



Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

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### IZIQULATHO

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Any person or organisation wishing to comment on the draft Bill is requested to submit the comment in writing before or on 15 May 2012:

Enige persoon of organisasie wat kommentaar oor die genoemde Konsepwetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 15 Mei 2012:

Nabani na onomdla wokwenza iziphakamiso ngalo Mthetho uSayilwayo uyacelwa ukuba enze njalo ngokubhaliweyo ungadlulanga umhla we-15 kuCanzibe 2012:

- (a) by posting it to:  
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Head of Department of  
Community Safety  
PO BOX 5346  
Cape Town  
8000
- (b) by e-mailing it to:  
hodcomsafe@pgwc.gov.za
- (c) by faxing it to:  
Dr Gilbert Lawrence  
Head of the Department of  
Community Safety  
Fax: 021 483-6412

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Copies of the draft Bill is available on the following website:  
<http://www.capegateway.gov.za>

Afskrifte van die Konsepwetsontwerp is beskikbaar op die volgende webtuiste:  
<http://www.capegateway.gov.za>

Ikopi yalo Mthetho uSayilwayo iyafumaneka kule webhusayithi:  
<http://www.capegateway.gov.za>

For enquires contact Adv JC Gerber SC at tel. (021) 483-6993 or Mr G Morris at tel. (021) 483-7811.

Vir navrae kontak Adv JC Gerber SC by tel. (021) 483-6993 of Mnr G Morris by tel. (021) 483-7811.

Ngemibuzo tsalela uAdv JC Gerber SC kule nombolo (021) 483-6993 okanye Mnu G Morris kule nombolo (021) 483-7811.

**PROVINCIAL NOTICES****PROVINSIALE KENNISGEWINGS**

The following Provincial Notices are published for general information.

ADV. B. GERBER,  
DIRECTOR-GENERAL

Provincial Building,  
Wale Street,  
Cape Town.

Die volgende Provinsiale Kennisgewings word vir algemene inligting gepubliseer.

ADV. B. GERBER,  
DIREKTEUR-GENERAAL

Provinsiale-gebou,  
Waalstraat,  
Kaapstad.

**PROVINCIAL NOTICE**

The following draft Bill is hereby published for general information:

**Draft Western Cape Community Safety Bill, 2012**

P.N. 27/2012

2012

**DRAFT WESTERN CAPE COMMUNITY SAFETY BILL, 2012**

To provide for the carrying out and the regulation of the policing functions of the Provincial Cabinet under Chapter 11 of the Constitution 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 in terms of the South African Police Service Act, 1995; to provide for the accreditation of organisations 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 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 policing; to regulate reporting on policing; to establish the Provincial Safety Advisory Board; and to provide for matters incidental thereto.

**B**e it enacted by the Provincial Parliament of the Western Cape:—

**Definitions**

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

“**the Board**” means the Provincial Safety Advisory Board established in terms of section 20;

“**community police forum**” means a community police forum established in terms of section 19 of the South African Police Service Act, 1995 (Act 68 of 1995);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Civilian Secretariat**” means the Civilian Secretariat for the Police Service established in terms of section 4 of the Civilian Secretariat for Police Service Act, 2011 (Act 2 of 2011);

“**Department**” means the provincial department 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);

“**Minister**” means the Cabinet member responsible for policing;

“**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(4)(a);

“**Ombudsman**” means the Western Cape Provincial Police Ombudsman appointed in terms of section 10;

“**police official**” means a member of the South African Police Service in the Province or a member of a municipal police service;

“**police service**” means the South African Police Service in the Province or a municipal police service;

“**police**” means the South African Police Service in the Province or a municipal police service;

“**policing**” means the functions performed by members of the South African Police Service or a municipal police service;

“**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;

“**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 policing in the Province;

“**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 26;

“**security service providers**” means a security service provider as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001);

“**South African Police Service**” means the South African Police Service established in terms of section 5(1) the South African Police Service Act, 1995;

“**the office**” means the office of the Ombudsman; and

“**this Act**” includes the regulations made under section 26 and any directives made under sections 3(e) and 5.

### **Purpose of Act**

2. The purpose of this Act is to—

- (a) regulate the functions of the Provincial Cabinet contemplated in Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997;
- (b) provide for the carrying out of the functions of the Provincial Cabinet referred to in section 206 of the Constitution and sections 66 and 67(1) of the Constitution of the Western Cape, 1997—
  - (i) to monitor police conduct;
  - (ii) to oversee the effectiveness and efficiency of the Police Service, including receiving reports on the police service;
  - (iii) to promote good relations between the police and the community;
  - (iv) to assess the effectiveness of visible policing;
  - (v) to investigate any complaints of police inefficiency or a breakdown in relations between the police and any community; and
- (c) support the objects of the Civilian Secretariat and Provincial Secretariat.

### **Functions of Provincial Minister**

3. The Provincial Minister may, in order to achieve the objectives of section 206 of the Constitution and sections 66 and 67 of the Constitution of the Western Cape, 1997, exercise the following functions—

- (a) monitor police conduct;
- (b) oversee the effectiveness of policing policies and directives implemented by the police service and the efficiency of the police service;
- (c) promote good relations between the police and the community;
- (d) identify causes of any breakdown in relations between the police and any community and to establish measures to improve the relations;
- (e) issue directives for the establishment and strengthening of community police forums and associated structures and to facilitate their proper functioning in order to promote good relations between the police and the community;
- (f) establish partnerships with any community aimed at promoting good relations between the police and the community;
- (g) maintain a database of community organisations involved in the field of policing;
- (h) assess the effectiveness of visible policing;
- (i) 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;
- (j) liaise with the Minister regarding crime and policing in the Province;
- (k) record complaints relating to police inefficiency or a breakdown in relations between the police and the community;
- (l) receive and analyse reports, including quantitative and qualitative information on the police service;
- (m) collect empirical information on performance indicators and resource distribution;
- (n) identify indicators to monitor and assess the effectiveness and efficiency of the police service;
- (o) receive and analyse information about the funding, expenditure, activities, outputs and outcomes of policing;
- (p) analyse patterns and practices of police conduct, identify problems and shortcomings in the policing system and make recommendations to the Minister responsible for policing on how to remedy it;
- (q) advise the Provincial Cabinet on the policing needs and priorities of the Province as contemplated in section 17;
- (r) liaise with and make recommendations to the Minister regarding the policing needs and priorities which exist in the Province as determined by the Provincial Cabinet;
- (s) report to the Provincial Parliament on the performance of the functions in terms of this Act and annually table a report in the Provincial Parliament in respect thereof;
- (t) conduct research as may be required;
- (u) oversee the functioning of the Provincial Secretariat;

- (v) facilitate close cooperation between the Department, the Civilian Secretariat, the Provincial Secretariat and the police in the performance of the functions in terms of this Act.

#### **Monitoring, oversight and assessment of policing**

4. (1) The Provincial Minister may in the prescribed manner 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;
  - (b) monitor and evaluate the allocation, distribution and use of human and other resources for policing in the Province;
  - (c) inspect police stations, or other police premises to—
    - (i) monitor police conduct;
    - (ii) oversee the effectiveness and efficiency of the police service in the area or to monitor any indicator of police efficiency and effectiveness;
    - (iii) oversee the effectiveness and efficiency of the police or the lack thereof, in dealing with complaints from the community regarding policing in the area;
    - (iv) evaluate the relations between the community and the police.
- (2) The Provincial Minister may authorise any other person in the prescribed manner to perform the functions referred to in subsection (1).
- (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)—
- (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;
  - (c) is entitled to assistance by any member of the police service or any other employee of a municipality.
- (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, area community police boards or a provincial community police board in terms of sections 19(1), 20(1) and 21(1) of the South African Police Service Act, 1995 including directives relating to—
- (a) the requirements for identifying relevant community organisations, institutions and interest groups to form part of a community police forum or board;
  - (b) the procedures for the nomination and election of persons to serve on 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;
  - (e) dispute resolution procedures applicable to any dispute in respect of the establishment or functioning of community police forums and boards.
- (2) The Head of the Department must evaluate the level of functionality of community police forums and boards and the relations between the police and the community police forums and boards and report his or her findings to the Provincial Minister.
- (3) The Head of the Department may assist community police forums in providing 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.
- (2) The Provincial Minister may require further information in support of the application.
- (3) The Provincial Minister may accredit an organisation or association as a neighbourhood watch after considering the application, any further information provided by the applicant, and whether—

- (a) the organisation or association conducts its activities according to the prescribed standards relating to—
    - (i) criteria for membership of a neighbourhood watch and the conduct of members;
    - (ii) the structures of a neighbourhood watch;
    - (iii) the control and use of funds of a neighbourhood watch; and
    - (iv) accountability to, and representation of a neighbourhood watch in, the community police forum in the area;
  - (b) the organisation or association cooperates with the community police forum in the area; and
  - (c) the police official in charge of the police office in the area recommends accreditation of the organisation or association as a neighbourhood watch.
- (4) 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;
    - (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 in the area; or
  - (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 therefor.
- (5) The Provincial Minister must annually publish a list of neighbourhood watches.
- (6) The Provincial Minister may provide training or resources to a neighbourhood watch.
- (7) The Provincial Minister must keep a register of neighbourhood watches and make the register available for inspection to any interested person on their request and on payment of the prescribed fee.
- (8) A neighbourhood watch must—
- (a) renew its accreditation every two years in the prescribed manner, failing which the accreditation will lapse;
  - (b) subject to the Promotion of Access to Information Act, 2000 (Act 2 of 2000), 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—
    - (i) the activities of the neighbourhood watch;
    - (ii) safety concerns and crime incidents in the area where the neighbourhood watch operates; 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; and
  - (d) preserve the records contemplated in paragraph (c) for at least five years from the date of recording.
- (9) The Provincial Minister may exempt any neighbourhood watch from the requirements referred to in subsection (8)(b), (c) and (d).
- (10) Subject to the Promotion of Access to Information Act, 2000, an employee of the Department, authorised by the Provincial Minister, has access to any records kept by or on behalf of a neighbourhood watch in terms of subsection (8) and may examine, make extracts from or copies of, any such records for the purposes of obtaining further information in respect of a report made in terms of subsection (8)(b) and to verify whether the neighbourhood watch is complying with the standards contemplated in subsection (3)(a).
- (11) If a neighbourhood watch fails to comply with the standards contemplated in subsection (3)(a), the Provincial Minister may, after giving notice to the neighbourhood watch of the failure, 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;
  - (b) assist community organisations on the database by providing support, training or resources;

- (c) subject to any law governing the award of contracts by the Provincial Government, 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 on the database must report to the Head of the Department, in the prescribed form, on safety incidents dealt with by the organisation.

#### **Integrated information system**

8. (1) In order to oversee the efficiency and effectiveness of the police 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 designate 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 information system must allow for—
- (a) a collection of data from organs of state, security service providers, the police service or other institutions;
  - (b) an analysis of data;
  - (c) a recording of safety concerns that exist within the communities of the Province;
  - (d) an incorporation of information on the database referred to in section 7(1)(a); and
  - (e) an analysis of the number and nature of complaints related to policing received by the Ombudsman in terms of section 12, organs of state, community police forums and other institutions.
- (5) The Head of the Department must refer information relating to crime or criminal activities received through the information system to the Provincial Commissioner.
- (6) As from a date determined by the Provincial Minister, by notice in the *Provincial Gazette*, a security service provider that operates in the Province must register in the prescribed manner and form with the Provincial Minister.
- (7) A security service provider must—
- (a) subject to the Promotion of Access to Information Act, 2000, 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;
    - (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;
  - (b) keep record of—
    - (i) safety concerns in the area where the security service provider operates;
    - (ii) crime incidents in the area where the security service provider operates;
    - (iii) firearms that are lost or stolen whilst in the possession of the security service provider; and
  - (c) preserve the records contemplated in paragraph (b) for at least five years from the date of recording.
- (8) The Provincial Minister may exempt any security service provider from the requirements referred to in subsection (7)(a), (b) and (c).
- (9) Subject to the Promotion of Access to Information Act, 2000, 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), and may examine, make extracts from or copies of, any such records for the purposes of obtaining further information in respect of a report made in terms of subsection (7)(a).

#### **Establishment of office of Western Cape Provincial Police Ombudsman**

9. (1) An office called the office of Western Cape Provincial Police Ombudsman is established in the Department.
- (2) The functions of the office are performed by the Ombudsman and staff appointed in his or her office.
- (3) The staff required for the proper performance of the functions of the office is appointed in terms of the Public Service Act, 1994.
- (4) The Police Service and any other organ of state must cooperate with the Ombudsman and the office by assisting and supporting them in the performance of their functions in terms of this Act.



**Appointment of Ombudsman**

10. (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.
- (2) The Ombudsman is appointed by the Premier—
  - (a) after consultation with the Provincial Commissioner, the Provincial Parliament's Standing Committee responsible for policing, the Provincial Safety Advisory Board and the Provincial Cabinet;
  - (b) in terms of the laws governing the public service; and
  - (c) for a term of three years, renewable for one additional term after consultation with the persons referred to in paragraph (a).
- (3) The Ombudsman may, in the performance of his or her functions, also be assisted by a person or body whose service the Ombudsman obtains for the purpose of a particular investigation.
- (4) A person or body contemplated in subsection (3) may be paid the remuneration and allowances and be reimbursed for the expenses determined by the Head of Department, subject to the laws governing the procurement of services.

**Functions of Ombudsman**

11. (1) "Police" or "policing" in this section and sections 12 to 14, in relation to the functions of the Ombudsman or complaints that may be submitted to the Ombudsman refers to the South African Police Service.
- (2) The Ombudsman—
  - (a) must receive and investigate complaints submitted in terms of section 12, regarding inefficiency of the police or a breakdown in relations between the police and any community; and
  - (b) must perform the other functions assigned to him or her under this Act.
- (3) The Ombudsman must annually submit a report to the Provincial Minister on the complaints investigated by the Ombudsman.
- (4) The Provincial Minister must table the report in the Provincial Parliament.
- (5) The report must describe the number and nature of complaints received, the number of complaints resolved and an analysis of any shortcomings in the police system that relate to the complaints.

**Submitting complaints**

12. (1) Any person may submit a complaint in the prescribed manner and form to the office 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 office for investigation.

**Investigations by Ombudsman**

13. (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 office, the Ombudsman must conduct an investigation into that matter.
- (3) The Ombudsman may by notice in the *Provincial Gazette*, make known any investigation which it is conducting, and state that any person may within a period specified in the notice make written representations to the office 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.
- (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 on any investigated complaint that could not be resolved by the Ombudsman, to the Minister and inform the complainant of the recommendation made.

**Investigating powers and officers**

14. (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.
- (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 persons in the service of the office or other suitable persons as investigating officers to perform the functions in 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 investigating officer appointed in terms of this Act.
- (6) An investigating officer must have the certificate of appointment on his or her person when performing a function in terms of this Act.

**Reporting by Provincial Commissioner**

15. (1) In order for the Provincial Minister to oversee the efficiency and effectiveness of the South African Police Service and to monitor police conduct, the Provincial Commissioner must, within the period prescribed, report in writing to the Provincial Minister on the following matters—
  - (a) the number of firearms issued to police officials in the Province which have been lost or stolen and the circumstances under which they have been lost or stolen;
  - (b) the number of persons arrested during the prior quarter, 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;
  - (c) the allocation of funds and resources to safety objectives, the methods used to achieve the objectives and measurable outcomes achieved;
  - (d) the number of complaints received about police misconduct, the number of criminal cases instituted against police officials, the names of those officials, the case reference numbers, the charges in respect thereof and the outcome of those cases;
  - (e) the number and nature of complaints received by the police regarding police service delivery; and
  - (f) 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.
- (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 annually by the prescribed date report to the Provincial Parliament on policing in the Province.
- (4) The Provincial Minister may from time to time request any other reports required by the Provincial Minister to perform his or her functions in terms of this Act from the Provincial Commissioner.
- (5) The Provincial Parliament may require the Provincial Commissioner to appear before it or any of its committees to answer questions.

**Reporting by executive head of municipal police service**

16. (1) In order for the Provincial Minister to monitor the efficiency and effectiveness of a municipal police service and to monitor the conduct of a municipal police service, an executive head of a municipal police service must, within the period prescribed, report in writing to the Provincial Minister on the following matters—
  - (a) the number of firearms issued to municipal police officials within the area of the Municipal Police Service which have been lost or stolen and the circumstances under which they have been lost or stolen;
  - (b) the number of persons arrested during the prior quarter, 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;
  - (c) the allocation of funds and resources to safety objectives, the methods used to achieve the objectives and measurable outcomes achieved;
  - (d) the number of complaints received about police misconduct, the number of cases of police misconduct opened and the outcomes of those cases;
  - (e) the number and nature of complaints regarding crimes received and recorded by the municipal police; and
  - (f) 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.



- (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.
- (3) The Provincial Minister may from time to time request any other report required by the Provincial Minister to perform his or her functions in terms of this Act from an executive head of a municipal police service.
- (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.

#### **Policing needs and priorities**

17. (1) The Provincial Minister must annually report to the Provincial Parliament on his or her functions in terms of this Act and his findings in relation thereto.
- (2) The Provincial Parliament must refer the report referred to in subsection (1) to its Standing Committee responsible for policing.
- (3) The Standing Committee referred to in subsection (2) must consider and debate the report and may hold public hearings and request representations from the Director of Public Prosecutions in the Western Cape, the Regional Commissioner of the Department of Correctional Services and the Regional Head of the Department of Justice and Constitutional Development.
- (4) The Provincial Parliament must afford the Provincial Commissioner 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 is formulated, as contemplated in sections 206(1) and (2) of the Constitution.

#### **Provincial Secretariat**

18. (1) The Provincial Minister must, in consultation with the Minister and the Premier, appoint the head of the Provincial Secretariat referred to in section 18(1) of the Civilian Secretariat for Police Service Act, 2011.
- (2) The Provincial Minister must subject to the laws governing the public service, appoint staff for the Provincial Secretariat.
- (3) The staff members of the Provincial Secretariat must be South African citizens, fit and proper persons, with appropriate knowledge, experience and qualifications.

