

No. 4

14 November 2012

[English text signed by the Premier]

**KWAZULU-NATAL  
ARCHIVES AND RECORDS SERVICE ACT, 2011  
(Act No. 08 of 2011)**

Assented to on 02-10-2012

**ACT**

To provide for the establishment of the KwaZulu-Natal Archives and Records Service; to provide for the proper management and care of public records in the Province of KwaZulu-Natal; to provide for the preservation and use of a provincial archival heritage for all the people of the Province of KwaZulu-Natal; to repeal the KwaZulu-Natal Provincial Archives Act, 2000 (Act No. 5 of 2000); and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

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## CHAPTER 1 DEFINITIONS

### Definitions

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

"**appraisal**" means the archival function of determining the eventual disposal of records;

"**archivalia**" means the public and non-public records in the custody of an archives repository,

"**archives repository**" means any archives repository contemplated in section 20;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Council**" means the KwaZulu-Natal Archives Advisory Council contemplated in section 7;

"**custody**" means the control of records by way of physical possession;

"**Department**" means the Department in the Province of KwaZulu-Natal responsible for provincial archives;

"**disposal authority**" means a written authority issued by the Provincial Archivist in terms of section 18(2) specifying records to be preserved or documents to be otherwise disposed of;

"**electronic records system**" means any records system in which information is generated electronically and stored by means of computer technology;

"**Executive Council**" means the Executive Council of the Province of KwaZulu-Natal;

**"financial year"** means the period commencing on 1 April of a particular year and terminating on 31 March of the following year;

**"Gazette"** means the official *Provincial Gazette* of KwaZulu-Natal;

**"Head of Department"** means the person appointed as the accounting officer of the Department;

**"head of a governmental body"** means the accounting officer of a governmental body or any person acting as such;

**"governmental body"** means any legislative, executive, judicial or administrative organ of state, including any statutory body, commission, board or council in the provincial or local sphere of government in the Province of KwaZulu-Natal;

**"member"** means a member of the Council contemplated in section 9;

**"Member of the Executive Council responsible for finance"** means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

**"non-public record"** means a record created or received by a private individual or a body other than a governmental body as defined in this Act;

**"Portfolio Committee"** means the relevant Portfolio Committee of the Provincial Legislature responsible for provincial archives;

**"prescribed"** means prescribed by regulation under section 25, and **"prescribe"** has a corresponding meaning;

**"Province"** means the province of KwaZulu-Natal contemplated in section 103 of the Constitution, and **"provincial"** has a corresponding meaning;

**"Provincial Archives"** means the KwaZulu-Natal Archives and Records Service

established in terms of section 2;

**"Provincial Government"** means the government of the Province;

**"Provincial Legislature"** means the Legislature of the Province as contemplated in section 105 of the Constitution, and having legislative authority for the Province as contemplated in section 104(1) of the Constitution;

**"public record"** means a record created or received by a governmental body in the performance of its functions and the pursuance of its activities;

**"record"** means recorded information regardless of form or medium and includes electronic and digital information;

**"records classification system"** means a classification plan for the identification, arrangement, storage and retrieval of records;

**"regulations"** means regulations made in terms of section 25;

**"responsible Member of the Executive Council"** means the member of the Executive Council of the Province responsible for provincial archives; and

**"this Act"** includes the regulations.

## CHAPTER 2

### KWAZULU-NATAL ARCHIVES AND RECORDS SERVICE (PROVINCIAL ARCHIVES)

#### **Establishment of KwaZulu-Natal Provincial Archives and Records Service**

2.(1) There is hereby established the KwaZulu-Natal Provincial Archives and Records Service, hereinafter referred to as the Provincial Archives.

(2) The Provincial Archives –

- (a) is a component within the Department; and
- (b) is not a juristic person.

### **Objects and Functions of Provincial Archives**

**3. The objects and functions of the Provincial Archives are –**

- (a) to preserve public and non-public records with enduring value for use by the public and the State;
- (b) to facilitate the accessibility of archivalia contemplated in paragraph (a) to the members of public, subject to this Act, the regulations and any other law governing access to the public records;
- (c) to promote the use of archivalia contemplated in paragraph (a) by the members of public;
- (d) to ensure the proper management and care of all public records by all governmental bodies in the Province;
- (e) to collect non-public records with enduring value of provincial significance which cannot be more appropriately preserved by another institution, with due regard to the need to document aspects of the nation's experience neglected by archives in the past;
- (f) to maintain provincial registers of non-public records with enduring value;
- (g) to promote co-operation and co-ordination between institutions having custody of non-public records with enduring value;
- (h) to initiate and co-ordinate the collection of oral and audio-visual archival material;
- (i) to participate in the National Automated Archival Information Retrieval System in terms of section 3(e) of the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996);
- (j) to promote an awareness of archives and records management;
- (k) to encourage and organize archival and records management activities in the Province; and
- (l) generally, to promote the preservation and use of the provincial archival heritage.

### CHAPTER 3 PROVINCIAL ARCHIVIST AND STAFF

#### **Appointment of Provincial Archivist**

4.(1)(a) The Provincial Archives must be managed by a Provincial Archivist appointed by the responsible Member of the Executive Council in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(b) The Provincial Archivist, as head of the Provincial Archives as a component within the Department, reports to the Head of Department.

(2) The Provincial Archivist appointed in terms of subsection (1) must –

- (a) be a fit and proper person; and
- (b) possess the relevant qualifications and experience in archives and records management.

#### **Powers and Functions of Provincial Archivist**

5.(1) The Provincial Archivist must –

- (a) be responsible for the management of the Provincial Archives;
- (b) take such measures as are necessary to preserve, conserve, arrange, describe and retrieve archivalia;
- (c) provide information, consultation, research and other services related to the management, preservation and conservation of, and access to, archivalia;
- (d) with special emphasis on activities designed to reach out to less privileged sectors of society, make known information concerning archivalia by means of publications, exhibitions and lending of archivalia;
- (e) subject to section 17, provide administrative and secretarial support to the Council; and
- (f) generally –
  - (i) take such other steps and perform such other acts as may be reasonably necessary for, or conducive to, the achievement of the objects of this Act; or
  - (ii) do anything –
    - (aa) reasonably necessary or expedient for; or



(bb) incidental or ancillary to,  
the effective exercise of his or her powers, and the effective performance  
of his or her functions or duties in terms of this Act.

(2) The Provincial Archivist may –

- (a) provide training in archival techniques, management and preservation of records;
- (b) co-operate with other organisations interested in archival matters or the management of records;
- (c) provide professional and technical support in aid of archival activities and the archival community;
- (d) subject to section 18(9), exempt any governmental body in the Province from any provision of this Act;
- (e) direct a head of a governmental body to submit or provide such reports as the Provincial Archives may require from time to time;
- (f) require of a person who has made use of any public record in the custody of the Provincial Archives while researching a publication or thesis, to donate a copy of the publication or thesis to the Provincial Archives; and
- (g) subject to section 25(2), charge fees for –
  - (i) the utilisation of certain facilities in the Provincial Archives; and
  - (ii) any utilisation or reproduction of certain archivalia for commercial or income generating purposes.

