oMgaqo-siseko weNtshona Koloni, 1997.

Umhlathi 4

Lo mhlathi umalunga nokugunyaziswa kwabasebenzi beSebe lePhondo nabanye abantu nguMphathiswa wePhondo ukuba babeke iliso kwindlela yokuziphatha kwamapolisa, ebandakanya indlela apha ngayo abantu abavalelwe eziseleni, bongamele bavandlakanye amapolisa yaye bavavanye nobudlelwane phakathi kwamapolisa noluntu.

Umhlathi 5

Lo mhlathi umalunga nokukhutshwa kwezikhokelo ngokusekwa kwamaqonga ezobupolisa asekuhlaleni neebhodi, njengoko kukhankanywa kumacandelo 19, 20 nelama-21 oMthetho oyi- *South African Police Services Act*, 1995 (uMthetho 68 ka-1995). Lo Mthetho unomqathango wokuba uMKhomishinala wePhondo angaseka amaqonga ezobupolisa asekuhlaleni, kodwa ke ehamba ngezikhokelo zoMphathiswa wePhondo.

Umhlathi 6

Lo mhlathi umalunga nokuqinisekiswa nokuxhaswa koosolomzi beengingqi ngokuzithandela apha eNtshona Koloni ngeenjongo zokuphucula ubudlelane phakathi kwamapolisa nabahlali.

UMphathiswa wePhondo usenokuthi abonelele aba solomzi beengingqi ngenkxasomali, ngoqeqesho nangezibonelelo.

Lo mhlathi kanaanjalo unomqathango wokuba oosolomzi beengingqi kufuneka bangenise iingxelo kuMphathiswa wePhondo:

- 1) ngezinto ezenziwayo ngusolomzi wengingqi; kunye
- 2) nangeenkxalabo eziphathelile kukhuseleko nolwaphulo-mthetho kwezo ngingqi basebenza kuzo oosolomzi beengingqi.

Ezi mfuneko zijoliswe ekudaleni uvimba weenkukacha ngemeko yokhuseleko kwiPhondo eli khona ukuze kubekwe iliso kwimpumelelo nocikizeko lwenkonzo yamapolisa njengoko zifunwa nguMgaqo-siseko nokubeka iimfuno zomsebenzi wamapolisa kwiPhondo eli neendawo eziphambili ngokubaluleka kuwo.

Umhlathi 7

Lo mhlathi umalunga nokugcinwa kovimba weenkukacha ngemibutho yasekuhlaleni ebandakanyeka kwinxaxheba yomsebenzi wamapolisa kwiPhondo eli, eyokuxhasa amaxhoba olwaphulo-mthetho, eyokunqanda ulwaphulo-mthetho neyokuncedisa kukhuseleko loluntu nokuyinika inkxaso loo mibutho. Kanaanjalo ukwachaza nendlela yokungena kubuhlakani nemibutho yasekuhlaleni ekufezekiseni iinjongo zalo Mthetho usaYilwayo, ukuphucula ubudlelane phakathi kwamapolisa nabahlali. Imibutho yasekuhlaleni ekuvimba weenkukacha kufuneka inike iNtloko yeSebe iingxelo ngeenkukacha zolwaphulo-mthetho ukuze incedise ekuqwalaselweni kweemfuno zomsebenzi wamapolisa kwiPhondo kwakunye neendawo eziphambili ngokubaluleka kuwo.

Umhlathi 8

Lo mhlathi umalunga nokusekwa, ukulawulwa nokulondolozwa kwenkqubo yeenkcukacha emanyanisiweyo nguMphathiswa wePhondo neSebe lePhondo. Le nkqubo yeenkcukacha iya kuthi incede uMphathiswa wePhondo ekongameleni impumelelo nocikizeko lomsebenzi wamapolisa nasekubekeni iimfuno zomsebenzi wamapolisa kwiPhondo eli neendawo eziphambili ngokubaluleka kuwo.

Lo mhlathi kananjalo ubonelela ngokuba uMphathiswa wePhondo acele abaniki beenkonzo zokhuseleko ukuba babhalise kuvimba wemibutho yasekuhlaleni ze bangenise iinkcukacha malunga neenkxalabo ngokhuseleko nezenzo zolwaphulo-mthetho kwezo ndawo basebenza kuzo. Kuqikelelwa ukuba oku kuya kubuphucula ubudlelane phakathi kwamapolisa nabahlali kuncede nasekuqwalaselweni kweemfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka kuwo kwiphondo eli.