#### **Cooperation and intergovernmental relations**

19. (1) The Provincial Minister, authorised employees and persons, investigating officers and the Ombudsman must exercise their functions in terms of this Act in accordance with the principles of co-operative 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 by section 6 of the Civilian Secretariat for Police Service Act, 2011.

#### **Provincial Safety Advisory Board**

20. (1) The Provincial Safety Advisory Board is established.
- (2) The functions of the Board are to advise the Provincial Minister generally, and to make recommendations, with regard to—
  - (a) the functions of the Provincial Cabinet 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 or which the Board may deem necessary in order to achieve the purpose of this Act or which the Provincial Minister may refer to the Board for advice.

#### **Composition of Board**

21. (1) The members of the Board must be appointed by the Provincial Minister and consist of—
  - (a) a representative of the business community;
  - (b) a member of the judiciary, Cape Bar or the Cape Law Society;
  - (c) a senior member of an academic institution having experience in the field of Criminology;
  - (d) a representative from non-governmental organisations involved in policing and related areas; and
  - (e) the Head of the Department as an *ex officio* member.

- (2) The members of the Board 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 have competence in, or knowledge of the field of policing and related areas and are fit and proper persons to be so appointed.

#### **Term of office and conditions of service of members of Board**

22. (1) A member, except for the *ex officio member*, is appointed for a term of three years, which is renewable once.
- (2) The office of a member becomes vacant if—
- (a) the member is absent from two consecutive meetings of the Board without the leave of the chairperson of the Board;
  - (b) the member tenders his or her resignation in writing to the chairman of the Board;
  - (c) the member is removed from the Board under subsection (3); or
  - (d) the member dies.
- (3) The Provincial Minister may remove any member of the Board if, in the opinion of the Provincial Minister, sufficient reasons exist for his or her removal.
- (4) A vacancy on the Board arising in terms of subsection (2) must be filled by the Provincial Minister in terms of section 21(1) and (2).
- (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 Board as chairperson.
- (7) The Provincial Minister may determine any other conditions of appointment not provided for in this section.
- (8) Members of the Board referred to in section 21(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.

#### **Meetings of Board**

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

#### **Awards**

24. The Provincial Minister may make an appropriate award including a monetary award in terms of prescribed criteria to any member of a community or other person for meritorious service in promoting the purpose of this Act.

#### **Offences**

25. (1) Any person who contravenes the provisions of sections 6(8)(b), 6(8)(c), 6(8)(d), 8(7)(a), 8(7)(b) or 8(7)(c), without being exempted under section 6(9) or 8(8) or who contravenes section 8(6), is guilty of an offence and on conviction liable to a fine or imprisonment not exceeding three years.
- (2) Any person who hinders or obstructs the Ombudsman or an investigating officer in the office or an employee of the Department 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.

#### **Regulations**

26. The Provincial Minister may make regulations regarding—
- (a) any matter in respect of which this Act requires or authorises regulations;
  - (b) the functions and duties of the Provincial Minister or the office of the Ombudsman;
  - (c) the receipt, processing and investigation of complaints submitted in terms of this Act;
  - (d) requirements for reporting by the Provincial Commissioner or an executive head of a municipal police service in terms of this Act;
  - (e) the format of any report required in terms of this Act;
  - (f) the determination of key indicators and types of empirical data that must be included in a report required in terms of this Act;
  - (g) measures to ensure confidentiality and control of and access to information obtained through the integrated information system;
  - (h) the screening of employees, investigators and other persons authorised by the Provincial Minister to perform functions in terms of the Act;
  - (i) indicators to oversee and assess the effectiveness and efficiency of the police service; or
  - (j) any other matter necessary for the effective execution of the functions in terms of this Act.

**Delegation**

27. (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 Department.
- (2) A delegation or assignment in terms of subsection (1)—
- (a) must be in writing;
  - (b) does not prevent the Provincial Minister from exercising the power or performing the duty concerned;
  - (c) may be made subject to conditions;
  - (d) may include the power to sub-delegate; and
  - (e) may be withdrawn at any time.

**Short title and commencement**

28. 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 DRAFT WESTERN CAPE COMMUNITY SAFETY BILL, 2012

### 1. Background

The Draft Western Cape Community Safety Bill seeks to achieve increased levels of safety, in support of an open society that is free from the fear of crime, through the development of oversight models in compliance with the constitutional mandate of provinces to oversee the police. The functions of oversight are to detect patterns and practices of police conduct, to identify shortcomings and failures in the police system and to make recommendations on how best to improve policing in the Western Cape Province.

The manner in which the Province addresses the complaints received from communities about policing will be significantly enhanced through the introduction of a Provincial Police Ombudsman, who is duly empowered by the Draft Bill to effectively deal with such complaints.

The establishment of an integrated information system will broaden the scope of information taken into account by the Provincial Cabinet when determining the Province's policing needs and priorities. This involves moving away from the current practice of determining policing needs based primarily on crime statistics. A holistic approach will be followed by determining policing needs based on information obtained in partnership with communities, civil society, other spheres of government and the business community.

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

### 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. Such power is further shared with the national sphere of government.

Section 66, read with section 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.

The provisions of section 66 of the Constitution of the Western Cape, 1997 include:

"66 (1) 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 206(3) of the Constitution has similar provisions. 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 is responsible for the policing functions set out in the Constitution and that the Provincial Cabinet must determine the Province's policing needs and priorities.

### 3. Purpose of the Draft Bill

The purpose of the Draft 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 Draft Bill

#### Clause 1

This is the definition clause.

#### Clause 2

This clause states the Draft Bill's purpose, which is to regulate and provide for the carrying out of the Provincial Cabinet's functions as provided for in Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997, namely to monitor police conduct; to assess the effectiveness of visible policing; to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service, and to promote good relations between the police and communities. The Draft Bill also seeks to support the objects of the Civilian Secretariat and Provincial Secretariat established in terms of the Civilian Secretariat for Police Service Act, 2011 (Act 2 of 2011).

#### Clause 3

This clause deals with the functions of the Provincial Minister responsible for policing ("Provincial Minister"). These functions derive from the abovementioned constitutional powers referred to in section 206, 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 of Community Safety (“the Provincial Department”) and other persons to monitor, oversee and assess the police.

**Clause 5**

This clause provides for the directives for the establishment of community police forums and boards as referred to in sections 19, 20 and 21 of the SA Police Services Act, 1995 (Act 68 of 1995). This Act provides that the Provincial Commissioner may establish community police forums subject to the Provincial Minister’s directives.

**Clause 6**

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

It also provides for the voluntary accreditation of neighbourhood watches. The Provincial Minister may also provide for the training of neighbourhood watches.

This clause also provides for neighbourhood watches to submit reports to the Provincial Minister on:

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

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

**Clause 7**

This clause provides for the maintenance of a database of community organisations that are actively involved in policing in the Province and to provide support to these organisations. It also provides for the entering into partnerships with community organisations to achieve the Act’s objectives, to improve the relations between the police and communities and to assist community organisations on the database with training and other resources.

Community organisations on the database must also report information on incidents of crime to the Head of Department, 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 police’s efficiency and effectiveness and to determine the Province’s policing needs and priorities.

This clause also provides for the registration of security service providers with the Provincial Minister and for security service providers to provide 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.

**Clauses 9 to 14**

These clauses provide for the establishment of an office of the Western Cape Provincial Police Ombudsman and the appointment of the Ombudsman in terms of the laws that govern the public service.

The Ombudsman’s primary functions are to investigate complaints regarding inefficiency of the South African Police Service (SAPS) or a breakdown in relations between the SAPS 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 these can be more appropriately dealt with by that authority.

Clause 14 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 to the national Cabinet member responsible for policing on matters investigated by the Ombudsman.

**Clause 15**

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 16**

This clause provides for similar reporting requirements to those referred to in clause 15, but in relation to a municipal police service established in terms of section 64A of the SA Police Services Act, 1995. It requires that the various executive heads of the municipal police services in the Province must submit certain regular mandatory reports to the Provincial Minister.

**Clause 17**

This clause provides for the determination of the Province's policing needs and priorities. 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 206(1) of the Constitution has a similar provision and 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 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 Standing Committee responsible for policing must debate the report and may call for public hearings to receive comments from stakeholders in the criminal justice system. 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 18**

This clause provides for the Provincial Minister to appoint the head of the Provincial Secretariat established in terms of the Civilian Secretariat for Police Service Act, 2011, in consultation with the Minister and the Premier and further also provides for the appointment of Provincial Secretariat staff.

**Clause 19**

This clause provides for cooperation between the Provincial Department, the Civilian Secretariat and the Provincial Secretariat, as well as for agreements to be entered into between the various role-players.

**Clauses 20 to 23**

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

The Board'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 Draft Bill's application.

The Board comprises members that represent private and public stakeholders.

**Clause 24**

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 cause of this Draft Bill.

**Clause 25**

This clause creates offences for hindering or obstructing employees of the Provincial Department or the office of the Ombudsman in exercising their functions in terms of this Act, or a failure by accredited neighbourhood watches and security service providers to report and keep record of prescribed matters. An offence is also created in respect of the failure by a security service provider to register with the Provincial Minister.

**Clause 26**

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

**Clause 27**

This clause provides for the delegation of any power conferred or duty assigned to the Provincial Minister to the Head of the Provincial Department, who may— if authorised to do so— further delegate these powers and duties to employees of the Provincial Department.

**Clause 28**

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

**5. Financial implications**

The financial implications are yet to be determined.

**6. Consultation**

The following Departments were consulted:

The Department of Community safety

The Department of the Premier

The Draft Bill will also be submitted to local government, provincial departments and relevant national departments for consultation.

**7. Legislative competence**

Section 206 of the Constitution, read with section 104 and Schedule 4 of the Constitution and sections 66 and 67(1) of the Constitution of the Western Cape, authorises the Provincial Parliament to pass legislation necessary to carry out the functions referred to in Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997.



## PROVINSIALE KENNISGEWING

Die volgende Konsepwetsontwerp word hiermee vir algemene inligting gepubliseer:

### Wes-Kaapse Konsepwetsontwerp op Gemeenskapsveiligheid, 2012

P. N. 27/2012

2012

#### WES-KAAPSE KONSEPWETSONTWERP OP GEMEENSKAPSVEILIGHEID, 2012

Om voorsiening te maak vir die uitvoer en regulering van die polisiëeringsfunksies van die Provinsiale Kabinet 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 Provinsiale Sekretariaat en die Burgerlike Sekretariaat, soos ingestel ingevolge die “Civilian Secretariat for Police Service Act, 2011”; om voorsiening te maak vir voorskrifte vir die instelling van gemeenskapspolisieforums ingevolge die Wet op die Suid-Afrikaanse Polisie, 1995; om voorsiening te maak vir die akkreditering van organisasies 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 registrasie van sekuriteitsdiensverskaffers op die databasis van organisasies; om die kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman in te stel om klagtes oor polisiëring te ondersoek; om verslagdoening oor polisiëring te reguleer; om die Provinsiale Veiligheidsadviesraad in te stel; en om vir aangeleenthede wat daarmee verband hou, voorsiening te maak.

**D**aar word bepaal deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

#### Woordomsrywings

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

“**Burgerlike Sekretariaat**” die Burgerlike Sekretariaat vir die Polisie diens ingestel ingevolge artikel 4 van die Wet op die Burgerlike Sekretariaat vir die Polisie, 2011;

“**buurtwag**” ’n organisasie of vereniging beoog in artikel 6(1) en geakkrediteer ingevolge artikel 6(4)(a);

“**Departement**” die provinsiale departement 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);

“**die kantoor**” die kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman;

“**die Raad**” die Provinsiale Veiligheidsadviesraad wat ingevolge artikel 20 ingestel is;

“**gemeenskapspolisieforum**” ’n gemeenskapspolisieforum ingestel ingevolge artikel 19 van die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 van 1995);

“**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;

“**hierdie Wet**” ook die regulasies kragtens artikel 26 en enige voorskrifte wat kragtens artikels 3(e) en 5 uitgevaardig is;

“**Minister**” die Kabinetslid verantwoordelik vir polisiëring;

“**munisipale polisie diens**” ’n munisipale polisie diens ingestel in die Provinsie ingevolge artikel 64A van die Wet op die Suid-Afrikaanse Polisie, 1995;

“**Ombudsman**” die Wes-Kaapse Provinsiale Polisie-ombudsman aangestel ingevolge artikel 10;

“**polisie**” die Suid-Afrikaanse Polisie diens in die Provinsie of ’n munisipale polisie diens;

“**polisiebeampte**” ’n lid van die Suid-Afrikaanse Polisie diens in die Provinsie of ’n lid van ’n munisipale polisie diens;

“**polisie diens**” die Suid-Afrikaanse Polisie diens in die Provinsie of ’n munisipale polisie diens;

“**polisiëring**” die funksies uitgevoer deur Suid-Afrikaanse Polisie dienslede of munisipale polisie dienslede;

“**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;

“**Provinsiale Minister**” die Provinsiale Minister verantwoordelik vir polisiëring in die Provinsie;

“**Provinsiale Sekretariaat**” die provinsiale sekretariaat vir die Provinsie ingestel ingevolge artikel 16 van die Wet op die Burgerlike Sekretariaat vir die Polisie, 2011;

“**Provinsie**” die Provinsie Wes-Kaap;

“**regulasie**” ’n regulasie wat kragtens artikel 26 uitgevaardig is;

“**sekuriteitsdiensverskaffers**” ’n sekuriteitsdiensverskaffer soos omskryf in artikel 1 van die Wet op die Regulering van die Private Sekuriteitsbedryf, 2001 (Wet 56 van 2001);

“**Suid-Afrikaanse Polisie diens**” die Suid-Afrikaanse Polisie diens, wat ingevolge artikel 5(1) van die Wet op die Suid-Afrikaanse Polisie, 1995 ingestel is;

“**voorskrif**” by regulasie voorskrif; en

“**Wet op die Burgerlike Sekretariaat vir die Polisie diens, 2011**” die “Civilian Secretariat for Police Service Act”, 2011. (Wet 2 van 2011).

#### Doelstelling van Wet

2. Hierdie Wet het ten doel om—

(a) die funksies van die Provinsiale Kabinet, beoog in Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997, te reguleer;

(b) voorsiening te maak vir die verrigting van die funksies van die Provinsiale Kabinet bedoel in artikel 206 van die Grondwet en artikels 66 en 67(1) van die Grondwet van die Wes-Kaap, 1997—

- (i) om polisie-optrede te monitor;
  - (ii) om toesig te hou oor die doeltreffendheid en bevoegdheid van die polisie-diens, waarby inbegrepe is die ontvangs van verslae oor die polisie-diens;
  - (iii) om goeie betrekkinge tussen die polisie en die gemeenskap te bevorder;
  - (iv) om die doeltreffendheid van sigbare polisieëring te bepaal;
  - (v) om enige klagtes van polisie-onbevoegdheid of 'n verbrokkeling in betrekkinge tussen die polisie en enige gemeenskap te ondersoek; en
- (c) om die oogmerke van die Burgerlike Sekretariaat en die Provinsiale Sekretariaat te ondersteun.

### **Funksies van Provinsiale Minister**

3. Die Provinsiale Minister kan die volgende funksies verrig om die oogmerke van artikel 206 van die Grondwet en artikels 66 en 67 van die Grondwet van die Wes-Kaap, 1997, te bereik—
- (a) monitering van polisie-optrede;
  - (b) toesighouding oor die doeltreffendheid van polisieëring-beleid en voorskrifte geïmplementeer deur die polisie-diens en die bevoegdheid van die polisie-diens;
  - (c) bevordering van goeie betrekkinge tussen die polisie en die gemeenskap;
  - (d) identifisering van oorsake van enige verbrokkeling in betrekkinge tussen die polisie en enige gemeenskap en die inwerkingstelling van maatreëls om die betrekkinge te verbeter;
  - (e) uitvaardiging van voorskrifte vir die instelling en ondersteuning van gemeenskapspolisieforums en verwante strukture en die fasilitering van hul behoorlike werking om goeie betrekkinge tussen die polisie en die gemeenskap te bevorder;
  - (f) sluit van vennootskappe met enige gemeenskap om goeie betrekkinge tussen die polisie en die gemeenskap te bevorder;
  - (g) instandhouding van 'n databasis van gemeenskapsorganisasies wat aktief betrokke is op die gebied van polisieëring;
  - (h) bepaling van die doeltreffendheid van sigbare polisieëring;
  - (i) instelling en instandhouding van geïntegreerde inligtingstelsels om toesig te hou oor die polisie-diens se doeltreffendheid en bevoegdheid en om die Provinsie se polisieëring-behoefes en -prioriteite te bepaal;
  - (j) skakeling met die Minister oor misdaad en polisieëring in die Provinsie;
  - (k) rekordhouding van klagtes oor polisie-onbevoegdheid of 'n verbrokkeling in betrekkinge tussen die polisie en die gemeenskap;
  - (l) ontvangs en ontleding van verslae, waaronder kwantitatiewe en kwalitatiewe inligting oor die polisie-diens;
  - (m) versameling van empiriese inligting oor prestasie-aanwysers en die verspreiding van hulpbronne;
  - (n) identifikasie van aanwysers om die doeltreffendheid en bevoegdheid van die polisie-diens te monitor en te bepaal;
  - (o) ontvangs en ontleding van inligting oor die befondsing, besteding, aktiwiteite, uitsette en uitkomste van polisieëring;
  - (p) ontleding van patrone en praktyke van polisie-optrede, die identifikasie van probleme en tekortkominge in die polisieëringstelsel en die indien van voorstelle aan die Minister oor hoe om dit reg te stel;
  - (q) advisering van die Provinsiale Kabinet oor die Provinsie se polisieëring-behoefes en -prioriteite, soos beoog in artikel 17;
  - (r) skakeling met, en indien van, voorstelle aan die Minister oor die Provinsie se polisieëring-behoefes en -prioriteite, soos deur die Provinsiale Kabinet bepaal;
  - (s) verslagdoening aan die Provinsiale Parlement oor die uitvoer van funksies ingevolge hierdie Wet en die jaarlikse voorlegging van 'n verslag in die Provinsiale Parlement daaroor;
  - (t) die onderneem van navorsing, wanneer nodig;
  - (u) toesighouding oor die funksionering van die Provinsiale Sekretariaat;
  - (v) fasilitering van noue samewerking tussen die Departement, die Burgerlike Sekretariaat, die Provinsiale Sekretariaat en die polisie in die uitvoer van die funksies ingevolge hierdie Wet.