#### **Staff of Provincial Archives**

6. The Provincial Archivist must, in the performance of his or her functions and duties in terms of this Act, be assisted by officers and employees in the Department appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

### CHAPTER 4 KWAZULU-NATAL ARCHIVES ADVISORY COUNCIL

#### **Establishment of KwaZulu-Natal Archives Advisory Council**

7.(1) There is hereby established an advisory council to be known as the KwaZulu-Natal

Archives Advisory Council.

(2) The Council is not a juristic person.

### **Powers, duties and functions of Council**

8. The Council must –

- (a) advise the responsible Member of the Executive Council on any matter related to the operation of this Act;
- (b) advise the Provincial Archivist on furthering the objects and functions of the Provincial Archives;
- (c) consult with the Public Protector on investigations into unauthorised destruction of records otherwise protected under this Act;
- (d) investigate and make recommendations to the responsible Member of the Executive Council regarding any matter related to the preservation of public records in the Province; and
- (e) generally do anything –
  - (i) reasonably necessary or expedient for; or
  - (ii) incidental or ancillary to,the effective exercise of his or her powers, and the effective performance of his or her functions or duties in terms of this Act.

### **Composition of Council**

9.(1) The Council is composed of –

- (a) not less than five and not more than seven members appointed by the responsible Member of the Executive Council; and
- (b) the Provincial Archivist, as an *ex officio* member of the Council, without the right to vote at its meetings.

(2) Members of the Council must –

- (a) be fit and proper persons to serve the best interests of the Province;
- (b) be characterised by their independence, impartiality and fairness; and
- (c) collectively possess –

(i) the necessary skills, experience or qualifications in the following fields or disciplines –

- (aa) archives and records management;
- (bb) conservation or preservation of records;
- (cc) information technology;
- (dd) ethnographic history; and
- (ee) law; and

(ii) any other skill, expertise, experience or qualification that may, in the opinion of the responsible Member of the Executive Council, be of benefit to the Council.

(3) In appointing members of the Council, the responsible Member of the Executive Council, must ensure that –

- (a) historic imbalances are addressed; and
- (b) the Council collectively possesses the necessary and appropriate knowledge, qualifications, experience, skills and expertise.

(4) The responsible Member of the Executive Council must, by notice in the *Gazette* and at least two newspapers circulating in the Province, invite interested parties within the Province to nominate candidates to serve as members of the Council.

(5) The invitation for nominations in terms of subsection (4) must specify –

- (a) the nomination procedure;
- (b) the requirements for nomination;
- (c) the date by which a nomination must be received by the responsible Member of the Executive Council; and
- (d) the manner in which proof of acceptance of nomination by nominees, should be submitted.

(6) The responsible Member of the Executive Council must appoint a selection panel comprising of –

- (a) senior Departmental officials; and
- (b) any other person that the responsible Member of Executive Council may deem fit, to –

- (i) review all the nominations,
- (ii) shortlist, evaluate or interview the nominees; and
- (iii) make recommendations to the responsible Member of the Executive Council on the nominees.

(7) The responsible Member of the Executive Council must, subject to subsection (6), appoint the members of the Council and designate –

- (a) one of the members of the Council as the chairperson; and
- (b) one of the members of the Council as the deputy chairperson.

(8) The responsible Member of the Executive Council must publish the names of the persons appointed to the Council in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified in writing, of their appointment to the Council.

(9) The responsible Member of the Executive Council must, within two months after the appointment of members of the Council, inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

(10) This section applies, with the necessary changes, to the filling of a vacancy on the Council.

#### **Disqualification from being appointed to Council**

**10.(1)** A person is disqualified from being appointed to the Council or from remaining in the Council, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) is a person under curatorship;
- (d) has at any time been removed from an office of trust on account of misconduct involving theft or fraud; or
- (e) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council

may, upon a person who is nominated for appointment disclosing full details of an offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution.

(2) A disqualification in terms of subsection (1)(e) ends five years after the sentence has been completed.

#### **Term of office of members of Council**

11.(1) Persons appointed to the Council hold office for a period of five years or such lesser period as the responsible Member of the Executive Council may determine and are, subject to section 9, eligible for reappointment at the expiration of such period.

(2) No person may be reappointed after having served on the Council for more than two consecutive terms.

#### **Vacancies, removal and resignation from office of members of Council**

12.(1) A member of the Council must vacate office if he or she becomes subject to a disqualification contemplated in section 10.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her discretion, there are good reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Council, from three consecutive meetings of the Council for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office in writing by giving not less than 30 days notice to the responsible Member of the Executive Council.

(5) The responsible Member of the Executive Council may waive the resignation notice contemplated in subsection (4), if such waiver would not be detrimental to the efficient

functioning of the Council.

(6) Whenever a vacancy occurs in the Council, the responsible Member of the Executive Council must, subject to section 9, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(7) The responsible Member of the Executive Council may –

- (a) subject to subsection (2);
- (b) after consultation with the Executive Council; and
- (c) subject to the relevant provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000),

terminate the appointment of –

- (i) all the members of the Council; or
- (ii) the majority of the members of the Council, which termination may render the Council inoperable.

(8) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (7), he or she may, notwithstanding the procedure for the appointment of the members of the Council set out in section 9, subject to section 9(2) and (3), appoint persons to serve as members of the Council on an *interim* basis: Provided that –

- (a) the persons appointed in terms of this subsection may not remain on the Council for a period of more than 90 days from the date of their appointment; and
- (b) the responsible Member of the Executive Council must, subject to section 9, appoint the members of the Council within 90 days of the appointment contemplated in this subsection.

### **Meetings of Council**

13.(1)(a) The responsible Member of the Executive Council must convene the first meeting of the Council.

(b) The Council must thereafter meet as often as necessary, but at least three times a year at such times and places as the Council may determine.

(2) Every member of the Council must be notified of each meeting in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.

(3) In the event that the chairperson and the deputy chairperson of the Council are absent from any meeting of the Council, the members present at that meeting may elect one of their number to preside at that meeting.

(4) A special meeting of the Council may be called at the request of –

(a) the chairperson; or

(b) the majority of the members of the Council by written petition, whereupon the chairperson must, in writing, notify every member of the Council of the time and place of the special meeting.

(5) A *quorum* for a meeting of the Council is a majority of its members.

(6) Any decision of the Council must be taken by resolution of the majority of the members present at any meeting of the Council and, in the event of an equality of votes on any matter, the member presiding at the meeting in question will have a casting vote in addition to his or her deliberative vote as a member of the Council.

(7) No decision of the Council is invalid merely by reason of a vacancy in the Council: Provided that the decision is taken by the required majority of the members of the Council then present and entitled to sit as members of the Council.

(8) The proceedings of all meetings of the Council must be duly recorded, minuted and retained on file.

(9)(a) The minutes of the previous meeting must be read at the commencement of each meeting.

(b) The minutes may be regarded as read if copies thereof were furnished to the members of the Council prior to the meeting.

(c) The chairperson may only sign the minutes once objections or corrections have been dealt with.