Umhlathi 9

Lo mhlathi ubonelela ngamanyathelo okuqinisekisa ukuba iinkcukacha zabantu ezifunyenwe kwimibutho elisolomzi, kubaboneleli ngeenkonzo zokhuseleko nakweminye imibutho zigcinwa ziyimfihlo ngokuthi kusetyenziswe inkqubo yeenkcukacha ehlanganisiweyo.

Imihlathi 10 ukuya kowe-18

Le mihlathi imalunga nokusekwa kweOfisi kaNozikhhalazo wezaMapolisa yePhondo leNtshona Koloni nokuqeshwa kukaNozikhhalazo yiNkulumbuso emva kokubonisa noMphathiswa wePhondo, uMkomishinala waMapolisa kunye neentloko zesigqeba samapolisa kamasipala, kambe ke oko ukuxhomekeke ekubeni lo ngqesho yamkelwe yikomiti esisigxina yePalamente yePhondo ejongene nemicimbi yokhuseleko.

Eyona misebenzi kaNozikhhalazo iphambili kukuphanda ngezikhhalazo ezinxulumene nosilelo lwamapolisa (SAPS namapolisa kamasipala) okanye ukuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali. IPhondo eli ligunyaziswe ukuba lenze le misebenzi ngokwemiqathango yecandelo 206(5) loMgaqo-siseko neyecandelo 66(2) loMgaqo-siseko weNtshona Koloni, 1997.

UNozikhhalazo usenokuthi azidlulisele izikhhalazo kuso nasiphi na isiphathamandla esinegunya, ukuba ngaba ezo zikhhalazo zinokuqwalaselwa ngcono nangokufanelekileyo seso siphathamandla.

Umhlathi 18 kananjalo ukwanika uNozikhhalazo okanye abaphandi ababekiweyo igunya lokuba bayalele nawuphi na umntu ukuba angenise inkcazo efunyelweyo okanye inkcazo eyenzelwe uqinisekiso, okanye ukuba aye kuvela phambi kwakhe aye kunika ubungqina okanye angenise nalo naluphi na uxwebhu olunxulumanayo nombala lowo kwenziwa uphando ngawo.

UNozikhhalazo kufuneka ukuba enzele uMphathiswa wePhondo izindululo ngawo nawuphi na umba ekukho isikhhalazo esiphandwayo ngawo, izindululo ezo ezinokuthi zibandakanye nesokuba kumiselwe ikhomishini yophando yiNkulumbuso. UMphathiswa wePhondo kufuneka enzele uMphathiswa wesizwe elongamele ezamapolisa isindululo malunga naso nasiphi na isikhhalazo esiphandwayo esingakwazanga kusonjululwa nguNozikhhalazo ze azise umfakisikhhalazo ngesindululo asenzileyo.

Umhlathi 19

Lo mhlathi uchaza iingxelo ngeengxelo ekunyanzelekileyo ngokomthetho ukuba zingeniswe kuMphathiswa wePhondo nguMkhomishinala weSAPS.

Ezinye zezinto ezibandakanyeka kwezi ngxelo zibandakanya ukulahleka okanye ukubiwa kwemipu yamapolisa, ukufa kwamapolisa esenza imisebenzi yawo, nakuphi na ukufa okubangwe ngamapolisa ngexesha esenza umsebenzi wawo, nabaphi na abantu abafe beselugcinweni lwamapolisa neemeko abathe bafa phantsi kwazo, iinkcukacha-manani ngokuphathelele kubantu ababanjiweyo, inani

lamatyala athe adluliselwa enkundleni, inani lamatyala athe axoxwa namazinga okufunyanwa kwabamangalelwa benamatyala, inani lezikhhalazo ezithe zafunyanwa, nawo nawuphi na omnye umcimbi ophathelele kwindlela yokuziphatha yamapolisa, ucikizeko nempumelelo kumsebenzi wawo kwakunye nobudlelane phakathi kwamapolisa nabahlali. Lo mhlathi ukwafuna nokuba uMkhomishinala wePhondo angenise ingxelo yonyaka malunga nomsebenzi wamapolisa kwiPhondo eli.