### **Monitering, oorsig en evaluering van polisieëring**

4. (1) Die Provinsiale Minister kan op die voorgeskrewe wyse werknemers in die Departement magtig om—
- (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 polisieëring in die Provinsie te monitor en te evalueer;

- (c) polisiestasies en ander polisiepersele te inspekteer om—
- (i) polisie-optrede te monitor;
  - (ii) toesig te hou oor die doeltreffendheid en bevoegdheid van die polisie diens in die gebied, of enige aanwyser van die polisie se doeltreffendheid en bevoegdheid te monitor;
  - (iii) toesig te hou oor die doeltreffendheid en bevoegdheid van die polisie, of die gebrek daaraan, om klagtes van die gemeenskap oor polisiëring in die gebied te hanteer;
  - (iv) betrekkinge tussen die polisie en die gemeenskap te evalueer.
- (2) Die Provinsiale Minister kan op die voorgeskrewe wyse enige ander persoon magtig om die funksies wat in subartikel (1) bedoel word, te verrig.
- (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 die beheer van die polisie diens of 'n betrokke munisipaliteit aanvra en verkry;
  - (b) 'n gebou, perseel, voertuig of eiendom onder die beheer van die polisie diens of 'n betrokke munisipaliteit betree;
  - (c) op ondersteuning deur 'n lid van die polisie diens of enige ander werknemer van 'n munisipaliteit aanspraak maak.
- (4) Enige geskil oor 'n versoek, toegang of bystand beoog in subartikel (3) moet aan die Provinsiale Minister gerapporteer word.

#### **Voorskrifte vir instelling van gemeenskapspolisieforums en -rade**

5. (1) Om goeie betrekkinge tussen die Suid-Afrikaanse Polisie diens en die gemeenskap te bevorder, kan die Provinsiale Minister voorskrifte uitvaardig vir die instelling van gemeenskapspolisieforums, areagemeenskapspolisierade of 'n provinsiale gemeenskapspolisieraad ingevolge artikels 19(1), 20(1) en 21(1) van die Wet op die Suid-Afrikaanse Polisie diens, 1995, met inbegrip van voorskrifte oor—
- (a) die vereistes vir die identifisering van toepaslike gemeenskapsgebaseerde organisasies, instellings en belangegroepes om deel van 'n gemeenskapspolisieforum of -raad te vorm;
  - (b) die prosedures vir die benoeming en verkiesing van persone om op 'n gemeenskapspolisieforum of -raad te dien;
  - (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; en
  - (e) geskilbeslegtingsprosedures wat van toepassing is op 'n geskil oor die instelling of funksionering van gemeenskapspolisieforums en -rade.
- (2) Die Departementshoof moet die funksionaliteitsvlak van gemeenskapspolisieforums en -rade en die betrekkinge tussen die polisie en die gemeenskapspolisieforums en -rade evalueer en moet sy of haar bevindinge aan die Provinsiale Minister verstrek.
- (3) Die Departementshoof kan gemeenskapspolisieforums of -rade ondersteun deur opleiding of hulpbronne te voorsien.

#### **Akkreditering en ondersteuning van buurtwagte**

6. (1) Enige organisasie of vereniging wat—
- (a) werk as 'n vrywillige organisasie of vereniging sonder winsoogmerk;
  - (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
  - (c) ten doel het om sy lede en hulle onroerende en roerende eiendom te beskerm teen misdaad en ander veiligheidsbepaaenisse 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.
- (2) Die Provinsiale Minister kan ter ondersteuning van die aansoek verdere inligting vereis.
- (3) Die Provinsiale Minister kan 'n organisasie of vereniging as 'n buurtwag akkrediteer na oorweging van 'n aansoek, enige verdere inligting voorsien, en of—
- (a) die organisasie of vereniging sy aktiwiteite volgens die voorgeskrewe standarde uitvoer met betrekking tot—
    - (i) vereistes vir lidmaatskap van 'n buurtwag en die optrede van lede;
    - (ii) die strukture van 'n buurtwag;
    - (iii) die beheer oor en aanwending van fondse van die buurtwag; en
    - (iv) verantwoordelikeheidspligtigheid teenoor en verteenwoordiging van die buurtwag in die gemeenskapspolisieforum in die gebied;
  - (b) die organisasie of vereniging met die gemeenskapspolisieforum in die gebied saamwerk; en

- (c) die polisiebeampte in beheer van die polisiekantoor in die gebied die akkreditasie van die organisasie of vereniging as buurtwag aanbeveel.
- (4) Indien die Provinsiale Minister besluit om—
- (a) 'n organisasie of vereniging as 'n buurtwag te akkrediteer, moet die Provinsiale Minister—
- (i) die buurtwag se naam op die register van buurtwagte aanbring;
  - (ii) 'n akkreditasiesertifikaat uitreik in die naam van die buurtwag 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 polisie in die gebied stuur; of
- (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 daarvoor verwittig.
- (5) Die Provinsiale Minister moet jaarliks 'n lys van buurtwagte publiseer.
- (6) Die Provinsiale Minister kan 'n buurtwag van opleiding of hulpbronne voorsien.
- (7) Die Provinsiale Minister moet 'n register hou van buurtwagte en die register op versoek aan enige belangstellendes beskikbaar stel, na betaling van die voorgeskrewe bedrag.
- (8) 'n Buurtwag moet—
- (a) sy akkreditasie elke twee jaar op die voorgeskrewe wyse hernu, andersins sal die akkreditasie verval;
- (b) onderworpe aan die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000), aan die Provinsiale Minister op die voorgeskrewe wyse en binne die voorgeskrewe tydperk, verslag doen oor—
- (i) veiligheidsbekommernisse en misdadaadvoorvalle 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 polisiëringsbehoefes en -prioriteite en die polisie se doeltreffendheid en bevoegdheid te bepaal;
- (c) rekord hou van:
- (i) die buurtwag se aktiwiteite;
  - (ii) veiligheidsbekommernisse en misdadaadvoorvalle in die gebied waarin die buurtwag werksaam is; en
  - (iii) enige voorgeskrewe aangeleentheid wat deur die Provinsiale Minister vereis word om polisiëringsbehoefes en -prioriteite en die polisie se doeltreffendheid en bevoegdheid te bepaal; en
- (d) die rekords beoog in paragraaf (c) vir minstens vyf jaar vanaf die rekordhoudingsdatum bewaar.
- (9) Die Provinsiale Minister kan enige buurtwag vrystel van die vereistes bedoel in subartikel (8)(b), (c) en (d).
- (10) Onderworpe aan die Wet op die Bevordering van Toegang tot Inligting, 2000, het 'n werknemer van die Departement wat deur die Provinsiale Minister daartoe gemagtig is, toegang tot enige rekord wat ingevolge subartikel (8) deur of namens 'n buurtwag gehou word en kan hy of sy enige sodanige rekord ondersoek of uittreksels of afskrifte daarvan maak om verdere inligting oor 'n verslag wat ingevolge subartikel (8)(b) opgestel is, in te win, en om te bepaal of die buurtwag voldoen aan die standaard wat in subartikel (3)(a) beoog word.
- (11) Indien 'n buurtwag versuim om aan die standaard wat in subartikel (3)(a) beoog word te voldoen, kan die Provinsiale Minister, nadat hy of sy die buurtwag van die versuim verwittig het, daardie buurtwag se akkreditasie terugtrek.

#### **Databasis en vennootskappe met gemeenskapsorganisasies**

7. (1) Om goeie betrekkinge tussen die polisie en gemeenskappe in die Provinsie te bevorder, kan die Provinsiale Minister—
- (a) 'n databasis van gemeenskapsorganisasies wat betrokke is op die gebied van polisiëring, in stand hou;
  - (b) gemeenskapsorganisasies op die databasis bystaan deur ondersteuning, opleiding of hulpbronne te voorsien;
  - (c) onderworpe aan enige wetgewing wat die toestaan 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;
  - (d) die instelling van spesiale eenhede fasiliteer, in antwoord op spesifieke misdadaadkategorieë.
- (2) 'n Gemeenskapsorganisasie op die databasis moet op die voorgeskrewe vorm aan die Departementshoof verslag doen oor veiligheidsvoorvalle wat deur die organisasie hanteer is.

**Geïntegreerde inligtingstelsel**

8. (1) Om toesig te hou oor die polisie se doeltreffendheid en bevoegdheid en om die Provinsie se polisiëringsbehoefes 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 aanwys om inligting in te win en die geïntegreerde inligtingstelsel te administreer en in stand te hou.
- (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 Polisie, 2011, te verseker.
- (4) Die inligtingstelsel moet voorsiening maak vir—
- (a) 'n insameling van data vanaf staatsorgane, sekuriteitsdiensverskaffers, die polisie en ander instellings;
  - (b) die ontleding van data;
  - (c) rekordhouding van veiligheidsbepommernisse in gemeenskappe in die Provinsie;
  - (d) die byvoeging van inligting op die databasis bedoel in artikel 7(1)(a); en
  - (e) 'n ontleding van die aantal en aard van klagtes wat verband hou met polisieëring, wat ontvang is deur die Ombudsman ingevolge artikel 12, staatsorgane, gemeenskapspolisieforums en ander instellings.
- (5) Die Departementshoof moet inligting wat betrekking het op misdaad of kriminele aktiwiteite wat deur middel van die inligtingstelsel ontvang is, na die Provinsiale Kommissaris verwys.
- (6) Vanaf 'n datum wat die Provinsiale Minister by wyse van kennisgewing in die *Provinsiale Koerant* bepaal, moet 'n sekuriteitsdiensverskaffer wat in die Provinsie werksaam is op die voorgeskrewe wyse en formaat by die Provinsiale Minister registreer.
- (7) 'n Sekuriteitsdiensverskaffer moet—
- (a) onderworpe aan die Wet op die Bevordering van Toegang tot Inligting, 2000, op die voorgeskrewe wyse en binne die voorgeskrewe tydperk verslag doen aan die Provinsiale Minister oor—
    - (i) veiligheidsbepommernisse 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 voorgeskrewe aangeleentheid wat deur die Provinsiale Minister vereis word om polisieëringbehoefes en -prioriteite te bepaal en om toesig te hou oor die polisieëring se doeltreffendheid en bevoegdheid; en
  - (b) rekord hou van—
    - (i) veiligheidsbepommernisse in die gebied waarin die sekuriteitsdiensverskaffer werksaam is;
    - (ii) misdaadvoorvalle in die gebied waarin die sekuriteitsdiensverskaffer werksaam is;
    - (iii) vuurwapens wat weggeraak het of gesteel is terwyl dit in die sekuriteitsdiensverskaffer se besit was; en
  - (c) die rekords beoog in paragraaf (b) vir minstens vyf jaar vanaf die rekordhoudingsdatum bewaar.
- (8) Die Provinsiale Minister kan enige sekuriteitsdiensverskaffer vrystel van die vereistes bedoel in subartikels (7)(a), (b) en (c).
- (9) Onderworpe aan die Wet op die Bevordering van Toegang tot Inligting, 2000, het 'n werknemer van die Departement wat deur die Provinsiale Minister daartoe gemagtig is, toegang tot enige rekords wat ingevolge subartikel (7) deur of namens 'n sekuriteitsdiensverskaffer gehou word, en kan hy of sy sodanige rekords ondersoek of uittreksels of afskrifte daarvan maak om verdere inligting oor 'n verslag wat ingevolge subartikel (7)(a) gelewer is, in te win.

**Instelling van kantoor van Wes-Kaapse Provinsiale Polisie-ombudsman**

9. (1) 'n Kantoor genaamd die kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman word in die Departement ingestel.
- (2) Die kantoor se funksies word deur die Ombudsman en personeel wat in sy of haar kantoor aangestel is, verrig.
- (3) Die personeel benodig vir die behoorlike verrigting van die kantoor se funksies word ingevolge die Staatsdienswet, 1994, aangestel.
- (4) Die polisieëring en enige ander staatsorgaan moet met die Ombudsman en sy of haar kantoor saamwerk deur hom of haar by te staan en te ondersteun in die verrigting van die funksies ingevolge hierdie Wet.

**Aanstelling van Ombudsman**

10. (1) Die Premier moet 'n toepaslik gekwalifiseerde persoon met regservaring of ervaring in polisieëring as die Wes-Kaapse Provinsiale Polisie-ombudsman aanstel.
- (2) Die Ombudsman word deur die Premier aangestel—
- (a) na oorleg met die Provinsiale Kommissaris, die Provinsiale Parlement se Staande Komitee wat vir polisieëring verantwoordelik is, die Provinsiale Veiligheidsadviesraad en die Provinsiale Kabinet;

- (b) ingevolge die wette wat die staatsdiens reguleer; en
  - (c) vir 'n termyn van drie jaar, hernubaar vir een verdere termyn, na oorleg met die persone genoem in paragraaf (a).
- (3) Die Ombudsman kan, by die verrigting van sy of haar pligte, ook bygestaan word deur 'n persoon of liggaam wie se diens die Ombudsman vir die doel van 'n bepaalde ondersoek verkry.
- (4) 'n Persoon of liggaam in subartikel (3) beoog, mag die besoldiging, toelaes en vergoeding vir uitgawes ontvang soos deur die Departementshoof bepaal, onderworpe aan die wette wat diensverkryging reguleer.

#### **Funksies van Ombudsman**

11. (1) "Polisie" of "polisiering" in hierdie artikel en in artikels 12 tot 14 met betrekking tot die funksies van die Ombudsman of klagtes wat aan die Ombudsman voorgelê word, verwys na die Suid-Afrikaanse Polisie.
- (2) Die Ombudsman moet—
- (a) klagtes wat ingevolge artikel 12 oor polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge tussen die polisie en enige gemeenskap ingedien word, ontvang en ondersoek; en
  - (b) die ander funksies verrig wat kragtens hierdie Wet aan hom of haar opgedra is.
- (3) Die Ombudsman moet jaarliks 'n verslag oor die klagtes wat deur hom of haar ondersoek is, by die Provinsiale Minister indien.
- (4) Die Provinsiale Minister moet die verslag by die Provinsiale Parlement indien.
- (5) Die verslag moet besonderhede verstrek van die aantal en aard van die klagtes wat ontvang is, die aantal klagtes wat afgehandel is, asook 'n ontleding van enige te kortkominge in die polisie-stelsel wat verband hou met die klagtes.

#### **Indiening van klagtes**

12. (1) Enige persoon kan op die voorgeskrewe wyse en formaat 'n klagte oor beweerde polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge tussen die polisie en enige gemeenskap by die kantoor indien.
- (2) Enige lid van die Provinsiale Parlement kan, wanneer hulle bewus word van 'n klagte oor beweerde polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge tussen die polisie en enige gemeenskap, die klagte by die kantoor indien om dit te laat ondersoek.

#### **Ondersoeke deur Ombudsman**

13. (1) Die Ombudsman kan, indien 'n klag ingedien is wat nie ooglopend beuselagtig of kwaadwillig is nie, enige nodige ondersoek onderneem na beweerde polisie-onbevoegdheid of 'n verbrokkeling in die betrekkinge tussen die polisie en enige gemeenskap.
- (2) Indien 'n lid van die Provinsiale Parlement 'n aangeleentheid beoog in subartikel (1) na die kantoor verwys, moet die Ombudsman die aangeleentheid ondersoek.
- (3) Die Ombudsman kan, by wyse van 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 verhoë aangaande die ondersoek tot die kantoor kan rig.
- (4) Indien die Ombudsman van mening is dat 'n ander bevoegde owerheid, waaronder 'n nasionale gesag, '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.
- (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 die aanbeveling aan die Premier doen dat 'n kommissie van ondersoek ingevolge die Wes-Kaapse Provinsiale Kommissiewet, 1998 (Wet 10 van 1998) aangestel word om die klagte te ondersoek.
- (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.
- (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 die klaer moet van die aanbeveling verwittig word.

#### **Ondersoekmagte en -beampies**

14. (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 betrekking het op die ondersoek 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.
- (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 persone in diens van die kantoor of ander geskikte persone as ondersoekbeamptes aanwys om die funksies wat in subartikels (1) en (2) genoem word, uit te voer.
- (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 van 'n aanstellingsertifikaat wat onderteken is namens of deur die Ombudsman, voorsien word, waarin verklaar word dat hy of sy 'n ondersoekbeampte is wat ingevolge hierdie Wet aangestel is.
- (6) 'n Ondersoekbeampte moet die aanstellingsertifikaat by hom of haar dra wanneer hy of sy 'n funksie ingevolge hierdie Wet verrig.

#### **Verslag deur Provinsiale Kommissaris**

15. (1) Om die Provinsiale Minister in staat te stel om die Suid- Afrikaanse Polisie se doeltreffendheid en bevoegdheid te oorsien en polisie-optrede te monitor, moet die Provinsiale Kommissaris binne die voorgeskrewe tydperk skriftelik oor die volgende aangeleenthede aan die Provinsiale Minister verslag doen—
  - (a) hoeveel vuurwapens wat aan polisiebeamptes in die Provinsie uitgereik is, weggeraak het of gesteel is en die omstandighede waaronder dit weggeraak het of gesteel is;
  - (b) hoeveel persone in die vorige kwartaal gearrester is, hoeveel sake met betrekking tot daardie arrestasies na die hof verwys is, hoeveel van daardie sake vervolgt is en hoeveel skuldigbevindings daar met betrekking tot daardie sake was;
  - (c) watter gedeelte van die begroting en hoeveel hulpbronne aan veiligheidsoogmerke toegeken is, die metodes wat gebruik is om hierdie oogmerke te bereik en die meetbare uitkomst wat bereik is;
  - (d) hoeveel klagtes oor polisiegedrag ontvang is, hoeveel kriminele sake teen polisiebeamptes aanhangig gemaak is, die name van daardie polisiebeamptes, die saakverwysingsnommers, die aanklagte wat ingedien is en die uitkomst van daardie sake;
  - (e) die aantal en aard van klagtes wat die polisie oor polisiegedrag ontvang het; en
  - (f) enige ander aangeleentheid, soos voorgeskryf mag word, wat verband hou met polisie-optrede, die doeltreffendheid en bevoegdheid van die polisie, of 'n verbrekking in betrekkinge tussen die polisie en die gemeenskap.
- (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 sterftes van persone tydens polisie-aanhouding en die omstandighede waaronder daardie persone dood is.
- (3) Die Provinsiale Kommissaris moet jaarliks teen die voorgeskrewe datum aan die Provinsiale Parlement verslag doen oor polisie in die Provinsie.
- (4) Die Provinsiale Minister kan van tyd tot tyd die Provinsiale Kommissaris versoek om enige ander verslag in te dien wat deur die Provinsiale Minister benodig word om sy of haar funksies ingevolge hierdie Wet te verrig.
- (5) Die Provinsiale Parlement kan daarop aandrang dat die Provinsiale Kommissaris voor hom of voor enige van sy komitees verskyn om vrae te beantwoord.