(10) The chairperson must decide on issues of order or procedure: Provided that if any member objects to any such decision, the issue must be put to the vote and the decision of the majority of the members is final and binding on the Council.

(11) A member of the Council who has an interest in relation to any matter to be discussed at a meeting of the Council, which reasonably considered, may preclude him or her from performing his or her duties in a fair, unbiased and proper manner, must recuse himself or herself from such meeting.

(12) Any member of staff of the Provincial Archives may, on invitation by the Council, attend a meeting of the Council.

(13) The Council may invite any person to attend any of its meetings.

#### **Recusal of member of Council**

**14.(1)** A member of the Council must recuse himself or herself in any matter or proceeding where he or she, a family member or close associate has or reasonably could be expected to have, a financial or other interest in the outcome of a decision by the Council.

(2) Any person may make an application, orally or in writing, for a member of the Council to recuse himself or herself where that person has reason to believe that the member of the Council, a family member or close associate has or could reasonably be expected to have a financial or other conflict of interest in the outcome of a decision by the Council.

(3) A person making an application referred to in subsection (2) must give reasons for his or her request.

(4) In the event of an application referred to in subsection (2), the chairperson of the Council must decide on the matter, save that in cases where the application concerns the chairperson of the Council the matter must be decided on by the deputy chairperson.



(5) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(6) If it subsequently emerges that the Council took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Council is invalid.

(7) For the purposes of this section –

(a) a “**close associate**” includes, but is not limited to, a business partner or employer; and

(b) a “**family member**” includes, but is not limited to –

(i) a spouse of a member of the Council;

(ii) a partner in a customary union or a person with whom a member of the Council cohabits or lives as though they were married; or

(iii) a child, parent or sibling of a member of the Council.

### **Committees of Council**

**15.(1)** The Council may appoint one or more committees, not limited to its own members, to assist it in the exercise of its powers and the performance of its duties and functions.

(2) Any committee appointed in terms of subsection (1) must be chaired by a member of the Council.

(3) A committee contemplated in subsection (1) must perform such duties and functions as the Council may determine.

(4) The Council may, at any time, dissolve or reconstitute such a committee.

(5) The Council –

(a) may delegate any of its powers, duties or functions to a committee appointed in terms of subsection (1);

- (b) is not absolved from exercising or performing any power, duty or function so delegated; and
- (c) may amend, review or rescind any decision of a committee.

(6) Any delegated or assigned power, duty or function exercised or performed by a committee is regarded to have been exercised or performed by the Council.

### **Remuneration of members of Council**

16.(1)(a) A member of the Council may be paid such remuneration or allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.

(b) A member of the Council who receives remuneration, allowances or other benefits by virtue of his or her post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality; or

(iv) a corporation, body or institution in which the national or a provincial government has a controlling interest, who continues to receive such remuneration, allowances or other benefits while serving as a member of the Council, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position in which he or she would have been were it not for such post or employment.

(2)(a) A member of the Council and a member of a committee of the Council may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Council or a committee of the Council.

(b) The responsible Member of the Executive Council must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

**Administrative and secretarial work of Council**

17. The administrative and secretarial work incidental to the performance of the functions of the Council must be performed by officers in, or employees of, the Department designated for such purpose by the Head of Department in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994).

**CHAPTER 5  
PUBLIC RECORDS****Management and care of Public Records**

18.(1) Subject to this Act, the Provincial Archivist is charged with the promotion, co-ordination and monitoring of proper management and care of public records in the custody of any governmental body in the Province.

(2) No public record under the control of any governmental body may be –

- (a) transferred to an archives repository;
- (b) transferred to an off-site storage facility or any other site outside of the ordinary premises of the governmental body concerned;
- (c) destroyed;
- (d) erased; or
- (e) otherwise disposed of,

without the written authorisation of the Provincial Archivist.

(3) The Provincial Archivist may refuse to grant the authorisation contemplated in subsection (2) in respect of the transfer of records to an off-site storage facility or any other site outside of the ordinary premises of the governmental body concerned, if he or she has any reason to believe that –

- (a) the identified off-site storage facility or any other site outside of the ordinary premises of the governmental body concerned, is not suitable for the preservation of records; or
- (b) the transportation of the records to an off-site storage facility or any other site outside of the ordinary premises of the governmental body concerned, could somehow lead to the destruction of the records concerned.

(4) The Provincial Archivist's authorisation for the transfer of public records to an off-site storage facility or any other site outside of the ordinary premises of the governmental body concerned in terms of subsection (2) does not divest the head of the governmental body concerned from his or her duties to ensure that such records are properly managed in accordance with this Act.

(5) The Provincial Archivist must determine –

- (a) the records classification system to be applied by governmental bodies;
- (b) the conditions subject to which records may be microfilmed or electronically reproduced; and
- (c) the conditions subject to which records systems must be managed.

(6) The Provincial Archivist may, with or without any notice to the head of a particular governmental body, inspect public records during office hours, in so far as such inspection may be necessary for the performance of his or her functions in terms of this Act: Provided that –

- (a) the inspection of the public records which contain information, the disclosure of which is restricted in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) or any other law, must be done with the consent of the head of the governmental body concerned; and
- (b), the powers conferred upon the Provincial Archivist in terms of this provision also apply in respect of public records kept in an off-site facility or any other site outside of the ordinary premises of the governmental body.

(7) The Provincial Archivist may issue written directives and instructions to the heads of governmental bodies in the Province in relation to the management and care of public records in the custody of such governmental bodies: Provided that such directives and instructions are not inconsistent with the powers of the Provincial Archivist in terms of this Act and the regulations.

(8)(a) Subject to –

- (i) any law governing the employment of personnel of the governmental body concerned; and
- (ii) such other requirements as may be prescribed,

the head of each governmental body in the Province must designate an official as the records manager of the governmental body concerned.

(b) A records manager contemplated in paragraph (a) is responsible for ensuring that the governmental body concerned complies with the –

- (i) requirements of this Act; and
- (ii) written directives and instructions issued by the Provincial Archivist from time to time as contemplated in subsection (7).

(9)(a) The head of any governmental body may, in the event that such governmental body is, for any justifiable and cogent reason, not able to comply with any provision of this Act, make written application to the Provincial Archivist for exemption from compliance with such provision.

(b) An application for exemption made in terms of paragraph (a), must –

- (i) contain sufficient and motivated reasons as to why the governmental body is unable to comply; and
- (ii) be made within 14 days of the date upon which the head of the governmental body concerned first became aware that the governmental body is unable to comply.

(c) In deciding whether to grant any application made in terms of paragraph (a), the Provincial Archivist must consider whether –

- (i) the application complies with the requirements contemplated in paragraph (b); and
- (iii) the non-compliance is preventable.

(d) Any head of any governmental body, aggrieved by the decision of the Provincial Archivist contemplated in paragraph (c) may, within 7 days, appeal in writing in the manner prescribed to the responsible Member of the Executive Council.