Umhlathi 20

Lo mhlathi uthetha ngegunya leKhabhinethi yePhondo ngokwemiqathango yecandelo 69(2) loMgaqosiseko weNtshona Koloni, 1997, lokuba icele uMkhomishinala wePhondo ukuba aye kuvela phambi kwayo okanye phambi kweekomiti zayo, ukuba ngaba iKhabhinethi yePhondo iphelelwe kukumthamba uMkhomishinala wePhondo.

Umhlathi 21

Lo mhlathi ukwaqwalasela iimfuno zokunikwa kwengxelo ezikwafana nezi zikumhlathi 19, kodwa ke zona izeziphathelele kwinkonzo yamapolisa kamasipala esekwe ngokwemiqathango yecandelo 64A loMthetho oyi- *South African Police Services Act*, Ufuna ukuba iintloko ngeentloko ezilawulayo zeenkono zamapolisa kamasipala kwiPhondo zingenise rhoqo iingxelo ezinyanzeliswayo ngumthetho kuMphathiswa wePhondo.

Umhlathi 22

Lo mhlathi ukhankanya indawo yokuba uMphathiswa wePhondo agcine irejista apho arekhode iingxelo ezibhaliweyo nezindululo ezenziwe kuMphathiswa waMapolisa, izicelo ezibhaliweyo zeenkukacha ebezithunyelwe kuMkhomishinala wePhondo okanye nayiphi na intloko yesigqeba samapolisa kamasipala kunye naluphi na uluvo oluye lwabhalwa malunga noko.

Umhlathi 23

Lo mhlathi umalunga nokuqwalaselwa kweemfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka kuwo kwiPhondo eli.

ICandelo 206(1) loMgaqo-siseko likhankanya indawo yokuba uMphathiswa wesizwe onoxanduva lwezamapolisa kufuneka “abeke umgaqo-nkqubo wesizwe wokwenziwa komsebenzi wamapolisa asakuba edlene iindlebe noorhulumente bamaphondo kananjalo “ezithathele ingqalelo iimfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka kuwo kumaPhondo njengoko zibekiwe ngabalawuli bamaphondo”. ICandelo 66(1)(e) loMgaqo-siseko weNtshona Koloni, 1997, linomqathango othi uMphathiswa wePhondo angathethana noMphathiswa wesizwe ojongene nemicimbi yobupolisa “malunga nolwaphulomthetho kunye nemicimbi yesipolisa eNtshona Koloni”. ICandelo 68(2) loMgaqo-siseko weNtshona Koloni, 1997, linomqathango othi iKhabhinethi yePhondo kufuneka iqwalasele iimfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka kuwo kwiPhondo eli.

Ukuze iKhabhinethi yePhondo ikwazi ukuziqwalasela iimfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka kuwo kwiPhondo, lo mhlathi ubekela uMphathiswa wePhondo umqathango wokuba makangenise ingxelo kwiPalamente yePhondo leNtshona Koloni.

IKomiti eSisigxina ejongene nokhuseleko loluntu kufuneka ixoxe ngengxelo leyo ze iqhube neendibano zovakaliso lwezimvo zoluntu ukuze ifumane izimvo zaloo maqela achaphazelekayo kwinkqubo yezobulungisa kwinkalo yolwaphulomthetho. Iziphumo kwakunye nezimvo ezo zivakalisiweyo ziya kuthi ke ziqwalaselwe yiKhabhinethi yePhondo kwingxelo yayo ngeemfuno zomsebenzi wamapolisa neendawo eziphambili kuwo kweli Phondo kuMphathiswa weSizwe.

Umhlathi 24

Lo mhlathi ukhankankanya ukwenziwa komsebenzi wokubeka iliso owenziwa liphondo kumapolisa kulandelwa imithethosiseko yokusebenzisana kukarhulumente nobudlelwane obuphakathi kwamanqwanqwa karhulumente

ekubhekiswe kuwo kwiSahluko 3 soMgaqosiseko. Lo mhlathi unomqathango wokuba iNkulumbuso yePhondo mayivane noMphathiswa wePhondo malunga nokunyulwa kwentloko yebutho looNobhala bePhondo elisekwe phantsi kwemiqathango yoMthetho oyi*Civilian Secretariat for Police Service Act, 2011* (uMthetho 2 ka-2011) ukuqinisekisa ulungelelwaniso phakathi kweemfuno zonyulo zephondo neemfuno zonyulo ezichazwe kumthetho i-*Civilian Secretariat for Police Service Act, 2011*.