#### **Verslag deur uitvoerende hoof van munisipale polisie**

16. (1) Om die Provinsiale Minister in staat te stel om die munisipale polisie se doeltreffendheid en bevoegdheid te monitor en munisipale polisie-optrede te monitor, moet die uitvoerende hoof van 'n munisipale polisie binne die voorgeskrewe tydperk skriftelik oor die volgende aangeleenthede aan die Provinsiale Minister verslag doen—
  - (a) hoeveel vuurwapens wat aan munisipale polisiebeamptes in die area van die munisipale polisie uitgereik is, weggeraak het of gesteel is en die omstandighede waaronder dit weggeraak het of gesteel is;
  - (b) hoeveel persone in die vorige kwartaal gearrester is, hoeveel sake met betrekking tot daardie arrestasies na die hof verwys is, hoeveel van daardie sake vervolgt is en hoeveel skuldigbevindings daar met betrekking tot daardie sake was;
  - (c) watter gedeelte van die begroting en hoeveel hulpbronne aan veiligheidsoogmerke toegeken is, die metodes wat gebruik is om hierdie oogmerke te bereik en die meetbare uitkomst wat bereik is;
  - (d) hoeveel klagtes oor polisiegedrag ontvang is, hoeveel sake oor polisiegedrag aanhangig gemaak is en die uitkomst van daardie sake;
  - (e) die aantal en aard van klagtes wat die munisipale polisie oor misdade ontvang en opgeteken het; en
  - (f) enige ander aangeleentheid, soos voorgeskryf mag word, wat verband hou met polisie-optrede, die doeltreffendheid en bevoegdheid van die polisie of 'n verbrekking in betrekkinge tussen die polisie en die gemeenskap.
- (2) 'n Uitvoerende hoof van 'n munisipale polisie 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 sterftes tydens munisipale polisie-aanhouding en die omstandighede waaronder daardie persone gesterf het.
- (3) Die Provinsiale Minister kan van tyd tot tyd enige ander verslag van 'n munisipale polisie se uitvoerende hoof versoek wat die Provinsiale Minister benodig om sy of haar funksies ingevolge hierdie Wet te verrig.
- (4) Die Provinsiale Parlement kan vereis dat die uitvoerende hoof van 'n munisipale polisie voor hom of haar of enige van sy of haar komitees verskyn om vrae te beantwoord.

### Polisiëringsbehoefte en -prioriteite

17. (1) Die Provinsiale Minister moet jaarliks aan die Provinsiale Parlement verslag doen oor sy of haar funksies ingevolge hierdie Wet en sy of haar bevindinge wat daarop betrekking het.
- (2) Die Provinsiale Parlement moet die verslag genoem in subartikel (1) na sy Staande Komitee verantwoordelik vir polisiëring, verwys.
- (3) Die Staande Komitee waarna in subartikel (2) verwys word, moet hierdie verslag oorweeg en daaroor debatteer en mag openbare verhore hou en versoë versoek van die Wes-Kaapse Direkteur van Openbare Vervolging, die Streekskommissaris van die Departement van Korrektiewe Dienste en die Streekshoof van die Departement van Justisie en Konstitusionele Ontwikkeling.
- (4) Die Provinsiale Parlement moet die Provinsiale Kommissaris die geleentheid gee om te antwoord op die inhoud van die verslag, die versoë en enige ander kommentaar wat ontvang is.
- (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.
- (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 artikels 206(1) en (2) van die Grondwet.

### Provinsiale Sekretariaat

18. (1) Die Provinsiale Minister moet, in oorleg met die Minister en die Premier, die hoof van die Provinsiale Sekretariaat bedoel in artikel 18(1) van die Wet op die Burgerlike Sekretariaat vir die Polisiediens, 2011, aanstel.
- (2) Die Provinsiale Minister moet onderworpe aan die wette wat die staatsdiens reguleer, personeel vir die Provinsiale Sekretariaat aanstel.
- (3) Die personele van die Provinsiale Sekretariaat moet Suid-Afrikaanse burgers en bekwame en bevoegde persone wees wat oor die gepaste kennis, ervaring en kwalifikasies beskik.

### Samewerking en inter-regeringsbetrekkinge

19. (1) Die Provinsiale Minister, gemagtigde werknemers en persone, ondersoekbeamptes en die Ombudsman moet hulle funksies ingevolge hierdie Wet in ooreenstemming met die beginsels van samewerkende regering en inter-regeringsbetrekkinge, bedoel in Hoofstuk 3 van die Grondwet, verrig.
- (2) Die Provinsiale Minister mag aanbevelings oor die polisie en polisiëringsaangeleenthede aan die Burgerlike Sekretariaat voorlê of ooreenkomste sluit, om die samewerking tussen die verskeie rolspelers, soos beoog in artikel 6 van die Wet op die Burgerlike Sekretariaat vir die Polisiediens, 2011, te versterk.

### Provinsiale Veiligheidsadviesraad

20. (1) Die Provinsiale Veiligheidsadviesraad word ingestel.
- (2) Die funksies van die Raad is om die Provinsiale Minister in die algemeen van advies te bedien en om voorstelle te maak oor—
  - (a) die funksies van die Provinsiale Kabinet ingevolge Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997;
  - (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 mag voortspruit, of wat die Raad nodig ag om die oogmerke van hierdie Wet te bereik, of wat die Provinsiale Minister na die Raad mag verwys vir advies.

### Samestelling van die Raad

21. (1) Raadslede moet deur die Provinsiale Minister aangestel word en bestaan uit—
  - (a) 'n verteenwoordiger vanuit die sakegemeenskap;
  - (b) 'n lid van die regbank, Kaapse Balie of die Kaapse Wetsgenootskap;
  - (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 en op verwante gebiede betrokke is; en
  - (e) die Departementshoof, as 'n *ex officio* lid.
- (2) Die raadslede waarna daar in subartikel (1)(a) tot (d) verwys word, mag slegs aangestel word nadat die Provinsiale Minister, by wyse van 'n kennisgewing in die *Provinsiale Koerant* en in ander media wat die Provinsiale Minister as geskik beskou, al die belangstellende partye uitgenooi het om binne die tydperk wat in die kennisgewing vermeld word, die name van gepaste en bevoegde persone voor te lê met bekwaamheid in, of wat kennis het van die gebied van polisiëring en verwante gebiede.

### Ampstermyn van en diensvoorwaardes vir Raadslede

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

- (2) 'n Lid se pos raak vakant indien—
- (a) die lid sonder die Raadsvoorsitter se toestemming van twee opeenvolgende Raadsvergaderings afwesig is;
  - (b) die lid sy of haar skriftelike bedanking by die Raadsvoorsitter indien;
  - (c) die lid uit die Raad afgedank word kragtens subartikel (3); of
  - (d) die lid sterf.
- (3) Die Provinsiale Minister kan 'n Raadslid 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 Raad wat ingevolge subartikel (2) ontstaan, ingevolge artikel 21(1) en (2) vul.
- (5) 'n Lid wat op grond van subartikel (4) aangestel word, se termyn duur vir die oorblywende gedeelte van die tydperk waarvoor die lid wat sy of haar amp verlaat het, aangestel was.
- (6) Die Provinsiale Minister moet een van die Raadslede as voorsitter aanwys.
- (7) Die Provinsiale Minister kan enige ander aanstellingsvoorwaardes waarvoor daar nie in hierdie artikel voorsiening gemaak word nie, bepaal.
- (8) Die Raadslede wat in artikel 21(1)(a) tot (d) genoem word, mag die toelae ontvang en vir die uitgawes vergoed word soos bepaal deur die Provinsiale Minister met die instemming van die Provinsiale Minister verantwoordelik vir finansies.

### Raadsvergaderings

23. (1) Die Raad kan, onderworpe aan goedkeuring deur die Provinsiale Minister, reëls maak oor die Raad se besluitnemingsprosedure en die hou van en die prosedure tydens raadsvergaderings.
- (2) Raadsvergaderings moet gehou word op die tyd en plek soos deur die voorsitter van die Raad bepaal, in ooreenstemming met die Raad se reëls.

### Toekennings

24. Die Provinsiale Minister kan ooreenkomstig die voorgeskrewe kriteria toepaslike toekennings, wat geldelike toekennings kan insluit, maak aan enige lid van die gemeenskap of ander persoon vir verdienstelike diens ten opsigte van die bevordering van die oogmerke van hierdie Wet.

### Oortredings

25. (1) Enige persoon wat die bepalings van artikels 6(8)(b), 6(8)(c), 6(8)(d), 8(7)(a), 8(7)(b) of 8(7)(c), sonder 'n kwytskelding onder artikel 6(9) of 8(8) oortree of artikel 8(6) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf van hoogstens drie jaar.
- (2) Enige persoon wat die Ombudsman of 'n ondersoekbeampte in die kantoor of 'n werknemer van die Departement belemmer of hinder in die uitvoer 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.

### Regulasies

26. Die Provinsiale Minister kan regulasies uitvaardig oor—
- (a) enige aangeleentheid ten opsigte waarvan hierdie Wet regulasies vereis of magtig;
  - (b) die funksies en pligte van die Provinsiale Minister of die Ombudsman se kantoor;
  - (c) die ontvangs, verwerking en ondersoek van klagtes wat ingevolge hierdie Wet ingedien word;
  - (d) vereistes vir verslagdoening deur die Provinsiale Kommissaris of 'n uitvoerende hoof van 'n munisipale polisie diens ingevolge hierdie Wet;
  - (e) die formaat van enige verslag wat ingevolge hierdie Wet vereis word;
  - (f) die bepaling van sleutelaanwysers en empiriese datatipes wat in 'n verslag ingevolge hierdie Wet vereis, ingesluit moet word;
  - (g) maatreëls om die vertroulikheid van, beheer oor en toegang tot inligting wat deur die geïntegreerde inligtingstelsel ingewin is, te verseker;
  - (h) die klaring van werknemers, ondersoekbeamptes en ander persone wat deur die Provinsiale Minister gemagtig is om funksies ingevolge hierdie Wet te verrig;
  - (i) aanwysers om toesig te hou oor die polisie diens se doeltreffendheid en bevoegdheid en dit te bepaal; of
  - (j) enige ander aangeleentheid wat nodig is vir die doeltreffende uitvoering van die funksies ingevolge hierdie Wet.

### Delegering

27. (1) Die Provinsiale Minister kan enige bevoegdheid, behalwe die bevoegdheid om regulasies uit te vaardig, of plig wat ingevolge hierdie Wet aan hom of haar verleen of opgedra is, aan die Departementshoof delegeer of opdra.
- (2) 'n Delegasie of opdragting ingevolge subartikel (1)—
- (a) moet op skrif wees;
  - (b) verhinder nie die Provinsiale Minister daarvan om die bevoegdheid uit te voer of die plig te verrig nie;

- (c) kan aan voorwaardes onderworpe gemaak word;
- (d) kan die bevoegdheid om te subdelegeer insluit; en
- (e) kan te eniger tyd teruggetrek word.

**Kort titel en inwerkingtreding**

28. Hierdie Wet staan bekend as die Wes-Kaapse Wet op Gemeenskapsveiligheid, 2012, en tree in werking op 'n datum deur die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

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

### 1. Agtergrond

Die doel van die Wes-Kaapse Konsepwetsontwerp op Gemeenskapsveiligheid is om verhoogde vlakke van veiligheid te bewerkstellig ter ondersteuning van 'n oop gemeenskap waarin daar geen vrees vir misdaad heers nie, deur die ontwikkeling van toetsmodelle in ooreenstemming met die grondwetlike mandaat van provinsies om oor die polisie toesig te hou. Die doel van toesighouding is om patrone en praktyke van polisie-optrede asook om tekortkominge in die polisiestelsel te identifiseer en aanbevelings te doen oor hoe polisiëring in die Wes-Kaap verbeter kan word.

Die wyse waarop die Provinsie klagtes oor polisiëring uit die gemeenskap hanteer, sal aansienlik verbeter word deur die instelling van 'n Provinsiale Polisie-ombudsman, wat deur die Konsepwetsontwerp gemagtig word om sulke klagtes doeltreffend te hanteer.

Die instel van 'n geïntegreerde inligtingstelsel sal die omvang van inligting wat deur die Provinsiale Kabinet in ag geneem word wanneer die Provinsie se polisiëringsbehoefte en prioriteite bepaal word, verbreed. Dit beteken dat die huidige praktyk van polisiëringsbehoeftebepaling deur primêr net van misdaadstatistiek gebruik te maak, vervang sal word. 'n Holistiese benadering sal gevolg word deur polisiëringsbehoefte te bepaal wat gebaseer is op inligting wat verkry is uit vennootskappe met gemeenskappe, die burgerlike samelewing, ander regeringsfere en die sakegemeenskap.

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

### 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 (artikel 205-208) sodanige wetgewende bevoegdheid aan die Provinsie verleen. Hierdie bevoegdheid word met die nasionale regeringsfeer gedeel.

Artikel 66, saamgelees met artikel 67, van die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998) bemagtig 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 opsig wetgewing uit te vaardig.

Die bepalings van artikel 66 van die Grondwet van die Wes-Kaap, 1997, sluit in:

"66. (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 polisiediens, waarby inbegrepe is die ontvangs van verslae oor die polisiediens;
- (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 polisie-onbevoegdheid of 'n verbrokkeling 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 206(3) van die Grondwet bevat soortgelyke bepalings. Artikel 67(1) van die Grondwet van die Wes-Kaap bemagtig 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 verantwoordelik is vir die polisiëringsfunksies vermeld in die Grondwet en dat die Provinsiale Kabinet die Provinsie se polisiëringsbehoefte en -prioriteite moet bepaal.

### 3. Doel van Konsepwetsontwerp

Die doel van die Konsepwetsontwerp is 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 funksie van toesighouding oor die polisie.

### 4. Inhoud van Konsepwetsontwerp

#### Klousule 1

Hierdie klousule bevat die woordomskrivings.

#### Klousule 2

Hierdie klousule handel oor die oogmerk van die Konsepwetsontwerp wat die regulering en uitvoering van die Provinsiale Kabinet se funksies soos bepaal in Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997, behels, naamlik om polisie-optrede te monitor; om die doeltreffendheid van sigbare polisiëring te bepaal; om oor die doeltreffendheid en bevoegdheid van die polisiediens toesig te hou, waarby ingesluit is die ontvangs van verslae oor die polisiediens; en om goeie betrekkinge tussen die polisie en gemeenskappe te bevorder. Die Konsepwetsontwerp streef ook daarna om die doelstellings van die Burgerlike Sekretariaat en die Provinsiale Sekretariaat, wat ingevolge die "Civilian Secretariat for the Police Service Act", 2011 (Wet 2 van 2011) ingestel is, te ondersteun.

#### Klousule 3

Hierdie klousule verwys na die funksies van die Provinsiale Minister wat vir polisiëring in die Provinsie verantwoordelik is ("Provinsiale Minister"). Hierdie funksies spruit voort uit die bogenoemde grondwetlike bevoegdhede wat in artikel 206 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 van Gemeenskapsveiligheid ("die Provinsiale Departement") en ander persone kan magtig om die polisie te monitor, oor die polisie toesig te hou en die polisie te evalueer.

**Klousule 5**

Hierdie klousule maak voorsiening vir die voorskrifte vir die stigting van gemeenskapspolisieforums en -rade, soos genoem in artikels 19, 20 en 21 van die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 van 1995). Hierdie Wet bepaal dat die Provinsiale Kommissaris gemeenskapspolisieforums mag stig, onderworpe aan die Provinsiale Minister se voorskrifte.

**Klousule 6**

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

Hierdie klousule maak ook voorsiening vir die vrywillige akkreditering van buurtwagte. Die Provinsiale Minister kan ook vir die opleiding van buurtwagte voorsiening maak.

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

- (1) die aktiwiteite van die buurtwagte; en
- (2) veiligheidsbekommernisse en misdadaanvalle in die gebiede waarin buurtwagte werksaam is.

Hierdie vereistes beoog om 'n databasis oor die veiligheidsituasie in die Provinsie te skep om, soos deur die Grondwet vereis, toesig te hou oor die polisie se doeltreffendheid en bevoegdheid en om die Provinsie se polisiëringsbehoefte en -prioriteite te bepaal.

**Klousule 7**

Hierdie klousule het betrekking op die instandhouding van 'n databasis van gemeenskapsorganisasies wat aktief betrokke is by polisiëring 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 Wet te bereik, betrekkinge tussen die polisie en gemeenskappe te verbeter, en gemeenskapsorganisasies op die databasis te ondersteun met opleiding en hulpbronne.

Gemeenskapsorganisasies op die databasis moet inligting oor misdadaanvalle aan die Departementshoof rapporteer ten einde die Provinsie se polisiëringsbehoefte en -prioriteite te bepaal.

**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 inligting sal die Provinsiale Minister in staat stel om toesig te hou oor die polisie se doeltreffendheid en bevoegdheid en om die Provinsie se polisiëringsbehoefte en -prioriteite te bepaal.