## CHAPTER 6 NON-PUBLIC RECORDS

### **Acquisition of non-public records**

19.(1) The Provincial Archivist may, subject to this Act, on behalf of the Provincial Government, acquire by –

- (a) purchase;

(b) donation; or

(c) loan for a temporary or a longer period,

either unconditionally or subject to such conditions as may be agreed upon, non-public records which, in his or her opinion, have enduring value of provincial significance and which cannot be more appropriately preserved by any other institution.

(2) Subject to any conditions as may be applicable, non-public records acquired in terms of subsection (1) must be deposited in the archives repository determined by the Provincial Archivist.

(3) The Provincial Archivist must maintain provincial lists of non-public records with enduring value: Provided that the Provincial Archivist must, in maintaining the lists of non-public records, consult the institutions having custody of such records.

## CHAPTER 7

### CUSTODY AND PRESERVATION OF, AND ACCESS TO, ARCHIVALIA

#### **Custody and preservation of archivalia**

**20.**(1) The responsible Member of the Executive Council may, in consultation with the Council and by notice in the *Gazette* –

(a) establish archives repositories under the control of the Provincial Archivist; and

(b) determine the area of jurisdiction for each archives repository established in terms of paragraph (a).

(2)(a) The Provincial Archivist must, in respect of each archives repository and subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), designate an officer or employee, contemplated in section 6, as the head of each archives repository.

(b) The head of an archives repository, designated as such in terms of paragraph (a), must –

(i) assist the Provincial Archivist with the administration and management of an archives repository; and

(ii) exercise such powers and perform such duties and functions delegated to him or her by the Provincial Archivist in terms of section 26(3).

(3) Public records identified in a disposal authority as having enduring value, may, subject to the regulations, be transferred to an archives repository when they have been in existence for 20 years: Provided that –

- (a) no other law requires such records to be kept in the custody of a particular governmental body or person;
- (b) the Provincial Archivist may, after consultation with the head of a governmental body, identify such records which must –
  - (i) remain in the custody of a governmental body; or
  - (ii) be transferred to an archives repository before they have been in existence for 20 years; or
- (c) the Provincial Archivist may defer the transfer of any public record.

#### **Access to archivalia**

**21.(1)** The Provincial Archivist must grant any member of public access to any archivalia which is –

- (a) a public record: Provided that –
  - (i) such access is not prohibited in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), or any other law governing access to any public record;
  - (ii) a period of 20 years has elapsed since the end of the year in which the record came into existence; or
  - (iii) the Provincial Archivist has, upon request, granted access to such a record in respect of which a period of less than 20 years has elapsed since the end of the year in which the record came into existence; or
- (b) non-public record, subject to any conditions agreed upon at the acquisition of such record in terms of section 19.

(2) Notwithstanding subsection (1), the Provincial Archivist may refuse access to any archivalia in his or her possession, if –

- (a) the archivalia concerned is in a fragile condition and if it is impossible to grant access to such archivalia in any other form;
- (b) the conditions contemplated in subsection (1)(b) prohibit such access;

- (c) any of the grounds for refusal of access to records contemplated in Chapter 4 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), prevail; or
- (d) access to such archivalia is prohibited in terms of any other law.

(3) Any person aggrieved by the decision of the Provincial Archivist contemplated in subsection (2) may within 21 days appeal, in writing, in the manner prescribed to the responsible Member of the Executive Council.

## CHAPTER 8 ANNUAL PLANS AND REPORTS

### **Annual plans**

**22.** The Provincial Archivist, after consultation with the Council, must, before the beginning of any financial year or at such other time as the responsible Member of the Executive Council may determine, submit to the responsible Member of the Executive Council for approval, an annual plan of the Provincial Archives for each financial year containing –

- (a) details of planned activities of the Provincial Archives for that financial year;
- (b) measurable objectives, expected outcomes, outputs, performance indicators and targets; and
- (c) such further information as the responsible Member of the Executive Council may determine.

### **Annual reports**

**23.(1)** The Provincial Archivist, after consultation with the Council, must, through the responsible Member of Executive Council, table an annual report on the activities of the Provincial Archives in the Provincial Legislature within five months after the end of each financial year.

(2) The annual report contemplated in subsection (1) must –

- (a) state the extent to which the Provincial Archives has achieved or advanced the objects of this Act and the measurable objectives as set out in its annual



- plan, as contemplated in section 22, during the financial year concerned;
- (b) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that annual plan; and
- (c) contain a report –
- (i) on all cases of unauthorised destruction of public records investigated by the Provincial Archives; and
  - (ii) providing the details of all governmental bodies in the Province that have failed to comply with any provision of this Act.

## CHAPTER 9 PROVINCIAL RECORDS MANAGEMENT POLICY

### **Provincial Records Management Policy**

**24.** The responsible Member of the Executive Council must, after consultation with the Council, develop, determine and approve a Provincial Records Management Policy.

## CHAPTER 10 GENERAL PROVISIONS

### **Regulations and notices**

**25.(1)** The responsible Member of the Executive Council may, by notice in the *Gazette* and after consultation with the Council, make regulations prescribing –

- (a) any matter which is required or permitted to be prescribed in terms of this Act;
- or
- (b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) The responsible Member of the Executive Council may, by notice in the *Gazette* –

- (a) in consultation with the Member of the Executive Council responsible for finance; and
  - (b) after consultation with the Council,
- determine fees that the Provincial Archivist may charge for –

- (i) the utilisation of certain facilities in the Provincial Archives; or
- (ii) any utilisation or reproduction of certain archivalia for commercial or income generating purposes.

(3) The responsible Member of the Executive Council may, by notice in the *Gazette* after the required consultation contemplated in subsections (1) and (2), as the case may be –

- (a) amend;
- (b) substitute;
- (c) withdraw; or
- (d) repeal,

any such regulation or notice.

### **Delegations**

**26.(1)** The responsible Member of the Executive Council may delegate to the Head of Department –

- (a) any power conferred on the responsible Member of the Executive Council by this Act, except the power, in terms of –
  - (i) section 25(1), to make regulations;
  - (ii) section 25(2), to issue a notice determining fees; or
  - (iii) section 25(3), to amend, substitute, withdraw or repeal any regulations issued in terms of section 25(1) or (2); or
- (b) any duty imposed on the responsible Member of the Executive Council by this Act, except any duty regarding the appointment and termination of office, of the members of the Council contemplated in sections 9 and 12.

(2) The Council may delegate to the Provincial Archivist any power or duty conferred or imposed on the Council by this Act.

(3) The Provincial Archivist may delegate to the head of an archives repository or any member of staff of the Provincial Archives any power or duty conferred or imposed on him or her by this Act.

(4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised

or performed subject to such conditions as the person or body that made the delegation considers necessary.

(5) Any delegation in terms of subsection (1), (2) or (3) –

- (a) must be in writing;
- (b) may not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by that person or body.

### **General offences**

**27.** (1) Any person who –

- (a) wilfully damages any public or non-public record in the control of a governmental body; or
- (b) otherwise than in accordance with this Act or any other law, removes, destroys or erases any public or non-public record in the control of a governmental body,

is guilty of an offence.

(2) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of the Council or the Provincial Archives, is guilty of an offence.