Imihlathi 25 ukuya kowama-28

Le mihlathi imalunga nokusekwa kweKomiti yePhondo yeeNgcebiso ngoKhuseleko, amalungu eKomiti, izithuba zokuba sezikhundleni kwamalungu eKomiti kwakunye neentlanganiso zeKomiti.

Iinjongo zale Komiti kukecibisa uMphathiswa wePhondo kwimisebenzi ephathelele ekubekweni kweliso nokonganyelwa kocikizeko nempumelelo yenkonzo yamapolisa kwiPhondo eli. Iya kuthi kanaanjalobice malunga nezicwangciso-qhinga, imigaqo-nkqubo, uhlahlo lwabiwo-mali nezicwangciso zokwenziwa komsebenzi zonyaka ngokuphathelile kulo msebenzi wokongamela nangayo nayiphi na eminye imicimbi ethi ivele ekusetyenzisweni kwalo Mthetho uSayilwayo.

IKomiti le inamalungu amele amaqela ecandelo labucala namaqela oluntu achaphazelekayo.

Umhlathi 29

Lo mhlathi umalunga nokukhutshwa kwamabhaso afanelekileyo (kubandakanya nayimali) kuye nawuphi na umhlali okanye omnye umntu nje othe wabonakalisa inkonzo eqaqambileyo ekufezekiseni iinjongo zalo Mthetho uSayilwayo kunye nokurekhoda nokunika ingxelo malunga naloo mabhaso.

Umhlathi 30

Lo mhlathi umalunga nezigqitho zokuthintela abasebenzi beSebe lePhondo okanye iofisi kaNozikhhalazo ekwenzeni imisebenzi yabo ngokwemiqathango yalo Mthetho, kwiimeko apho baye basilela ukuthobela umyalelo okanye isicelo esikumhlathi 18(1) okanye (2) baphula imiqathango yokugcina kubo iinkcukacha zabantu.

Umhlathi 31

Lo mhlathi ugunyazisa uMphathiswa wePhondo ukuba aqulunqe imigaqo malunga nemiba ethile yalo Mthetho uSayilwayo.

Umhlathi 32

Lo mhlathi umalunga nokudluliselwa kwawo nawuphi na amagunya anikwe uMphathiswa wePhondo kwiNtloko yeSebe, enokuthi—ukuba igunyaziswe njalo—iwadlulisele nayo loo magunya kubasebenzi beSebe lePhondo. Kukwakhankanywa nokuba nayo iNtloko yeSebe ingawadlulisela nawo nawuphi na amagunya ewanikiweyo ngokwalo Mthetho uSayilwayo kuye nawuphi na umsebenzi weSebe lePhondo.

Umhlathi 33

Lo mhlathi uqulathe isihloko esifutshane salo Mthetho uSayilwayo kwaye ukwacacisa nangokubekwa komhla wokuqalisa kwawo ukusebenza.

5. Imali ebandakanyekayo

Imali ebandakanyekayo ekumiseleni lo Mthetho uSayilwayo iza kufunyanwa kwimali eyabelwa iSebe ze ibe yimali emana isongezwa kule minyakamali ilandelayo.

6. Uthethwano

Lo Mthetho uSayilwayo uye wapapashwa kwi*Gazethi yePhondo* ukuze uluntu luvakalise izimvo zalo waze wangeniswa nakwaba bantu balandelayo:

UMphathiswa waMapolisa

UMkhomishinala wePhondo

IButho loo Nobhala laBahlali

Amaqonga ooSolomzi basekuhlaleni neeBhodi

Icandelo loLawulo loPhando lwaMapolisa oluziMeleyo

UGunyaziwe oLawulayo iCandelo lezoKhuseleko

URhulumente weMimandla okanye ooMasipala

NaMasebe kaRhulumente ePhondo onke

Kubanjwe iiseshoni eziliqela zoluntu namaqonga ooSolomzi, amalungu eKhansile kunye nabanye abantu.

7. Uthobelo lweMithetho

UMphathiswa wePhondo woKhuseleko loLuntu wanelisekile ukuba yonke imiqathango yalo Mthetho uSayilwayo ayigudlukanga kwiimfuno zemithetho yePhondo.