Die klousule maak ook voorsiening vir die registrasie van sekuriteitsdiensverskaffers by die Provinsiale Minister en vir sekuriteitsdiensverskaffers om inligting te verskaf oor veiligheidsbekommernisse en misdadaanvalle in hulle operasionele gebiede. Daar word voorsien dat dit betrekkinge tussen die polisie en gemeenskappe sal verbeter en van hulp sal wees in die bepaling van die Provinsie se polisiëringsbehoefte en -prioriteite.

**Klousules 9 tot 14**

Hierdie klousules maak voorsiening vir die instelling van die kantoor van die Wes-Kaapse Provinsiale Polisie-ombudsman en die aanstelling van die Ombudsman.

Die Ombudsman se hoof funksies is die ondersoek van klagtes ten opsigte van polisie-ondoeltreffendheid of 'n verbroekeling in die betrekkinge tussen die Suid-Afrikaanse Polisie (SAPD) 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 mag klagtes verwys na enige ander bevoegde owerheid indien daardie owerheid die klagtes op 'n meer toepaslike wyse kan hanteer.

Klousule 14 bepaal dat die Ombudsman of aangewysde ondersoekers 'n persoon mag versoek 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 mag behels dat 'n kommissie van ondersoek deur die Premier aangestel moet word. Die Provinsiale Minister moet 'n aanbeveling doen aan die nasionale Kabinetsminister wat vir polisiëring verantwoordelik is oor sake wat deur die Ombudsman ondersoek is.

**Klousule 15**

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 waaronder daardie persone dood is, statistiek 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 indien.



**Klousule 16**

Hierdie klousule maak voorsiening vir soortgelyke verslaggewingsvereistes as in klousule 15, maar met betrekking tot die munisipale polisie diens wat ingevolge artikel 64A van die Wet op die Suid-Afrikaanse Polisie diens, 1995, 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 17**

Hierdie klousule maak voorsiening vir die bepaling van die Provinsie se polisieeringsbehoefes en -prioriteite.

Artikel 66(1)(e) van die Grondwet van die Wes-Kaap, 1997, bepaal dat die Provinsiale Minister met die nasionale Minister verantwoordelik vir polisieëring mag skakel “met betrekking tot misdad en polisieëring in [die] Wes-Kaap.”

Artikel 206(1) van die Grondwet bevat ’n soortgelyke bepaling en bepaal dat die nasionale Minister verantwoordelik vir polisieëring “moet na oorleg met die provinsiale regering en met inagneming van die polisieëeringsbehoefes en -prioriteite van die provinsies soos deur die provinsiale uitvoerende gesagte bepaal, die nasionale polisieëeringsbeleid bepaal.” Artikel 68(2) van die Grondwet van die Wes-Kaap, 1997, bepaal dat die Provinsiale Kabinet die polisieëeringsbehoefes en -prioriteite moet bepaal.

Die Provinsiale Minister moet aan die Wes-Kaapse Provinsiale Parlement verslag doen om die Provinsiale Kabinet in staat te stel om die polisieëeringsbehoefes en -prioriteite te bepaal. Die Staande Komitee verantwoordelik vir polisieëring moet oor die verslag debatteer en mag ook vir openbare verhore voorsiening maak om kommentaar van belanghebbendes in die strafregstelsel te ontvang. Die bevindinge en kommentaar sal dan deur die Provinsiale Kabinet oorweeg word in hulle verslag aan die nasionale Minister oor die Provinsie se polisieëeringsbehoefes en -prioriteite.

**Klousule 18**

Hierdie klousule bepaal dat die Provinsiale Minister in oorleg met die Premier en die Nasionale Minister die hoof van die Provinsiale Sekretariaat, wat ingevolge die “Civilian Secretariat for the Police Service Act”, 2011 (Wet 2 van 2011) ingestel is, moet aanstel en maak ook verder voorsiening vir die aanstelling van personeel vir die Provinsiale Sekretariaat.

**Klousule 19**

Hierdie klousule maak voorsiening vir samewerking tussen die Provinsiale Departement, die Burgerlike Sekretariaat en die Provinsiale Sekretariaat, asook ooreenkomste wat tussen die onderskeie rolspelers gesluit kan word.

**Klousules 20 tot 23**

Hierdie klousules maak voorsiening vir die instelling van die Provinsiale Veiligheidsadviesraad, die samestelling van die Raad, die ampstermyn van Raadslede, en Raadsvergaderings. Die doel van die Raad is om die Provinsiale Minister te adviseer oor die monitering van en toesig houing oor die doeltreffendheid en bevoegdheid van die polisie diens in die Provinsie. Die Raad sal ook advies gee oor strategieë, beleid, begrotings en jaarlikse prestasieplanne met betrekking tot die toesig houdende funksies, en oor enige ander sake wat uit die toepassing van die Konsepwetsontwerp mag voortspuit. Die Raad bestaan uit lede wat private en openbare belanghebbendes verteenwoordig.

**Klousule 24**

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 hierdie Konsepwetsontwerp te bevorder.

**Klousule 25**

Hierdie klousule skep oortredings ten opsigte van die belemmering of verhoeding van werknemers van die Provinsiale Departement of die kantoor van die Ombudsman om hulle funksies ingevolge hierdie Wet uit te voer, of wanneer geakkrediteerde buurtwagte en sekuriteitsdiensverskaffers versuim om verslag te lewer en rekord te hou van voorgeskrewe sake. ’n Oortreding word ook geskep ten opsigte van ’n versuim deur ’n sekuriteitsdiensverskaffer om te registreer by the Provinsiale Minister.

**Klousule 26**

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

**Klousule 27**

Hierdie klousule bepaal dat die Provinsiale Minister enige bevoegdheid of plig wat aan hom of haar opgedra is, aan die Hoof van die Provinsiale Departement kan delegeer wat dan — indien daartoe gemagtig — hierdie bevoegdhede of pligte aan werknemers van die Provinsiale Departement kan delegeer.

**Klousule 28**

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

**5. Finansiële implikasies**

Die finansiële implikasies moet nog bepaal word.

**6. Raadpleging**

Die volgende Departemente is geraadpleeg:

Die Departement van Gemeenskapsveiligheid

Die Departement van die Premier

Die Konsepwetsontwerp sal voorgeleë word aan plaaslike regering, provinsiale departemente en toepaslike nasionale departemente vir raadpleging.

**7. Wetgewende bevoegdheid**

Artikel 206 van die Grondwet, saamgelees met artikels 104 en Bylae 4 van die Grondwet en artikels 66 en 67(1) van die Wes-Kaapse Grondwet, 1997, magtig die Provinsiale Parlement om die nodige wetgewing uit te vaardig om die funksies in Hoofstuk 11 van die Grondwet en Hoofstuk 8 van die Grondwet van die Wes-Kaap, 1997, uit te voer.

## ISIBHENGEZO SEPHONDO

Kupapashwa lo Mthetho uSayilwayo ngeenjongo zokuzisa ulwazi:

### ISiqulunqo soMthetho weNtshona Koloni oSayilwayo woKhuseleko loLuntu, 2012

P.N. 27/2012

2012

### ISIQULUNQO SOMTHETHO WENTSHONA KOLONI OSAYILWAYO WOKHUSELEKO LOLUNTU, 2012

Wokubonelela ngokwenziwa nokulawulwa kwemisebenzi yezobupolisa yeKhabhinethi yePhondo ngokwemiqathango yeSahluko 11 soMgaqo-siseko woMzantsi Afrika ka-1996, neyeSahluko 8 soMgaqo-siseko weNtshona Koloni ka-1997; onika inkxaso nentsebenziswano kwiButho looNobhala boLuntu nabePhondo elasekwa ngokwemiqathango yoMthetho oyiCivilian Secretariat for Police Service Act ka-2011, nokubonelela ngentsebenziswano neButho looNobhala boLuntu eliyiCivilian Secretariat neButho looNobhala bePhondo elasekwa ngokwemiqathango yaloo Mthetho; ukubonelela ngezikhokelo zokusekwa kwamaqonga ezobupolisa asekuhlaleni ngokwemiqathango yoMthetho oyiSouth African Police Service Act, 1995; ukubonelela ngoqinisekiso lwemibutho njengamabutho eLiso Lomzi beengingqi (neighbourhood watches); ukubonelela ngokusekwa kobuhlakani nemibutho yasekuhlaleni; ukuseka nokulondoloza inkqubo yengcaciso emanyanisiweyo kunye novimba weenkukacha zemibutho; ukubonelela ngobhaliso lwabaniki beenkonzo zokhuseleko kuvimba weenkukacha zemibutho; ukuseka iOfisi kaNozikhhalazo wezaMapolisa wePhondo leNtshona Koloni (Office of the Western Cape Provincial Police Ombudsma) kuphandwe ngezikhhalazo eziphathelele kwinkonzo yamapolisa; ukulawula iingxelo eziphathelele kwinkonzo yamapolisa; ukuseka iBhodi yePhondo yeeNgcebiso ngoKhuseleko; kwakunye nokubonelela ngayo nayiphi na eminye imiba ephathelele kwezi zinto.

NGAKO OKO KE KUWISWA UMTHEMHO yiPalamente yePhondo leNtshona Koloni:—

#### Iinkcazo-magama

1. Kulo Mthetho, ngaphandle kwalapho indlela elisetyenziswe ngayo igama ilinika enye intsingiselo—
  - “iBhodi” ithetha iBhodi yePhondo yeeNgcebiso ngoKhuseleko esekwe ngokwemiqathango yecandelo 20;
  - “iqonga lezobupolisa lasekuhlaleni” lithetha iqonga lezobupolisa lasekuhlaleni elisekwe ngokwemiqathango yecandelo 19 loMthetho oyiSouth African Police Service Act, 1995 (uMthetho 68 ka-1995);
  - “uMgaqo-siseko” uthetha uMgaqo-siseko weRiphabliki yoMzantsi Afrika ka-1996;
  - “iButho looNobhala boLuntu” lithetha neButho looNobhala boLuntu leeNkonzo zaMapolisa elisekwe ngokwemiqathango yecandelo 4 loMthetho oyi Civilian Secretariat for Police Service Act, 2011 (uMthetho 2 ka-2011);
  - “iSebe” lithetha isebe lephondo elisingathe imisebenzi echazwe kwiSahluko 11 soMgaqo-siseko neyeSahluko 8 soMgaqo-siseko weNtshona Koloni ka-1997 (uMthetho 1 ka-1998);
  - “uMphathiswa” uthetha ilungu leKhabhinethi elisingathe ezobupolisa;
  - “inkonzo yamapolisa kamasipala” ithetha inkonzo yamapolisa esekwe kwiphondo eli ngokwemiqathango yecandelo 64A yoMthetho oyiSouth African Police Service Act ka-1995;
  - “iLiso Lomzi lengingqi” uthetha umbutho okhankanywe kwicandelo 6(1) waza waqinisekiswa ngokwemiqathango yecandelo
  - “iofisi kaNozikhhalazo” ithetha iofisi kaNozikhhalazo wezaMapolisa wePhondo leNtshona Koloni;
  - “uNozikhhalazo” uthetha uNozikhhalazo wezaMapolisa wePhondo leNtshona Koloni obekwe ngokwemiqathango yecandelo 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) kwiphondo eli okanye inkonzo yamapolisa kamasipala;
  - “amapolisa” abhekisele kwiNkonzo yaMapolisa oMzantsi Afrika kwiphondo eli okanye inkonzo yamapolisa kamasipala;
  - “imisebenzi yobupolisa” ithetha imisebenzi eyenziwa ngamalungu e-SAPS okanye enkonzo kamapolisa kamasipala;
  - “ukumisela” kuthetha ukumisela ngomgaqo;
  - “iPhondo” lithetha iNtshona Koloni;
  - “iKhabhinethi yePhondo” ithetha iKhabhinethi yePhondo, njengoko ikhankanywa kwicandelo 42 loMgaqo-siseko weNtshona Koloni, 1997;
  - “uMkhomishinala wePhondo” uthetha umkhomishinala wephondo obekelwe iphondo eli ngokwemiqathango yecandelo 207(3) loMgaqo-siseko
  - “uMphathiswa wePhondo” uthetha uMphathiswa wePhondo owongamele imisebenzi yamapolisa kwiphondo eli;
  - “iButho looNobhala bePhondo” lithetha ibutho loonobhala bephondo elisekwe ngokwemiqathango yecandelo 16 loMthetho oyiCivilian Secretariat for Police Service Act, 2011;
  - “umgaqo” uthetha umgaqo owenziwe phantsi kwecandelo 26;
  - “abaniki beenkonzo zokhuseleko” bathetha kubaniki beenkonzo zokhuseleko njengoko bechazwa kwicandelo 1 loMthetho oyiPrivate Security Industry Regulation Act, 2001 (uMthetho 56 ka-2001);
  - “iNkonzo yaMapolisa oMzantsi Afrika” ithetha iNkonzo yaMapolisa oMzantsi Afrika eyasekwa ngokwemiqathango yecandelo 5(1) loMthetho oyiSouth African Police Service Act, 1995;
  - “iofisi” ithetha iOfisi kaNozikhhalazo; kwaye
  - “lo Mthetho” ubandakanya imigaqo eyenziwe phantsi kwecandelo 26 kunye nazo naziphi na izikhokelo ezenziwe phantsi kwecandelo 3(e) nele-5.

**Iinjongo zalo Mthetho****2. Iinjongo zalo Mthetho—**

- (a) kukulawula imisebenzi yeKhabhinethi yePhondo njengoko icaciswa kwiSahluko 11 soMgaqo-siseko nakwiSahluko 8 soMgaqo-siseko weNtshona Koloni, 1997;
- (b) kukunika isikhokelo ngokuqhutywa kwemisebenzi yeKhabhinethi yePhondo njengoko ikhankanywa kwicandelo 206 loMgaqo-siseko ngokunjalo nakumacandelo 66 nele-67(1) loMgaqo-siseko weNtshona Koloni, 1997:
  - (i) ukubeka iliso kwindlela yokuziphatha kwamapolisa;
  - (ii) ukongamela impumelelo nocikizeko lwenkonzo yamapolisa, kubandakanya nokwamkela iingxelo ngenkonzo yamapolisa;
  - (iii) ukukhuthaza ubudlelane obuhle phakathi kwamapolisa nabahlali;
  - (iv) ukuvandlakanya impumelelo yokubonakala kwamapolisa ekwenzeni imisebenzi yawo;
  - (v) ukuphanda ngazo naziphi na izikhalazo ezimalunga nokusilela kwamapolisa emsebenzini wawo okanye ngokuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali; kunye
- (c) nokunika inkxaso kwiinjongo zeButho looNobhala loLuntu neButho looNobhala bePhondo.

**Imisebenzi yoMphathiswa wePhondo**

- 3. UMphathiswa wePhondo usenokuthi enze lemisebenzi ilandelayo ekufezekiseni iinjongo zecandelo 206 loMgaqo-siseko ngokunjalo nezamacandelo 66 nele-67 loMgaqo-siseko weNtshona Koloni, 1997:
  - (a) ukubeka iliso kwindlela yokuziphatha kwamapolisa;
  - (b) ukongamela impumelelo yemigaqo-nkqubo nezikhokelo zokwenziwa kwemisebenzi ekusetyenzisweni kwazo yinkonzo yamapolisa kwakunye nocikizeko lwenkonzo yamapolisa;
  - (c) ukukhuthaza ubudlelane obuhle phakathi kwamapolisa nabahlali;
  - (d) ukufumanisa izizathu zokuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali, nokuqulunqa amanyathelo okuphucula obu budlelane;
  - (e) ukukhupha izikhokelo zokusekwa nokuqiniswa kwamaqonga ezobupolisa lasekuhlaleni kwakunye nezinye izigqeba ezinxulumene nazo nokuquzelela indlela efanelekileyo yokusebenza kwawo khona ukuze kukhuthazeke ubudlelane obuhle phakathi kwamapolisa nabahlali;
  - (f) ukudala ubuhlakani nabahlali ngeenjongo zokukhuthaza ubudlelane obulungileyo phakathi kwabahlali namapolisa;
  - (g) ukulondoloza uvimba weenkukacha zemibutho yasekuhlaleni ethatha inxaxheba ebonakalayo kwinkalo yokwenziwa komsebenzi wamapolisa;
  - (h) ukuvandlakanya impumelelo yokubonakala kwamapolisa ekwenzeni imisebenzi yawo;
  - (i) ukuseka nokulondoloza iinkqubo zeenkukacha ezimanyanisiweyo khona ukuze kukwazeke ukubeka iliso impumelelo nocikizeko lwenkonzo yamapolisa nokubona iimfuno zephondo eli kwimisebenzi neendawo eziphambili ngokubaluleka;
  - (j) ukuqhagamshelana noMphathiswa malunga nolwaphulo-mthetho nokwenziwa kwemisebenzi yamapolisa kwiphondo eli;
  - (k) ukubhala phantsi izikhalazo ezimalunga nokusilela kwamapolisa emsebenzini wawo okanye ngokuqhawuka kwamakhonkco obudlelane phakathi kwamapolisa nabahlali;
  - (l) ukwamkela nokuhlalutya iingxelo, kubandakanya ubungakanani nomgangatho wenkonzo yamapolisa;
  - (m) ukuqokelela iinkukacha zobungcali malunga neziphumo zomsebenzi kwakunye nolwabiwo lwezancedisi;
  - (n) ukubeka iziphumo eziya kusetyenziswa ekubekweni kweliso nasekuvandlakanyweni kwempumelelo nocikizeko lwenkonzo yamapolisa;
  - (o) ukwamkela nokuhlalutya iinkukacha malunga nenkxaso-mali, inkcitho, izinto ezenziweyo neziphumo zomsebenzi wamapolisa;
  - (p) ukuqwalasela uthende nokwenzekayo ngakwicala yendlela yokuziphatha kwamapolisa, ukufumanisa iingxaki kwinkqubo yesipolisa nokwenza izindululo kuMphathiswa wezaMapolisa malunga nokulungiswa kolo silelo;
  - (q) ukucebisa iKhabhinethi yePhondo malunga neemfuno zePhondo eli ngakwicala lomsebenzi wamapolisa neendawo eziphambili ngokubaluleka njengoko kukhankanywa kwicandelo 17;
  - (r) ukuqhagamshelana noMphathiswa nokwenza izindululo malunga neemfuno zephondo eli ngakwicala lomsebenzi wamapolisa neendawo eziphambili ngokubaluleka, njengoko zibekiwe yiKhabhinethi yePhondo;
  - (s) ukunika iingxelo kwiPalamente yePhondo ngokuphathelele kwindlela eyenziwa ngayo imisebenzi equkathwe ngulo Mthetho nokuqulunqa iingxelo yonyaka ize yandlalwe kwiPalamente yePhondo qho ngonyaka ngamnye;
  - (t) ukuqhuba uphando olunokuthi lube yimfuneko;
  - (u) ukongamela ukusebenza ngempumelelo kweButho looNobhala bePhondo;

- (v) ukuququzelela intsebenziswano enkulu phakathi kweSebe eli, iButho looNobhala boLuntu namapolisa ekwenziweni kwemisebenzi ebekwa ngulo Mthetho.