(3) Any person who obstructs or prevents the Provincial Archives or the Council, including any officer or agent of the Provincial Archives or the Council, in the exercise of any powers or function conferred in terms of this Act, is guilty of an offence.

### **Penalties**

**28.** Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding two years.

**Repeal of law**

29. The KwaZulu-Natal Provincial Archives Act, 2000 (Act No. 5 of 2000), is hereby repealed.

**Transitional arrangements and validation**

30. (1) Any act, determination, designation, decision, matter or any other thing done, made, taken, executed or carried out or purported to have been done, made, taken, executed or carried out by the Provincial Archivist, an officer or member of staff of the Provincial Archives, the responsible Member of the Executive Council in terms of or in pursuance of the repealed KwaZulu-Natal Provincial Archives Act, 2000 (Act No. 5 of 2000), to the date of commencement of this Act, is not invalid by reason of –

- (a) having been so done, taken, made, carried out, or executed before the date of the coming into operation of the repealed KwaZulu-Natal Provincial Archives Act, 2000;
- (b) the regulations referred to in the repealed KwaZulu-Natal Provincial Archives Act, 2000, not having been made and published by the responsible Member of the Executive Council; and
- (c) any procedure, process, requirement, condition or detail referred to in the repealed KwaZulu-Natal Provincial Archives Act, 2000, not having been determined or prescribed by regulation, as contemplated in the repealed KwaZulu-Natal Provincial Archives Act, 2000.

(2)(a) The appointment of any officer, employee or member of staff of the Provincial Archives established in terms of section 2 of the repealed KwaZulu-Natal Provincial Archives Act, 2000 (Act No. 5 of 2000), in terms of or in pursuance of the repealed KwaZulu-Natal Provincial Archives Act, 2000, to the date of commencement of this Act, is not invalid by reason of –

- (i) having been made before the date of the coming into operation of the repealed KwaZulu-Natal Provincial Archives Act, 2000;
- (ii) the regulations referred to in the repealed KwaZulu-Natal Provincial Archives Act, 2000, not having been made or published by the responsible Member of the Executive Council; or
- (iii) any procedure, process, requirement, condition or detail referred to in the

repealed KwaZulu-Natal Provincial Archives Act, 2000, not having been determined or prescribed by regulation, as contemplated in the repealed KwaZulu-Natal Provincial Archives Act, 2000.

(b) A person who, on the day before the date of the commencement of this Act, was an officer, employee or member of staff referred to in paragraph (a), is regarded as having been appointed in terms of section 6 of this Act with the retention of all rights and benefits.

(c) The person who, on the day before the date of commencement of this Act, was the Provincial Archivist of the Provincial Archives established in terms of section 2 of the repealed KwaZulu-Natal Provincial Archives Act, 2000, is regarded as having been appointed as the Provincial Archivist in terms of section 4 of this Act with the retention of all rights and benefits.

**Short title**

**31.** This Act is called the KwaZulu-Natal Archives and Records Service Act, 2011.

No. 4

14 November 2012

[Engelse teks deur die Premier geteken]

**KWAZULU-NATAL  
WET OP DIE ARGIEF- EN REKORDDIENS, 2011  
(No. 08 van 2011)**

Goedgekeur 02-10-2012

**WET**

Om voorsiening te maak vir die instelling van die KwaZulu-Natal Argief- en Rekorddiens; om voorsiening te maak vir die behoorlike bestuur en versorging van publieke rekords in die provinsie KwaZulu-Natal; om voorsiening te maak vir die instandhouding en gebruik van 'n provinsiale argivale erfenis vir al die mense van die provinsie KwaZulu-Natal; om die KwaZulu-Natal Provinsiale Wet op Argiewe, 2000 (Wet No. 5 van 2000) te herroep; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD soos volg deur die Provinsiale Wetgewer van die provinsie KwaZulu-Natal bepaal:–

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KWAZULU-NATAL PROVINSIALE ARGIEF- EN REKORDDIENS (PROVINSIALE  
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## HOOFSTUK 5 PUBLIEKE REKORDS

18. Bestuur en versorging van publieke rekords

## HOOFSTUK 6 NIE-PUBLIEKE REKORDS

19. Verkryging van nie-publieke rekords

## HOOFSTUK 7 BEWARING EN INSTANDHOUDING VAN, EN TOEGANG TOT, ARGIEFSTUKKE

20. Bewaring en instandhouding van argiefstukke
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## HOOFSTUK 8 JAARPLANNE EN VERSLAE

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## HOOFSTUK 1 OMSKRYWINGS

### Omskrywings

1. In hierdie Wet, tensy uit die konteks anders blyk, beteken –

**"argiefbewaarplek"** enige argiefbewaarplek in artikel 20 bedoel;

**"argiefstukke"** die publieke en nie-publieke rekords in die bewaring van 'n argiefbewaarplek;

**"beskikkingsmagtiging"** 'n skriftelike magtiging uitgereik deur die Provinsiale Argivaris ingevolge artikel 18(2) wat spesifiseer watter rekords bewaar moet word of dokumente waaroor daar op 'n ander wyse beskik moet word;

**"bewaring"** die beheer van rekords gebaseer op die fisiese besit daarvan;

**"Departement"** die departement in die provinsie KwaZulu-Natal verantwoordelik vir provinsiale argiewe;

**"Departementshoof"** die persoon aangestel as die rekenpligtige beampte van die Departement;

**"elektroniese rekordstelsel"** enige rekordstelsel waarin inligting by wyse van rekenaartegnologie elektronies gegenereer en gestoor word;

**"finansiële jaar"** die tydperk wat op 1 April van 'n spesifieke jaar in werking tree en op 31 Maart van die volgende jaar eindig;

**"Grondwet"** die Grondwet van die Republiek van Suid-Afrika, 1996;

**"hierdie Wet"** ook die regulasies;

**"hoof van 'n regeeringsliggaam"** die rekenpligtige beampte van 'n

regeringsliggaam of enige persoon wat as sodanig optree;

"**keuring**" die argivale funksie van die uiteindelijke beskikking oor rekords te bepaal;

"**Koerant**" die amptelike *Provinsiale Koerant* van KwaZulu-Natal;

"**lid**" 'n lid van die Raad in artikel 9 bedoel;

"**lid van die Uitvoerende Raad verantwoordelik vir finansies**" die lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

"**nie-publieke rekord**" 'n rekord wat deur 'n privaat individu of liggaam buiten 'n regeringsliggaam, soos omskryf in hierdie Wet, geskep of ontvang word;

"**Portefeuljekomitee**" die tersaaklike Portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir provinsiale argiewe;

"**Provinsiale Argief**" die KwaZulu-Natal Argief- en Rekorddiens ingestel ingevolge artikel 2;

"**Provinsiale Regering**" die regering van die provinsie;

"**Provinsiale Wetgewer**" die Wetgewer van die provinsie soos in artikel 105 van die Grondwet bedoel, en het wetgewende magtiging vir die provinsie soos in artikel 104(1) van die Grondwet bedoel;

"**provinsie**" die provinsie KwaZulu-Natal in artikel 103 van die Grondwet bedoel, en "**provinsiale**" het 'n ooreenstemmende betekenis;

"**publieke rekord**" 'n rekord geskep of ontvang deur 'n regeringsliggaam in die verrigting van sy funksies en die uitvoering van sy werksaamhede;

"**Raad**" die KwaZulu-Natal Argiefadviesraad in artikel 7 bedoel;

**"regulasies"** regulasies uitgevaardig ingevolge artikel 25;

**"rekord"** vasgelegde inligting ongeag die vorm of medium en sluit elektroniese en digitale inligting in;

**"rekordklassifikasiesstelsel"** 'n klassifikasieplan vir die identifisering, rangskikking, stoor en oproep van rekords;

**"regeringsliggaam"** enige wetgewende, uitvoerende, regterlike of administratiewe staatsorgaan, met inbegrip van enige statutêre liggaam, kommissie, direksie of raad in die provinsiale of plaaslike staatsfeer in die provinsie KwaZulu-Natal;

**"Uitvoerende Raad"** die Uitvoerende Raad van die provinsie KwaZulu-Natal;

**"verantwoordelike lid van die Uitvoerende Raad"** die lid van die Uitvoerende Raad van die provinsie verantwoordelik vir provinsiale argiewe; en

**"voorgeskryf"** voorgeskryf deur regulasie kragtens artikel 25, en **"voorskryf"** het 'n ooreenstemmende betekenis.

## HOOFSTUK 2

### KWAZULU-NATAL ARGIEF- EN REKORDDIENS (PROVINSIALE ARGIEF)

#### **Instelling van KwaZulu-Natal Provinsiale Argief- en Rekorddiens**

2.(1) Die KwaZulu-Natal Provinsiale Argief- en Rekorddiens, hierna na verwys as die Provinsiale Argief, word hiermee ingestel.

(2) Die Provinsiale Argief –

- (a) is 'n komponent binne die departement; en
- (b) is nie 'n regs persoon nie.

### **Oogmerke en funksies van Provinsiale Argief**

#### **3. Die oogmerke en funksies van die Provinsiale Argief is –**

- (a) om publieke en nie-publieke rekords met blywende waarde in stand te hou vir gebruik deur die publiek en die staat;
- (b) om die toeganklikheid van argiefstukke in paragraaf (a) bedoel vir lede van die publiek te fasiliteer, onderhewig aan hierdie Wet, die regulasies en enige ander wet wat toegang tot die publieke rekords beheer;
- (c) om die gebruik van argiefstukke in paragraaf (a) bedoel deur lede van die publiek te bevorder;
- (d) om die behoorlike bestuur en versorging van alle publieke rekords deur alle regeringsliggame in die provinsie te verseker;
- (e) om nie-publieke rekords met blywende waarde van provinsiale belang wat nie meer toepaslik deur 'n ander instelling in stand gehou kan word nie, te versamel met inagneming van die behoefte om aspekte van die volk se ervaring wat in die verlede deur argiewe verwaarloos is, te dokumenteer;
- (f) om provinsiale registers van nie-publieke rekords met blywende waarde in stand te hou;
- (g) om samewerking en koördinasie te bevorder tussen instellings wat nie-publieke rekords met blywende waarde in bewaring het;
- (h) die versameling van verbale en oudiovisuele argivale materiaal te inisieer en koördineer;
- (i) om deel te neem aan die Nasionale Geoutomatiseerde Argivale Inligtingherwinningstelsel ingevolge artikel 3(e) van die Wet op die Nasionale Argief- en Rekorddiens van Suid-Afrika, 1996 (Wet No. 43 van 1996);
- (j) om 'n bewustheid van argiewe en rekordbestuur te bevorder;
- (k) om argivale en rekordbestuursaktiwiteite in die provinsie aan te moedig en organiseer; en
- (l) om die instandhouding en gebruik van die provinsiale argivale erfenis oor die algemeen te bevorder.

### HOOFSTUK 3 PROVINSIALE ARGIVARIS EN PERSONEEL

#### **Aanstelling van Provinsiale Argivaris**

4.(1)(a) Die Provinsiale Argief moet deur 'n Provinsiale Argivaris bestuur word, aangestel deur die verantwoordelike lid van die Uitvoerende Raad ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

(b) Die Provinsiale Argivaris, as hoof van die Provinsiale Argief as 'n komponent binne die Departement, doen aan die departementshoof verslag.

(2) Die Provinsiale Argivaris aangestel ingevolge subartikel (1) moet –

(a) 'n toepaslike en geskikte persoon wees; en

(b) oor toepaslike kwalifikasies en ervaring in argiewe en rekordbestuur beskik.

#### **Bevoegdhede en funksies van Provinsiale Argivaris**

5.(1) Die Provinsiale Argivaris moet –

(a) verantwoordelik wees vir die bestuur van die Provinsiale Argief;

(b) sodanige maatreëls tref as wat nodig is om argiefstukke in stand te hou, te bewaar, te rangskik, te beskryf en te herwin;

(c) inligting, konsultasie, navorsing en ander dienste verskaf wat verband hou met die bestuur, instandhouding en bewaring van, en toegang tot, argiefstukke;

(d) met spesiale klem op aktiwiteite wat ontwerp is om uit te reik na minder bevoorregte sektore van die gemeenskap, inligting rakende argiefstukke bekendmaak by wyse van publikasies, uitstallings en die uitleen van argiefstukke;

(e) onderhewig aan artikel 17, administratiewe en sekretariële bystand aan die Raad verskaf; en

(f) oor die algemeen –

(i) sodanige ander stappe doen en sodanige ander handeling uitvoer as wat redelikerwys nodig of bevorderlik mag wees vir die bereiking van die oogmerke van hierdie Wet; of

(ii) enigiets doen wat –

(aa) redelikerwys nodig of wenslik is vir; of

(bb) gepaard gaan met of aanvullend is vir, die effektiewe uitoefening van sy of haar bevoegdhede, en die effektiewe verrigting of uitvoering van sy of haar funksies of pligte ingevolge hierdie Wet.

(2) Die Provinsiale Argivaris kan –

- (a) opleiding in argivale tegnieke, bestuur en instandhouding van rekords verskaf;
- (b) met ander organisasies saamwerk wat in argivale aangeleenthede of die bestuur van rekords belangstel;
- (c) professionele en tegniese bystand verskaf ten bate van argivale werksaamhede en die argivale gemeenskap;
- (d) onderhewig aan artikel 18(9) enige regeringsliggaam in die provinsie kwytsekeld van enige bepaling van hierdie Wet;
- (e) 'n hoof van 'n regeringsliggaam gelas om sodanige verslae as wat die Provinsiale Argief van tyd tot tyd mag vereis, voor te lê of te verskaf;
- (f) van 'n persoon wat van enige publieke rekord in bewaring by die Provinsiale Argief gebruik gemaak het terwyl hy of sy vir 'n publikasie of tesis navorsing gedoen het, vereis om 'n afskrif van die publikasie of tesis aan die Provinsiale Argief te skenk; en
- (g) onderhewig aan artikel 25(2), fooie te hef vir –
  - (i) die benutting van sekere fasiliteite in die Provinsiale Argief; en
  - (ii) die benutting of reproduksie van sekere argiefstukke vir kommersiële of inkomstegenereringsdoeleindes.