#### **Ukubeka iliso, ukongamela nokuvandlakanya imisebenzi yamapolisa**

4. (1) UMphathiswa wePhondo usenokuthi, ngendlela ebekiweyo, agunyazise abasebenzi beSebe eli ukuba:
- baye apho kukho uqhankqalazo, apho kwenzeka ulwaphulo-mthetho nakweziph na ezinye iindawo asebenza kuzo amapolisa bahlole ze babhale abakubonileyo malunga noqhagamshelwano phakathi kwamapolisa nabahlali;
  - babeke iliso bavandlakanye ulwabiwo, ukuhanjiswa nokusetyenziswa kwabasebenzi nezinye izibonelelo zomisebenzi wamapolisa kwiphondo eli;
  - bahlole izikhululo zamapolisa okanye amanye amasango amapolisa ngeenjongo:
    - zokubeka iliso kwindlela yokuziphatha kwamapolisa;
    - ukongamela impumelelo nocikizeko lwenkonzo yamapolisa kuloo ndawo okanye ukubeka esweni nayiphi na into engqina ucikizeko lwempumelelo yamapolisa;
    - ukongamela ucikizeko nempumelelo yamapolisa ekuqwalaseleni izikhalazo zabahlali malunga nokusebenza kwamapolisa kwezo ndawo, okanye ukusilela kwawo;
    - ezokuvandlakanya ubudlelane phakathi kwabahlali namapolisa.
- (2) UMphathiswa wePhondo usenokugunyazisa nawuphi na omnye umntu, ngendlela ebekiweyo, ukuba enze le misebenzi ichazwe kwicandelwana (1).
- (3) Ukuze akwazi ukwenza le misebenzi iqulathwe kulo Mthetho, uMphathiswa wePhondo okanye nawuphi na umsebenzi okanye umntu othe wagunyaziswa ngokwemiqathango yecandelwana (1) okanye (2):
- usenokuthi acele afumane iinkcukacha neempepha eziphantsi kolawulo lwenkonzo yamapolisa okanye lwaloo masipala uchaphazelekayo;
  - usenokuthi angene kuso nasiphi na isakhiwo, amasango, inqwelo-mafutha okanye amasango aphantsi kolawulo lwenkonzo yamapolisa okanye lwakhe nawuphi na umasipala; kwaye
  - uselungelweni lokuba anikwe uncedo lilo naliphi na ilungu lenkonzo yamapolisa okanye nawuphi na umsebenzi kamasipala.
- (4) Nayiphi na imbambano emalunga nesicelo, ukufikelela okanye uncedo oluchazwe kwicandelwana (3) kufuneka aziswe uMphathiswa wePhondo ngayo.

#### **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, iibhodi zamapolisa zeengingqi zasekuhlaleni okanye ibhodi yephondo yamapolisa yasekuhlaleni ngokwemiqathango yamacandelo 19(1), 20(1) nelama-21(1) loMthetho oyi*South African Police Service Act*, kubandakanya nezikhokelo ezimalunga:
- neemfuneko zokufumanisa imibutho yasekuhlaleni efanelekileyo, amaziko namaqela achaphazelekayo anokuthi aseke iqonga lezamapolisa lasekuhlaleni okanye ibhodi;
  - neenkqubo zokutyumba nokunyula abantu bokuba ngamalungu eqonga lezobupolisa lasekuhlaleni okanye ibhodi;
  - nesithuba sobulungu kwiqonga lezobupolisa lasekuhlaleni okanye ibhodi;
  - nolwamkelo lomgaqo siseko kweqonga lezobupolisa lasekuhlaleni okanye ibhodi, nobuncinane omabuqulathwe kuwo; kwakunye
  - nosombululo lweembambano oluphathelele kuyo nayiphi na imbambano malunga nokusekwa nokusebenza kwamaqonga ezobupolisa asekuhlaleni neebhodi.
- (2) INtloko yeSebe kufuneka ivandlakanye izinga lokusebenza kwamaqonga ezobupolisa asekuhlaleni neebhodi kwakunye nobudlelane phakathi kwamapolisa namaqonga ezobupolisa asekuhlaleni neebhodi, kwaye kufuneka yenzele uMphathiswa wePhondo ingxelo ngoko ikufumanisileyo.
- (3) INtloko yeSebe isenokuthi iwancedise amaqonga ezobupolisa asekuhlaleni ngokuthi ibonelele ngoqeqesho nangezibonelelo.

#### **Uqinisekiso nenkxaso kwiLiso Lomzi lengingqi**

6. (1) Nawuphi na umbutho—
- ongasebenzeli nzuzo koko usenza umsebenzi wobuvolontiya;
  - onamalungu angabahlali, abaqeshi okanye abanini bezinto ezingahambiselaniyo okanye abanomdla koku kwingingqi leyo osebenza kuyo; kunye nalowo
  - unjongo yawo ikukukhusela amalungu awo, izinto zawo ezingahambiselaniyo nezinye izinto eziziimpahla zawo, kulwaphulo-mthetho nezinye iinkxalabo zawo ngokhuseleko kuloo ngingqi isebenza kuyo;
- usenokuthi ufake isicelo kuMphathiswa wePhondo, ngefomu emiselweyo yokuba uqinisekise njengeLiso Lomzi lengingqi.

- (2) UMphathiswa wePhondo usenokuthi afune ezinye iinkcukacha ezixhasa eso sicelo.
- (3) UMphathiswa wePhondo usenokuthi awuqinisekise umbutho njengeLiso Lomzi lengingqi asakuba ethe wasiqwalasela isicelo nazo naziphi na ezinye iinkcukacha ezithe zanikwa ngumfaki-sicelo, kwanokuba ngaba—
- (a) umbutho izinto ozenzayo uzenza ngokwemigangatho ebekiweyo ephathelele—
- (i) kwimiqathango yobulungu kwiLiso Lomzi lengingqi neyokuziphatha kwamalungu;
  - (ii) kwizigqeba zeLiso Lomzi lengingqi;
  - (iii) kulawulo nokusetyenziswa kweemali zeLiso Lomzi lengingqi;
  - (iv) kuxanduva lokuphendula nomelo lwesolomzi kwiqonga lezobupolisa lasekuhlaleni kwindawo leyo;
- (b) umbutho usebenza ngobuhlakani neqonga lezobupolisa lasekuhlaleni; nokuba ngaba
- (c) ipolisa elongamelelo iofisi yamapolisa kuloo ndawo liya kuxhasa na ukuqinisekiswa kombutho lowo njengeLiso Lomzi lengingqi.
- (4) Ukuba ngaba uMphathiswa wePhondo ugqiba kwelokuba—
- (a) awuqinisekise umbutho lowo njengeLiso Lomzi lengingqi, kufuneka ukuba uMphathiswa wePhondo—
- (i) afake igama lesolomzi lengingqi elo kwirejista yoosolomzi bengingqi;
  - (ii) akhuphe isiqinisekiso soqinisekiso olo ngegama lesolomzi elo echaza isithuba soqinisekiso olo, ingingqi elisebenza kuyo kunye neminye imiqathango yoqinisekiso; kananjalo
  - (iii) alithumelele isolomzi lengingqi elo eso siqinisekiso, athumelele neqonga lezobupolisa lasekuhlaleni kunye namapolisa aloo ndawo; okanye
- (b) kwelokuba angaliqinisekisi isolomzi lengingqi elo, uMphathiswa wePhondo kufuneka alazise ngento ebhaliweyo ngesigqibo sakhe eso, anike nezizathu zaso.
- (5) UMphathiswa wePhondo kufuneka ukuba qho ngonyaka apapashe uluhlu loosolomzi beengingqi.
- (6) UMphathiswa wePhondo usenokuthi abonelele isolomzi lengingqi ngenkxaso noqeqesho okanye nangezibonelelo.
- (7) UMphathiswa wePhondo kufuneka gcine irejista yoosolomzi beengingqi ekufuneka bakwazi ukufumaneka kuye nawuphi na umntu ochaphazelekayo onqwenela ukubahlola, asakuba enze isicelo sokwenza oko waza wayihlawula nentlawulo ebekiweyo.
- (8) Isolomzi lengingqi kufuneka:
- (a) liluhlaziye uqinisekiso lwalo qho emva kweminyaka emibini ngendlela ebekiweyo, kwaye ke ukuba lithe lasilela ukukwenza oko, luya kuphelelwa olo qinisekiso;
- (b) lithathele ingqalelo uMthetho oyi*Promotion of Access to Information Act, 2000* (uMthetho 2 ka-2000), 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
  - (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:
- (i) ezinto ezenziweyo lisolomzi lengingqi;
  - (ii) eenkxalabo zokhuseleko nezehlo zolwaphulo-mthetho kuloo ndawo lisebenza kuyo isolomzi lengingqi elo; and
  - (iii) awo nawuphi na umba omiselweyo ofunwa nguMphathiswa wePhondo ekuqwalaseleni iimfuno zomsebenzi wamapolisa kunye nezinto eziphambili ngokubaluleka kwakunye nempumelelo nocikizeko lwenkonzo yamapolisa; kwaye
- (d) la marekhodi akhankanywe kumhlathi(c) liwagcine isithuba seminyaka emihlanu ubuncinane ukusukela kumhla wokubhalwa kwawo.
- (9) UMphathiswa wePhondo usenokuthi alenzele isaphulelo naliphi na isolomzi lengingqi kwezimfuneko zikhankanywe kwicandelwana (8)(b), (c) no-(d).
- (10) Ethathele ingqalelo uMthetho oyi*Promotion of Access to Information Act, 2000*, umsebenzi weSebe eli ogunyaziswe nguMphathiswa wePhondo ufikelela kuwo nawuphi na amarekhodi agcinwe lisolomzi lengingqi okanye egameni lalo ngokwemiqathango yecandelwana (8) kwaye usenokuthi awahlole, athathe izicatshulwa kuwo okanye enze iikopi ngeenjongo zokuba afumane ezinye iinkcukacha ezizezinye ngokumalunga nengxelo ethe yenziwa ngokwemiqathango yecandelwana (8)(b) nezokuqinisekisa ukuba ngaba isolomzi lengingqi elo liyayithobela na imigangatho ekhankanywekwicandelwana (3)(a).
- (11) Ukuba ngaba isolomzi lengingqi liyasilela ekuyithobeleni le migangatho ichazwe kwicandelwana (3)(a), uMphathiswa wePhondo usenokuthi, emvakokuba elinike inothisi 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
- agcine uvimba weenkukacha zemibutho yasekuhlaleni ethatha inxaxheba kwinkalo yomsebenzi wamapolisa;
  - ayincedise imibutho yasekuhlaleni ekulo vimba weenkukacha ngokuthi ayinike inkxaso, uqeqesho okanye kunye nezibonelelo;
  - ethathele ingqalelo nawo nawuphi na umthetho olawula ukunikwa kweekhontrakthi nguRhulumente wePhondo, 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.
  - Aququzelele ukusungulwa kwecandelo elilodwa elijongene neentlobo ezithile zolwaphulo-mthetho
- (2) Umbutho wasekuhlaleni okuvimba weenkukacha kufuneka wenze ingxelo kwiNtloko yeSebe, ngefomu ebekiweyo, ngazo naziphi na izinto eziphathelelekukhuseleko ezithe zaqwalaselwa nguloo mbutho.

**Inkqubo yeenkukacha emanyanisiweyo**

8. (1) Ngeenjongo zokubeka iliso kwimpumelelo nocikizeko neyokuqinisekisa ngeemfuno zephondo eli kumsebenzi wamapolisa nangezinto eziphambili ngokubaluleka, uMphathiswa wePhondo kufuneka aseke alondolozwe inkqubo yeenkukacha emanyanisiweyo.
- (2) INtloko yeSebe kufuneka ibe nabasebenzi beSebe eli ebabekela bucala bokuba baqokelele iinkukacha balawule kwaye balondolozwe le nkqubo yeenkukacha imanyanisiweyo.
- (3) UMphathiswa wePhondo usenokuthi adlane iindlebe neButho looNobhala boLuntu neButho looNobhala bePhondo malunga nenkqubo yeenkukacha emanyanisiweyo ngeenjongo zokuqinisekisa umanyaniso lweenkukacha 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*.
- (4) Inkqubo yeenkukacha kufuneka ukuba ivumele—
- uqokelelo lweenkukacha kwizigqeba zikarhulumente, kubaniki beenkonzo zokhuseleko, kwinkonzo yamapolisa nakwamanye amaziko anxulumene nomsebenzi wamapolisa;
  - uhlaluty lweenkukacha;
  - ukubhalwa kweenkxalabo zabahlali ngezokhuseleko kwiphondo eli;
  - ukudityaniswa kweenkukacha ezikhankanywe kwicandelo 7(1)(a) kulo vimba; kwaye
  - uhlaluty lwenani nohlobo lwezikhazelo eziphathelele kwezomsebenzi wamapolisa ezifunyenwe nguNozikhazelo ngokwemiqathango yecandelo 12, zizigqeba zikarhulumente, amaqonga ezobupolisa asekuhlaleni nawo nawaphi na amanye amaziko.
- (5) INtloko yePhondo idlulisele iinkukacha eziphathelele kulwaphulo-mthetho ezithe zafunyanwa ngenkqubo yeenkukacha ngabasebenzi beSebe eli kuMkhomishinala wePhondo.
- (6) Ukusukela kumhla othe wabekwa nguMphathiswa wePhondo, ngenothisi ethe yakhutshwa kwiGazethi yePhondo, umniki wenkonzo yokhuseleko osebenza kwiphondo eli kufuneka abhalise ngendlela ebekiweyo nakwifomu ebekiweyo kuMphathiswa wePhondo.
- (7) Umniki wenkonzo yokhuseleko kufuneka ukuba:
- Ethathele ingqalelo uMthetho oyi*Promotion of Access to Information Act, 2000*, enzele uMphathiswa wePhondo ingxelo ngendlela ebekiweyo lingadlulanga futhi ixesha elimiselwe oko, malunga—
    - neenkxalabo zokhuseleko nezhlo zolwaphulo-mthetho kuloo ndawo asebenza kuyo umniki wenkonzo lowo;
    - nemipu elahlekileyo okanye ebekiweyo ngexesha ibisezandleni zomniki wenkonzo yokhuseleko; kunye
    - nawo nawuphi na umba omiselweyo ofunwa nguMphathiswa wePhondo ekuqwalaseleni iimfuno zomsebenzi wamapolisa nezinto eziphambili ngokubaluleka kwakunye nokubeka esweni impumelelo nocikizeko lwenkonzo yamapolisa; kunye
  - agcine amarekhodi—
    - eenkxalabo zokhuseleko kuloo ndawo asebenza kuyo umniki wenkonzo yokhuseleko lowo;
    - izehlo zolwaphulo-mthetho kuloo ndawo asebenza kuyo umniki wenkonzo yokhuseleko lowo;
    - nemipu elahlekileyo okanye ebekiweyo ngexesha ibisezandleni zomniki wenkonzo yokhuseleko lowo; kwaye
  - la marekhodi akhankanywe kumhlathi (b) awagcine isithuba seminyaka emihlanu ubuncinane ukusukela kumhla wokubhalwa kwawo.
- (8) UMphathiswa wePhondo usenokukhulula nawuphi na umniki wenkonzo zokhuseleko kwizibophelelo ezichazwe kwicandelwana (7)(a), (b) nakwicandelwana (c).
- (9) Ethathele ingqalelo uMthetho oyi*Promotion of Access to Information Act, 2000*, umsebenzi weSebe eli ogunyaziswe nguMphathiswa wePhondo ufikelela kuwo nawaphi na amarekhodi agciniweyo omniki wenkonzo yokhuseleko ngokwemiqathango yecandelwana (7), kwaye usenokuthi awahlole, athathe izicatshulwa kuwo okanye enze iikopi ngeenjongo zokuba afumane ezinye iinkukacha ezizezinye ngokumalunga nengxelo ethe yenziwa ngokwemiqathango yecandelwana (7)(a).



**Ukusekwa kweOfisi kaNozikhazalo wezaMapolisa wePhondo leNtshona Koloni**

9. (1) Kusekwe iofisi kweli Sebe ebizwa ngokuba yiOfisi kaNozikhazalo wezaMapolisa wePhondo leNtshona Koloni.
- (2) Imisebenzi yale ofisi yenziwa nguNozikhazalo nabo basebenzi abathe baqeshwa kwiofisi yakhe.
- (3) Abasebenzi ekufuneka ukuba basebenze ngokufanelekileyo kwimisebenzi yale ofisi baqeshwa ngokwemiqathango yothetho oyi*Public Service Act*, 1994.
- (4) INkonzo yaMapolisa kunye naso nasiphi na isigqeba sikarhulumente kufuneka zisebenzisane noNozikhazalo neofisi yakhe ngokuthi zincedisane nayo ziyixhase ekwenzeni kwayo umsebenzi wayo ngokwemiqathango yalo Mthetho.