### **Personeel van Provinsiale Argief**

6. Die Provinsiale Argivaris moet, in die verrigting of uitvoering van sy of haar funksies en pligte ingevolge hierdie Wet, bygestaan word deur beamptes en werknemers wat ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994) in die Departement aangestel is.

## HOOFSTUK 4 KWAZULU-NATAL ARGIEFADVIESRAAD

### **Instelling van KwaZulu-Natal Argiefadviesraad**

7.(1) 'n Adviesraad word hiermee ingestel wat as die KwaZulu-Natal Argiefadviesraad bekend sal staan.

(2) Die Raad is nie 'n regs persoon nie.

### **Bevoegdhede, pligte en funksies van Raad**

8. Die Raad moet –

- (a) die verantwoordelike lid van die Uitvoerende Raad adviseer aangaande enige aangeleentheid wat met die werking van hierdie Wet verband hou;
- (b) die Provinsiale Argivaris adviseer aangaande die bevordering van die oogmerke en funksies van die Provinsiale Argief;
- (c) die Openbare Beskermer raadpleeg oor ondersoek van ongemagtigde vernietiging van rekords wat andersins kragtens hierdie Wet beskerm is;
- (d) enige aangeleentheid wat verband hou met die instandhouding van publieke rekords in die provinsie ondersoek en aanbevelings daarvoor aan die verantwoordelike lid van die Uitvoerende Raad maak; en
- (e) oor die algemeen enigiets doen wat –
  - (i) redelikerwys nodig of wenslik is vir; of
  - (ii) gepaard gaan met of aanvullend is vir,die effektiewe uitoefening van sy of haar bevoegdhede, en die effektiewe verrigting of uitvoering van sy of haar funksies of pligte ingevolge hierdie Wet.

### **Samestelling van Raad**

9.(1) Die Raad bestaan uit –

- (a) nie minder nie as vyf en nie meer nie as sewe lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en
- (b) die Provinsiale Argivaris, as 'n *ex officio*-lid van die Raad, sonder stemreg by sy vergaderings.

(2) Lede van die Raad moet –

(a) toepaslike en geskikte persone wees wat in die beste belang van die provinsie sal dien;

(b) gekenmerk word deur hul onafhanklikheid, onpartydigheid en regverdigheid; en

(c) gesamentlik beskik oor –

(i) die tersaaklike kennis, kwalifikasies of ervaring op die volgende terreine of dissiplines –

(aa) argiewe en rekordbestuur;

(bb) instandhouding of bewaring van rekords;

(cc) inligtingstechnologie;

(dd) etnografiese geskiedenis; en

(ee) regte; en

(ii) enige ander vaardighede, kundigheid, ervaring of kwalifikasies wat na die mening van die verantwoordelike lid van die Uitvoerende Raad tot voordeel van die Raad mag wees.

(3) By aanstelling van lede van die Raad moet die verantwoordelike lid van die Uitvoerende Raad verseker dat –

(a) historiese ongelykhede aangespreek word; en

(b) die Raad gesamentlik oor die nodige en toepaslike kennis, kwalifikasies, ervaring, vaardighede en kundigheid beskik.

(4) Die verantwoordelike lid van die Uitvoerende Raad moet, by wyse van kennisgewing in die *Koerant* en in ten minste twee koerante met wye sirkulasie in die provinsie, belanghebbende partye binne die provinsie uitnooi om kandidate te benoem om as lede van die Raad te dien.

(5) Die uitnodiging om benoemings ingevolge subartikel (4) moet –

(a) die benoemingsprosedure;

(b) die vereistes vir benoeming;

(c) die datum waarop 'n benoeming deur die verantwoordelike lid van die Uitvoerende Raad ontvang moet word; en



(d) die wyse waarop bewys van aanvaarding van benoeming deur benoemdes voorgelê moet word,

vermeld.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n keurpaneel aanstel, bestaande uit –

(a) senior departementele beamptes; en

(b) enige ander persoon wat die verantwoordelike lid van die Uitvoerende Raad as geskik beskou, om –

(i) al die benoemings te hersien,

(ii) 'n kortlys op te stel of die benoemdes te evalueer of onderhoude met hulle te voer; en

(iii) aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad oor die benoemdes te maak.

(7) Die verantwoordelike lid van die Uitvoerende Raad moet, onderhewig aan subartikel

(6), die lede van die Raad aanstel en –

(a) een van die lede van die Raad as die voorsitter; en

(b) een van die lede van die Raad as die adjunkvoorsitter,

aanstel.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet die name van die persone wat op die Raad aangestel is, in die *Koerant* en in ten minste twee koerante met wye sirkulasie in die provinsie publiseer, onmiddellik nadat sodanige persone skriftelik van hul aanstelling op die Raad in kennis gestel is.

(9) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede van die Raad, die Uitvoerende Raad en die Portefeuljekomitee inlig oor die name van die aangestelde lede met inbegrip van hul aanstellingstermyn.

(10) Hierdie artikel is met die nodige veranderinge op die vul van 'n vakature op die Raad van toepassing.

**Onbevoegdheid om op Raad aangestel te word**

10.(1) 'n Persoon is onbevoeg om op die Raad aangestel te word of om op die Raad te bly, indien hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof geestelik siek verklaar is of word;
- (c) 'n persoon onder kuratorskap is;
- (d) te eniger tyd uit 'n vertrouensamp verwyder is as gevolg van wangedrag wat diefstal of bedrog insluit; of
- (e) skuldig bevind en gevangenisstraf opgelê is sonder die keuse van 'n boete, buiten dat die verantwoordelike lid van die Uitvoerende Raad 'n vonnis mag kondoneer indien sodanige benoemde, op 'n wyse wat ooreenstem met artikel 106(1)(e) van die Grondwet, volle besonderhede van die misdryf in 'n beëdigde verklaring verklaar.

(2) Onbevoegdheid ingevolge subartikel (1)(e) eindig vyf jaar nadat die vonnis voltooi is.

**Ampstermyn van raadslede**

11.(1) Persone aangestel op die Raad beklee die amp vir 'n tydperk van vyf jaar of sodanige korter tydperk soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal en is, onderhewig aan artikel 9, verkiesbaar vir heraanstelling by die verstryking van sodanige tydperk.

(2) Geen persoon mag heraan gestel word nadat hy of sy vir meer as twee opeenvolgende termyne op die Raad gedien het nie.

**Vakatures, ontslag en bedanking uit amp van raadslede**

12.(1) 'n Lid van die Raad moet die amp ontruim indien hy of sy onbevoeg raak soos in artikel 10 bedoel.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat 'n geleentheid aan die lid gebied is om sy of haar saak te stel, die ampstermyn van sodanige lid te eniger tyd beëindig indien, na sy of haar mening, daar grondige redes is om dit te doen.