**Ukubekwa kukaNozikhazalo**

10. (1) INkulumbuso kufuneka ibeke umntu ofanelekileyo onamava kwingalo yomthetho okanye kwezobupolisa njengoNozikhazalo wezaMapolisa weNtshona Koloni.
- (2) UNozikhazalo ubekwa yiNkulumbuso—
  - (a) isakuba ithethene noMkhomishinala wePhondo, iKomiti eMileyo ejongene nezamapolisa ePalamente, iBhodi eCebisayo yePhondo kunye neKhabhinethi yePhondo;
  - (b) ngokwemiqathango yemithetho elawula iinkonzo zikarhulumente;
  - (c) isithuba seminyaka emithathu, esinokuthi sivuselelwe kube kanye emva kokuba kuye kwathethwana naba bantu bakhankanywe kumhlathi (a).
- (3) UNozikhazalo usenokuthi ekwenzeni kwakhe imisebenzi yakhe, ancediswe ngumntu okanye ngumbutho anokuthi uNozikhazalo afune inkonzo yakhe okanye yawo ngeenjongo zophando oluthile.
- (4) Umntu okanye umbutho okhankanywe kwicandelwana (3) usenokuthi ahlawulwe ze anikwe isithabathaba kwaye abuyiselwe neenkitho zakhe njengoko kuqingqiwe yiNtloko yeSebe, kuthathelwe ingqalelo imithetho elawula iintengo zeenkonzo.

**Imisebenzi kaNozikhazalo**

11. (1) “Amapolisa” okanye “umsebenzi wamapolisa”, kweli candela nakwicandelo 12 ukuya kwele-14, ngokubhekisele kwimisebenzi kaNozikhazalo okanye kwizikhazalo ezinokuthi zingeniswe kuNozikhazalo abhekisele kwiNkonzo yaMapolisa oMzantsi Afrika.
- (2) UNozikhazalo—
  - (a) kufuneka amkele aphande izikhazalo ezingeniswe ngokwemiqathango yecandelo 12, ngokuphatelele kusilelo lwamapolisa okanye kukuqhawuka kwamakhonkco obudlelwane phakathi kwamapolisa nabahlali; kananjalo
  - (b) kufuneka enze neminye imisebenzi athe wayinikwa phantsi kwalo Mthetho.
- (3) UNozikhazalo kufuneka qho ngonyaka angenise ingxelo kuMphathiswa wePhondo malunga nezikhazalo ezithe zaphandwa nguNozikhazalo.
- (4) UMphathiswa wePhondo ke kufuneka ukuba le ngxelo ayandlale kwiPalamente yePhondo le ngxelo.
- (5) Le ngxelo kufuneka inike iinkcukacha ngenani lezikhazalo ezifunyenweyo nangeentlobo zazo, ngenani lezikhazalo ezisonjululweyo kunye nohlalutyo lwentsilelo kwinkqubo yesipolisa ephathelele kwezi zikhazalo.

**Ukungeniswa kwezikhazalo**

12. (1) Nawuphi na umntu angangenisa isikhazalo ngohlobo olubekiweyo nangefomu ebekiweyo eofisini malunga noko kubonwa kulusilelo lwamapolisa okanye ukuqhawuka kwamakhonkco obudlelwane phakathi kwamapolisa nabahlali.
- (2) Naliphi na ilungu lePalamente yePhondo lisenokuthi lisakuba lazile ngesikhazalo malunga noko kubonwa kulusilelo lwamapolisa okanye okanye ukuqhawuka kwamakhonkco obudlelwane phakathi kwamapolisa nabahlali bayo nayiphi na indawo, lisingenise eso sikhazalo eofisini ukuze kuphandwe ngaso.

**Uphando lukaNozikhazalo**

13. (1) UNozikhazalo usenokuthi xa kuthe kwangeniswa isikhazalo esibonakala singeyomfeketho okanye singekokuchukusha nje, aqalise naluphi na uphando oluyimfuneko malunga noko kubonwa kulusilelo lwamapolisa okanye ukuqhawuka kwamakhonkco obudlelwane phakathi kwamapolisa nabahlali bayo nayiphi na indawo.
- (2) Ukuba ilungu lePalamente yePhondo liwudlulisela kwiofisi kaNozikhazalo lo mba ukhankanywe kwicandelwana (1), uNozikhazalo kufuneka aqhube uphando ngalomcimbi.
- (3) UNozikhazalo usenokuthi, ngesaziso asikhuphe kwiGazethi yePhondo azise ngaso nasiphi na isikhazalo enza uphando ngaso, achaze ukuba nawuphi na umntu usenokuthi, lingadlulanga elo xesha lixelwe kwisaziso eso, avakalise izimvo zakhe e-ofisini ngento ebhaliweyo ngolo phando.
- (4) Ukuba ngaba uNozikhazalo unoluvo lokuba isikhazalo 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 inxenye yawo ethile, kuqondakale ke kambe ukuba uNozikhazalo usenokuthi asakuba ethethene neso siphathamandla awudlulisele kuso umcimbi waza awasombululeka, usenokuthi nanini na aluqale phantsi uphando ngawo.

- (5) UNozikhalazo, emva kokuthethana nabasemagunyeni apho umba lowo usingiswe khona, kwanokuba umba lowo awunakusonjulilwa na ngabasemagunyeni, angathi nangaliphi na ixesha aqalise uphando lwakhe ngaloo mba.
- (6) Ukuba ngaba uNozikhalazo unoluvo lokuba isikhalazo simandla kakhulu okanye singaqwalaselwa bhetele nangokufanelekileyo yikhomishoni yophando, usenokuthi enze isindululo kwiNkulumbuso yePhondo sokuba makumiselwe ikhomishoni yophando yokuba iqwalasele eso sikhalazo ngokwemiqathango yoMthetho oyi*Western Cape Provincial Commissions Act, 1998* (uMthetho 10 ka-1998).
- (7) Ukuba uNozikhalazo ugqiba ekusunguleni uphando, kufuneka ukuba uNozikhalazo amazise umfaki-sikhalazo ngeso sigqibo sakhe nangezizathu zaso.
- (8) Lusakuba lugqityiwe uphando kwaye ukuba ngaba umcimbi lowo awukwazanga ukusombululeka, uNozikhalazo kufuneka angenise isindululo ngophando olo nangoko akufumanisileyo kuMphathiswa wePhondo, kwaye kufuneka amazise umfaki-sikhalazo ukuba wenze njalo.
- (9) UMphathiswa wePhondo kufuneka enze isindululo kuMphathiswa ngaso nasiphi na isikhalazo ekwenziwe uphando ngaso saza asakwazi ukusonjululwa nguNozikhalazo, aze ke amazise umfaki-sikhalazo ngeso sindululo asenzileyo.

#### Amagunya okwenza uphando namagosa

14. (1) Ngeenjongo zokwenziwa kophando uNozikhalazo 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.
- (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 kwifisi le okanye abanye abantu abafanelekileyo njengamagosa enza uphando enza le misebenzi ikumacandelwana (1) nele-(2).
- (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.
- (6) UNozikhalazo okanye igosa lophando kufuneka libe nesiqinisekiso apha kulo xa lisenza umsebenzi ngokwemiqathango yalo Mthetho.

#### Ukunikwa kwengxelo nguMkhomishinala wePhondo

15. (1) Ukuze uMphathiswa wePhondo akwazi ukongamela nokubeka iliso kucikizeko nempumelelo yeNkonzo yamaPolisa oMzantsi Afrika, kufuneka ukuba uMkhomishinala wePhondo, lingadlulanga elo xesha libekiweyo, anike uMphathiswa wePhondo ingxelo ngento ebhaliweyo ngale miba ilandelayo—
  - (a) inani lemipu enikwe amapolisa ethe yalahleka okanye yabiwa kunye neemeko ethe yalahleka okanye yabiwa phantsi kwazo;
  - (b) inani labantu ababanjiweyo kwikota engaphambili, inani la matyala aphaathelele koko kubanjwa athe adluliselwa enkundleni, inani labo bathe batshutshiswa nenani labo bathe bafunyaniswa benetyala;
  - (c) ulwabiwo lohlahlo-mali nezibonelelo kwiinjongo zokhuseleko ezithile kwakunye neziphumo ezingqinisekayo ezithe zafikelelwa;
  - (d) inani lezikhalazo ezithe zafunyanwa malunga nokuziphatha kakubi kwamapolisa, inani lamatyala olwaphulo-mthetho athe angeniswa malunga namapolisa, amagama ala mapolisa, inombolo zala matyala, izityholo abekwa zona neziphumo zaloo matyala;
  - (e) inani lezikhalazo neentlobo zazo ezo zikhalazo zithe zafunyanwa malunga nokunikwa kwenkonzo yesipolisa; kunye
  - (f) nayo nayiphi na imiba, njengoko inothi imiselwe, enxulumene nendlela yokuziphatha kwamapolisa, ucikizeko nempumelelo okanye nobudlelane phakathi kwamapolisa nabahlali.
- (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.
- (3) UMkhomishinala wePhondo kufuneka ukuba qho ngonyaka, ngaloo mhla ubekiweyo, enzele iPalamente yePhondo ingxelo ngomsebenzi wamapolisa kwiphondo eli.
- (4) UMphathiswa wePhondo usenokuthi amane ukucela iingxelo azifunayo ekwenzeni kwakhe umsebenzi wakhe ngokwemiqathango yalo Mthetho kuMkhomishinala wePhondo.
- (5) IPalamente yePhondo isenokufuna ukuba uMkhomishinala wePhondo aye kuvela phambi kwayo okanye phambi kwayo nayiphi na kwiikomiti zayo aye kuphendula imibuzo.

#### Ukunikwa kwengxelo yintloko elawulayo yenkonzo yamapolisa kamasipala

16. (1) Ukuze uMphathiswa wePhondo akwazi ukubeka iliso kucikizeko nempumelelo yenkonzo yamapolisa kamasipala kunye nendlela aziphatha ngayo, kufuneka ukuba intloko elawulayo yenkonzo yamapolisa kamasipala, lingadlulanga elo xesha libekiweyo, anike uMphathiswa wePhondo ingxelo ngento ebhaliweyo ngale miba ilandelayo—
  - (a) inani lemipu enikwe amapolisa kamasipala kwingingqi yeNkonzo yamaPolisa kaMasipala ethe yalahleka okanye yabiwa kunye neemeko ethe yalahleka okanye yabiwa phantsi kwazo;

- (b) inani labantu ababanjweyo kwikota engaphambili, inani la matyala aphaathelele koko kubanjwa athe adluliselwa enkundleni, inani labo bathe batshutshiswa nenani labo bathe bafunyaniswa benetyala;
  - (c) ulwabiwo lohlahlo-mali nezibonelelo kwiinjongo zokhuseleko ezithile, iindlela ezisetyenzisiweyo zokufezekisa ezi njongo kwakunye neziphumo ezingqinisekayo ezithe zafikelelwa;
  - (d) inani lezikhhalazo ezithe zafunyanwa malunga nokuziphatha kakubi kwamapolisa, inani lamatyala okuziphatha kakubi kwamapolisa athe avulwa neziphumo zaloo matyala;
  - (e) inani lezikhhalazo zolwaphulo-mthetho neentlobo zazo ezo zikhhalazo zithe zafunyanwa zaza zabhalwa ngamapolisa kamasipala; kunye
  - (f) nayo nayiphi na imiba, njengoko inothi imiselwe, enxulumene nendlela yokuziphatha kwamapolisa, ucikizeko nempumelelo okanye nobudlelane phakathi kwamapolisa nabahlali.
- (2). Intloko elawulayo yenkonzo yamapolisa kamasipala kufuneka ikhawuleze yazise uMphathiswa wePhondo ngako nakuphi na ukufa kwamapolisa kamasipala xa esenxa 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.
  - (3) UMphathiswa wePhondo usenokuthi amane ukucela iingxelo azifunayo ekwenzeni kwakhe umsebenzi wakhe ngokwemiqathango yalo Mthetho kwintloko elawulayo yenkonzo yamapolisa.
  - (4) IPalamente yePhondo usenokuthi acele intloko elawulayo yamapolisa kamasipala ukuba iye kuvela phambi kwakhe okanye phambi kwayo nayiphi na kwiikomite zakhe aye kuphendula imibuzo.

#### **Iimfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka**

17. (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 eMileyo ejongene nomsebenzi wamapolisa.
- (3) Le Komiti iMileyo ikhankanywe kwicandelwana (2) kufuneka iyiqwalasele le ngxelo kwaye ixoxe ngayo kwaye isenokubamba iindibano zoluntu zovakaliso lwezimvo nokucelwa kokungeniswa kweenkcazo ezivela kuMlawuli waMatyala oLuntu weNtshona Koloni, uMkhomishinala woMmandla weSebe eeNkonzo zoLuleko, iNtloko yoMmandla yeSebe lezobulungisa noPhuhliso loMgaqo-siseko.
- (4) IPalamente yePhondo kufuneka imnike uMkhomishinala wePhondo ithuba lokuba aphenjule ngoko kuqulathwe yingxelo leyo, kwiinkcazelo ezenziweyo nangazo naziphi na izimvo ezithe zavakaliswa.
- (5) UMphathiswa wePhondo kufuneka akuthathele ingqalelo oko kuthe kwafunyaniswa yikomiti emileyo kwakunye nezimvo ezivakalisileyo xa equlunqa isindululo malunga neemfuno zomsebenzi wamapolisa nezinto eziphambili ngokubaluleka kwiphondo eli eziza kuthi zifune ukwamkelwa yiKhabhinethi yePhondo.
- (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.

#### **IButho looNobhala bePhondo**

18. (1) UMphathiswa wePhondo, asakuba ethethene neNkulumbuso yePhondo, kufuneka anyule intloko yeButho looNobhala bePhondo, njengoko kuchazwa kwicandelo 18(1) loMthetho oyi*Civilian Secretariat for Police Service Act*, 2011.
- (2) UMphathiswa wePhondo kufuneka, ehamba ngokwemithetho elawula inkonzo yakwarhulumente, anyule abasebenzi beButho looNobhala bePhondo.
- (3) Abasebenzi beButho looNobhala bePhondo kufuneka babe ngabemi baseMzantsi Afrika, babe ngabantu abasempilweni nabafanelekileyo, abanolwazi, amava kwakunye noqeqesho abaluphumeleleyo.

#### **Intsebenziswano nobudlelane bamanqanaba oburhulumente**

19. (1) UMphathiswa wePhondo, abasebenzi nabantu abagunyazisiweyo, abaphandi kunye noNozikhhalazo kufuneka benze imisebenzi yabo phantsi kwalo Mthetho ngokwezimiselo zoburhulumente bentsebenziswano nobudlelane bamanqanaba oburhulumente njengoko ziqukathiwe kwiSahluko 3 soMgaqo-siseko.
- (2) UMphathiswa wePhondo usenokuthi enzele iButho looNobhala boLuntu izindululo malunga namapolisa nemicimbi yezamapolisa okanye angene kwisivumelwano ngeenjongo zokuqinisa intsebenziswano phakathi kwamagela athabatha inxaxheba, njengoko kuchazwa kwicandelo 6 loMthetho oyi*Civilian Secretariat for Police Service Act*, 2011.

#### **IBhodi yePhondo yeeNgcebiso ngoKhuseleko**

20. (1) Kumiselwa iBhodi yePhondo yeeNgcebiso ngoKhuseleko.
- (2) Imisebenzi yale Bhodi kukecebisa uMphathiswa wePhondo ngokubanzi nokwenza izindululo malunga:
  - (a) nemisebenzi yeKhabhinethi yePhondo ngokwemiqathango yeSahluko 11 soMgaqo-siseko neSahluko 8 soMgaqo-siseko weNtshona Koloni, 1997;
  - (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 ifuneka; okanye
- (d) nayo nayiphi na eminye imicimbi esukela ekusetyenzisweni kwalo Mthetho okanye iBhodi inokuthi iyibone iyimfuneko ekufezekisweni kweenjongo zalo Mthetho okanye leyo anokuthi uMphathiswa wePhondo ayizise kwiBhodi ngelifuna iingcebiso.

#### Amalungu eBhodi

21. (1) Amalungu eBhodi anyulwe nguMphathiswa wePhondo kwaye kufuneka abandakanye—
- (a) ummeli osuka kwicandelo loshishino;
  - (b) ilungu ezijajini, kumbutho weejaji oyiCape Bar okanye kumbutho wamaqgqetha entshona Koloni oyiCape Law Society;
  - (c) ilungu leziko lemfundo ephakamileyo elikwinqanaba eliphezulu nelinamava kwinkalo yezifundo zolwaphulo-mthetho, iCriminology;
  - (d) ummeli osuka kumbutho ongengowakwarhulumente onenxaxheba kumsebenzi wamapolisa nezinxulumene nawo;
  - (e) iNtloko yeSebe njengelumgu *elingene ngokwesikhundla salo*.
- (2) La malungu eBhodi akhankanywe kumacandelwana (1)(a) ukuya ku-(d), aya kunyulwa kuphela emva kokuba uMphathiswa wePhondo, ethe, ngenothisi kwiGazethi yePhondo nakulo naliphi na ijelo anokulibona lifanelekile, wamema onke amaqela achaphazelekayo ukuba, lingadlulanga elo xesha likhankanywe kwisaziso eso, angenise amagama abantu abanesakhono okanye ulwazi kwinkalo yomsebenzi wamapolisa nezinye iinkalo ezinxulumene nayo nabasempilweni befanelekile ukuba banganyulwa.

#### Isithuba sokuba sezikhundleni samalungu eBhodi nemiqathango yale nkonz

22. (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 zeBhodi ezimbini zilandelelana ngaphandle kwemvume kasihlalo weBhodi;
  - (b) ilungu liye lazicelela ukuyeka ebulungwini ngento ebhaliweyo ethunyelwe kusihlalo weBhodi;
  - (c) ilungu liye lasuswa eBhodini phantsi kwecandelwana (3); okanye
  - (d) lithe labhubha ilungu elo.
- (3) UMphathiswa wePhondo usenokuthi alisuse naliphi na ilungu leBhodi, ukuba ngaba ngokokubona kwakhe uMphathiswa wePhondo kukho izizathu ngokwaneleyo zokuba lisuswe ilungu elo ebulungwini.
- (4) UMphathiswa wePhondo kufuneka asivale isikhewu esiye savuleka eBhodini phantsi kwecandelwana (2) ngokwemiqathango yamacandelo 21(1) nele-(2).
- (5) Ilungu elithe lanyulwa phantsi kwecandelwana (4) liba sesikhundleni sobulungu ngeso sithuba besisele kwisithuba elalinyulelwe sona eli lungu limkileyo.
- (6) UMphathiswa wePhondo kufuneka abeke ilungu leBhodi njengosihlalo.
- (7) UMphathiswa wePhondo usenokuthi abeke nayiphi na eminye imiqathango yokunyulwa engekho apha kweli candelo.
- (8) La malungu eBhodi akhankanywe kwicandelo 21(1)(a) ukuya ku-(d) asenokuthi ahlawulwe izithabathaba, kwaye abuyekwezwe nangeenkitho angene kuzo ngokolo hlobo lubekwe nguMphathiswa wePhondo ngemvavo noMphathiswa wePhondo osingathe ezemali.

#### Lintlanganisa zeBhodi

23. (1) IBhodi isenokuthi, ngokuvunyelwa nguMphathiswa wePhondo, yenze imithetho ephathelele ekuthathweni kwezigqibo yiBhodi, ukuhlalwa kweentlanganiso nenkqubo yeentlanganiso zeBhodi.
- (2) Iintlanganiso zeBhodi kufuneka zihlalwe ngelo xesha nakuloo ndawo anokuthi agqibe kuyo usihlalo weBhodi ehamba ngokwemithetho yeBhodi.

#### Amabhaso

24. UMphathiswa wePhondo usenokuthi akhuphe amabhaso (anokubandakanya namabhaso ayimali) ngokwemiqathango ebekiweyo aya kuye nawuphi na umhlali okanye omnye umntu othe wabonakalisa inkonzo eqaqambileyo ekufezekiseni iinjongo zalo Mthetho.

#### Izigqitho

25. (1) Nawuphi na umntu owaphula imiqathango yamacandelo 6(8)(b), 6(8)(c), 6(8)(d), 8(7)(a), 8(7)(b) okanye 8(7)(c), ngaphandle kokukhululwa kwizibophelelo ngokwecandelo 6(9) okanye 8(9) okanye owaphula imiqathango yecandelo 8(6), unobutyala bokwenza isigqitho kwaye usenokuwiselwa isigwebo sefayini okanye sokuvalelwa entolongweni isithuba esingadlulanga kwiminyaka emithathu.
- (2) Nawuphi na umntu othintela okanye ophazamisana noNozikhaziso okanye igosa lophando okanye umsebenzi weSebe ekwenzeni umsebenzi wakhe ngokwamagunya awanikwa ngulo Mthetho, unetyale lesigqitho kwaye usenokuwiselwa isigwebo sefayini okanye sokuvalelwa entolongweni isithuba esingadlulanga kwiminyaka emithathu. .

**Imigaqo**

26. UMphathiswa wePhondo usenkwenza imigaqo enxulumene—

- (a) nayo nayphi na imicimbi eyimfuneko okanye egunyazisa ukwenziwa kwemigaqo ngokwalo Mthetho
- (b) imisebenzi yoMphathiswa wePhondo okanye yeofisi kaNozikhhalazo;
- (c) ukwamkela, ukuqwalasela nokuphanda ngezikhhalazo ezingenisweyo ngokwemiqathango yalo Mthetho;
- (d) iimfuneko zokungeniswa kwengxelo nguMkhomishinala wePhondo okanye intloko elawulayo yenkonzo yamapolisa kamsipala ngokwemiqathango yalo Mthetho;
- (e) indlela ecwangciswa ngayo ingxelo efunekayo ngokwemiqathango yalo Mthetho;
- (f) ukuqulunqwa kweziphumo eziphambili ekujoliswa kuzo neentlobo zeenkukacha zophando lobungcali ekufuneka zibandakanyiwe kwingxelo efunekayo ngokwemiqathango yalo Mthetho;
- (g) amanyathelo okuqinisekisa ukungadizwa kweenkukacha eziyindaba yakwamkhozi, ulawulo kunye nofikeleleko leenkukacha ezithe zafunyanwa ngenkqubo yeenkukacha emanyanisiweyo;
- (h) ukuhluzwa kwabasebenzi, abaphandi naye nawuphi na umntu ogunyaziswe nguMphathiswa wePhondo ukuba enze imisebenzi ngokwemiqathango yalo Mthetho; okanye
- (i) iziphumo ekujoliswe kuzo ekongameleni nasekuvandlakanyeni impumelelo nocikizeko lwenkonzo yamapolisa.
- (j) nayiphi na eminye imicimbi efunekayo ekuze kucikizeke ukwenziwa kwemisebenzi emiswe ngokwemiqathango yalo Mthetho.

**Ugunyaziso**

27. (1) UMphathiswa wePhondo usenokuthi anikezele nawuphi na amagunya agunyaziswe ngawo okanye anikezele nawuphi na umsebenzi awunikiweyo ngokwemiqathango yalo Mthetho, ngaphandle kwamagunya okwenza imigaqo, kwiNtloko yeSebe.
- (2) Ugunyaziso okanye unikezelo lomsebenzi ngokwemiqathango yecandelwana (1)—
  - (a) kufuneka lube ngento ebhaliweyo;
  - (b) alumthinteli uMphathiswa wePhondo ekusebenziseni amagunya okanye loo msebenzi uyimfuneko;
  - (c) lusenokwenziwa phantsi kwemiqathango ethile;
  - (d) lusenokubandakanya igunya lokwenza olunye ugunyaziso; kwaye
  - (e) lusenokurhoxiswa nanini na.

**Isihloko esifutshane nomhla wokuqalisa**

28. Lo Mthetho ubizwa ngokuba nguMthetho weNtshona Koloni woKhuseleko loLuntu, 2012, kwaye uqalisa ukusebenza ngaloo mhla ubekwe yiNkulumbuso yePhondo ngompoposho okwiGazethi yePhondo.

## MEMORANDAM YEENJONGO ZOMTHETHO OSAYILWAYO WOKHUSELEKO LOLUNTU WENTSHONA KOLONI, 2012

### 1. Intsukaphi

UMthetho Osayilwayo woKhuseleko loLuntu weNtshona Koloni uzama ukufikelela kumazinga okhuseleko athe kratya, ekuxhaseni uluntu olukhululekileyo kuloyiko lolwaphulo-mthetho ngokuthi kuqulunqwe izikhokelo zolongamelo ezihamba ngokogunyaziso lomgaqo-siseko olunikwa amaphondo lokuba ongamele umsebenzi wamapolisa. Imisebenzi yokongamela 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.

Indlela aziqwalasela ngayo amaPhondo izikhalazo zabahlali malunga nokusebenza kwamapolisa ziya kuphuculwa kakhulu ngokuthi kusungulwe isikhundla sikaNozikhalazo wezaMapolisa wePhondo, onikwa amagunya ngulo Mthetho uSayilwayo okuba aziqwalasele ngempumelelo ezo zikhalazo.

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 iinkcukach-amanani zolwaphulo-mthetho. Kuza kulandelwa inkqubo evelela 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 ubudlelane obuhle phakathi kwamapolisa nabahlali.

### 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 imithethokwinkalo “yomsebenzi wamapolisa”, njengoko iSahluko 11 (ss 205-208) silinika iPhondo eli elo gunya. Elo gunya ke kwabelwana ngalo nenqanaba loburhulumente besizwe.

ICandelo 66, xa lifundwa necandelo 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.

Kwimiqathango yecandelo 66 loMgaqo-siseko weNtshona Koloni, 1997 kubandakanya:

“66 (1) Urhulumente weNtshona Koloni uselungelweni—

- (a) lokubeka iliso kwiindlela 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 206(3) loMgaqo-siseko linemiqathango efana nale. ICandelo 67(1) loMgaqo-siseko weNtshona Koloni kanajalo ligunyazisa iPalamente yePhondo ukuba “**iwise imithetho eyimfuneko edweliswe kwicandelo 66(1)**. ICandelo 68 loMgaqo-siseko weNtshona Koloni, 1997 linomqathango othi iKhabhinethi yePhondo inoxanduva lwala misebenzi yamapolisa ichazwe kuMgaqo-siseko wePhondo nowokuba 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 eliliniwa nguMgaqo-siseko kwaye nelokongamela nokulawula amagunya nemisebenzi kaRhulumente weNtshona Koloni ngokuphathelele kumsebenzi wakhe wokongamela amapolisa.

### 4. Iziqulatho zalo Mthetho uSayilwayo

#### Umhlathi 1

Le yinkcazo yomhlathi.

#### Umhlathi 2

Lo mhlathi uchaza iinjongo zalo Mthetho uSayilwayo, iinjongo ezo ezikukulawula nokulungiselela ukwenziwa kwemisebenzi yeKhabhinethi yePhondo njengoko ichazwa kwiSahluko 11 soMgaqo-siseko nakwiSahluko 8 soMgaqo-siseko weNtshona Koloni, 1997, leyo ke kukubeka iliso kwiindlela 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. 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 onoxanduva lwemisebenzi yamapolisa (“uMphathiswa wePhondo”). Le misebenzi isekeleke phezu kwala magunya anikwa ngumgaqo-siseko angentla apha nachazwe kwicandelo 206, 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 loKhuseleko loLuntu lePhondo (“iSebe lePhondo”) nabanye abantu nguMphathiswa wePhondo ukuba babeke iliso, bongamele bavandlakanye amapolisa.

**Umhlathi 5**

Lo mhlathi umalunga nezikhokleo ngokusekwa kwamaqonga ezobupolisa asekuhlaleni neebhodi, njengoko kukhankanywa kumacandelo 19, 20 nelama-21 oMthetho oyi-SA *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 apha eNtshona Koloni ngeenjongo zokuphucula ubudlelane phakathi kwamapolisa nabahlali.

Ukwabonelela nangoqinisekiso lokuzithandela loosolomzi beengingqi. UMphathiswa wePhondo usenokuthi abonelele aba solomzi beengingqi ngoqeqesho.

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

- (1) ngezinto ezenziwayo ngusolomzi wengingqi; kunye
- (2) nageenkxalabo eziphathelile kukhuseleko nolwaphulo-mthetho kwezo ngingqi basebenza kuzo oosolomzi beengingqi. Ezi mfundo 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 nokuyinika inkxaso loo mibutho. Kananjalo ukwachaza nendlela yokungena kubuhlakani nemibutho yasekuhlaleni ekufezekiseni iinjongo zalo Mthetho, ukuphucula ubudlelane phakathi kwamapolisa nabahlali nokuncedisa le mibutho yasekuhlaleni ikuvimba weenkukacha noqeqesho nangezinye izibonelelo.

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 yeenkukacha emanyanisiweyo nguMphathiswa wePhondo neSebe lePhondo. Le nkqubo yeenkukacha iya kuthi incede uMphathiswa wePhondo ekongameleni impumelelo nocikizeko lomsebenzi wamapolisa nasekubekeni iimfuno zomsebenzi wamapolisa kwiPhondo eli neendawo eziphambili ngokubaluleka kuwo.

Lo mhlathi kananjalo ubonelela nangobhaliso lwabaniki beenkonzo zokhuseleko kuMphathiswa wePhondo nokuba abaniki beenkonzo zokhuseleko banike iinkukacha 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.

**Imihlathi 9 ukuya kowe-14**

Le mihlathi imalunga nokusekwa kweOfisi kaNozikhazalo zezaMaPolisa yePhondo leNtshona Koloni nokunyulwa kukaNozikhazalo ngokwemiqathango yemithetho elawula urhulumente.

Eyona misebenzi kaNozikhazalo iphambili kukuphanda ngezikhazalo ezinxulumene nosilelo kwiNkonzo yesiPolisa yoMzantsi Afrika(SAPS) 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. UNozikhazalo usenokuthi azidlulisele izikhazalo kuso nasiphi na isiphathamandla esinegunya, ukuba ngaba ezo zikhazalo zinokuqwalaselwa ngcono nangokufanelekileyo seso siphathamandla.

Umhlathi 14 kananjalo ukwanika uNozikhazalo okanye abaphandi ababekiweyo igunya lokuba bayalele nawuphi na umntu ukuba angenenise 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.

UNozikhazalo kufuneka ukuba enzele uMphathiswa wePhondo izindululo ngawo nawuphi na umba ekukho isikhazalo esiphandwayo ngawo, izindululo ezo ezinokuthi zibandakanye nesokuba kumiselwe ikhomishini yophando yiNkkulumbuso. UMphathiswa wePhondo kufuneka enzele ilungu leKhabhinethi yesizwe elongamele ezamapolisa isindululo malunga nemicimbi ephandwe nguNozikhazalo.

**Umhlathi 15**

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 usebenzi wawo, nabaphi na abantu abafe beselugcinweni lwamapolisa neemeko abathe bafa phantsi kwazo, iinkukacha-manani ngokuphathelile kubantu ababanjiweyo, inani lamatyala athe adluliselwa enkundleni, inani lamatyala

athe axoxwa namazinga okufunyanwa kwabamangelelwa benamatyala, inani lezikhalazo 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 16**

Lo mhlathi ukwaqwalasela iimfuno zokunikwa kwengxelo ezikwafana nezi zikumhlathi 15, kodwa ke zona izeziphathelele kwinkonzo yamapolisa kamasipalaesekwe ngokwemiqathango yecandelo 64A loMthetho oyi-SA *Police Services Act*, 1995 (uMthetho 68 ka-1995). Ufuna ukuba iintloko ngeentloko ezilawulayo zeenkono zamapolisa kamasipala kwiPhondo zingenise rhoqo iingxelo ezinyanzelisiwayo ngumthetho kuMphathiswa wePhondo.

#### **Umhlathi 17**

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

ICandelo 66(1)(e) loMgaqo-siseko weNtshona Koloni, 1997 linomqathango wokuba uMphathiswa wePhondo usenokuqhagamshelana noMphathiswa onoxanduva lwezamapolisa wesizwe “malunga nolwaphulo-mthetho nokwenziwa komsebenzi wamapolisa eNtshona Koloni”.

ICandelo 206(1) loMgaqo-siseko linomqathango ofanayo nalo kwaye likhankanya indawo yokuba uMphathiswa wesizwe onoxanduva lwezamapolisa kufuneka “abeke umgaqo-nkqubo wesizwe wokwenziwa komsebenzi wamapolisa asakuba edlene iindlebe noorhulumente bamaphondo kanaanjalo “ezithathele ingqalelo iimfuno zomsebenzi wamapolisa neendawo eziphambili ngokubaluleka kuwo kumaPhondo njengoko zibekiwe ngabalawuli bamaphondo”. 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 eMileyo ejongene nomsebenzi wamapolisa kufuneka ixoxe ngengxelo leyo ze iqhube neendibano zovakaliso lwezimvo zoluntu ukuze ifumane izimvo zaloo maqela achaphazelekayo kwinkqubo yezobulungisa kwinkalo yolwaphulo-mthetho. Iziphumo kwakunye nezimvo ezo zivakalisiweyo ziya kuthi ke ziqwalaselwe yiKhabhinethi yePhondo kwingxelo yayo ngeemfuno zomsebenzi wamapolisa neendawo eziphambili kuwo kweli Phondo kuMphathiswa weSizwe.

#### **Umhlathi 18**

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) kanaanjalo ukwanika umqathango ngokuqeshwa kwabasebenzi beButho looNobhala bePhondo.

#### **Umhlathi 19**

Lo mhlathi umalunga nentsebenziswano phakathi kweSebe lePhondo, iButho looNobhala boLuntu neButho looNobhala bePhondo, kwakunye noxwebhu lokuqondana okanye izivumelwano emakungenwe kuzo ngamaqela ngamaqela achaphazelekayo.

#### **Umhlathis 20 ukuya kowama-23**

Le mhlathi imalunga nokusekwa kweBhodi yePhondo yeeNgcebiso ngoKhuseleko, amalungu eBhodi, izithuba zokuba sezikhundleni kwamalungu eBhodi kwakunye neentlanganisano zeBhodi.

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

IBhodi le inamalungu amele amaqela ecandelo labucala namaqela oluntu achaphazelekayo.

#### **Umhlathi 24**

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.

#### **Umhlathi 25**

Lo mhlathi umalunga nezigqitho zokuthintela abasebenzi beSebe lePhondo okanye iofisi kaNozikhalazo ekwenzeni imisebenzi yabo ngokwemiqathango yalo Mthetho, okanye usilelo leLiso Lomzi lababhalisiweyo nabaniki beenkonzo zokhuseleko ekungeniseni iingxelo nasekugcineni amarekhodi ngaloo miba ibekiweyo. Ungabekwa ubutyala okanye utshutshiswe ekubeni utyeshele imigaqo yezokhuseleko uze ubhaliswe kuncwadi lomphathiswa wephondo.

#### **Umhlathi 26**

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

#### **Umhlathi 27**

Lo mhlathi umalunga nokudluliselwa kwawo nawuphi na amagunya anikwe uMphathiswa wePhondo kwiNtloko yeSebe, enokuthi— ukuba igunyaziswe njalo— iwadlulisele nayo loo magunya kubasebenzi beSebe lePhondo.

#### **Umhlathi 28**

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

**5. Imali ebandakanyekayo**

Umba wezemali useza kube uvelelwe.

**6. Uthethwano**

Kwenziwe uthethwano nala maSebe alandelayo:

ISebe loKhuseleko loLuntu

ISebe leNkulumbuso

Lo Mthetho uSayilwayo uya kuthi ungeniswe koomasipala, kumasebe karhulumente ephondo nakumasebe karhulumente wesizwe achaphazelekayo, khona ukuze kuthethwane ngawo.

**7. Igunya lokuwisa imithetho**

Icandelo 206 loMgaqo-siseko , xa lifundwa necandelo 104 neShedyuli 4 yoMgaqo-siseko, kunye necandelo 66 nelama-67(1) loMgaqo-siseko weNtshona Koloni, agunyazisa iPalamente yePhondo ukuba iwise imithetho eyimfuneko ekwenziweni kwalaa misebenzi idweliswe kwiSahluko 11 soMgaqo-siseko nakwiSahluko 8 soMgawo-siseko weNtshona Koloni, 1997.