(3) 'n Lid moet sy of haar amp ontruim indien hy of sy sonder vooraf toestemming van die Raad afwesig is van drie opeenvolgende vergaderings van die Raad waarvoor redelike kennis persoonlik of per pos aan daardie lid gegee is.

(4) 'n Lid kan uit sy of haar amp bedank deur nie minder nie as 30 dae skriftelike kennis aan die verantwoordelike lid van die Uitvoerende Raad te gee.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan van die bedankingskennisgewing in subartikel (4) bedoel, afsien, indien sodanige afsiening nie nadelig sal wees vir die doeltreffende funksionering van die Raad nie.

(6) Wanneer 'n vakature op die Raad ontstaan, moet die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 9, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke gedeelte van die ampstermyn van die lid in wie se plek sodanige persoon aangestel is.

(7) Die verantwoordelike lid van die Uitvoerende Raad kan –

(a) onderhewig aan subartikel (2);

(b) na oorleg met die Uitvoerende Raad; en

(c) onderhewig aan die tersaaklike bepalings van die Wet op die Bevordering van Administratiewe Geregtigheid, 2000 (Wet No. 3 van 2000),

die aanstelling beëindig van –

(i) al die lede van die Raad; of

(ii) die meerderheid van die lede van die Raad, welke beëindiging die Raad buite werking mag stel.

(8) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoegdheids ingevolge subartikel (7) uitoefen, kan hy of sy, ongeag die prosedure vir die aanstelling van die lede van die Raad uiteengesit in artikel 9, onderhewig aan artikel 9(2) en (3), persone aanstel om op 'n tussentydse basis as lede van die Raad te dien: Met dien verstande dat –

(a) die persone aangestel ingevolge hierdie subartikel nie op die Raad mag bly vir 'n tydperk van meer as 90 dae na hul aanstellingsdatum nie; en

(b) die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 9, die lede van die Raad binne 90 dae na die aanstelling in hierdie subartikel bedoel, moet aanstel.

### **Vergaderings van Raad**

**13.(1)(a)** Die verantwoordelike lid van die Uitvoerende Raad moet die eerste vergadering van die Raad belê.

(b) Die Raad moet daarna so dikwels as wat nodig is, vergader, maar ten minste drie keer per jaar op sodanige tye en plekke wat die Raad mag bepaal.

(2) Elke lid van die Raad moet skriftelik van elke vergadering in kennis gestel word ten minste 14 dae voor sodanige vergadering, en sodanige kennisgewing moet 'n agenda vir die voorgenome vergadering bevat.

(3) Indien die voorsitter en die adjunkvoorsitter van die Raad afwesig is van enige vergadering van die Raad, kan die lede teenwoordig by daardie vergadering 'n lid uit eie geledere verkies om by daardie vergadering voor te sit.

(4) 'n Spesiale vergadering van die Raad kan belê word op versoek van –

(a) die voorsitter; of

(b) die meerderheid van die lede van die Raad by wyse van 'n skriftelike petisie, waarna die voorsitter elke lid van die Raad skriftelik in kennis moet stel van die tyd en plek van die spesiale vergadering.

(5) 'n Kworum vir 'n vergadering van die Raad is 'n meerderheid van sy lede.

(6) Enige besluit van die Raad moet deur 'n meerderheidstem van die lede teenwoordig by enige vergadering van die Raad geneem word en, in die geval van 'n staking van stemme ten opsigte van enige aangeleentheid, het die lid wat op die betrokke vergadering voorsit die beslissende stem buiten sy of haar gewone stem as 'n lid van die Raad.

(7) Geen besluit van die Raad is ongeldig slegs as gevolg van 'n vakature op die Raad

nie: Met dien verstande dat die besluit geneem word deur die vereiste meerderheid van die lede van die Raad wat teenwoordig is en daarop geregtig is om as lede van die Raad te sit.

(8) Die verrigtinge van alle vergaderings van die Raad moet behoorlik vasgelê, genotuleer en op lêer gehou word.

(9)(a) Die notule van die vorige vergadering moet aan die begin van elke vergadering gelees word.

(b) Die notule kan beskou word as gelees indien afskrifte daarvan voor die vergadering aan die lede van die Raad verskaf is.

(c) Die voorsitter mag slegs die notule teken wanneer besware of korreksies hanteer is.

(10) Die voorsitter moet besluit oor kwessies van orde of prosedure: Met dien verstande dat indien enige lid beswaar maak teen enige sodanige besluit, die kwessie tot stemming gebring moet word en die besluit van die meerderheid van die lede is finaal en bindend vir die Raad.

(11) 'n Lid van die Raad wat 'n belang het met betrekking tot enige aangeleentheid wat op 'n vergadering van die Raad bespreek word, wat hom of haar redelikerwys kan verhoed om sy of haar pligte op 'n regverdige, onbevooroordeelde en behoorlike wyse uit te voer, moet hom- of haarself van sodanige vergadering onttrek.

(12) Enige personeellid van die Provinsiale Argief kan, op uitnodiging van die Raad, 'n vergadering van die Raad bywoon.

(13) Die Raad kan enige persoon uitnooi om enige van sy vergaderings by te woon.

#### **Onttrekking van raadslid**

**14.(1)** ) 'n Lid van die Raad moet hom- of haarself van enige aangeleentheid of verrigtinge onttrek indien hy of sy, 'n familielid of nabye medewerker 'n finansiële of ander belang in die uitslag van 'n besluit deur die Raad het of redelikerwys verwag kan word om te hê.

(2) Enige persoon kan 'n verbale of skriftelike aansoek indien dat 'n lid van die Raad hom- of haarself moet onttrek indien daardie persoon rede het om te glo dat die lid van die Raad 'n familielid of nabye medewerker het of redelikerwys verwag kan word om 'n finansiële of ander konflik van belang in die uitslag van 'n besluit deur die Raad te hê.

(3) 'n Persoon wat aansoek soos vermeld in subartikel (2) doen, moet redes vir sy of haar versoek verskaf.

(4) In die geval van 'n aansoek vermeld in subartikel (2), moet die voorsitter van die Raad oor die aangeleentheid beslis, buiten dat die aangeleentheid deur die adjunkvoorsitter beslis moet word in gevalle waar die aansoek met die voorsitter van die Raad verband hou.

(5) Enige verklaring wat ingevolge subartikel (1) gemaak word, moet in die notule van die betrokke vergadering genotuleer word.

(6) Indien dit later blyk dat die Raad 'n besluit geneem het, gegrond op 'n aangeleentheid met betrekking waartoe 'n lid versuim het om 'n belang in subartikel (1) bedoel te verklaar, is sodanige besluit deur die Raad ongeldig.

(7) Vir die doeleindes van hierdie artikel –

(a) sluit 'n **“nabye medewerker”** in, maar is nie beperk nie tot, 'n besigheidsvennoot of werkgewer; en

(b) sluit 'n **“familielid”** in, maar is nie beperk nie tot –

(i) 'n eggenoot van 'n lid van die Raad;

(ii) 'n lewensmaat in 'n gewoonteverbintenis of 'n persoon met wie 'n lid van die Raad saamwoon of leef asof hulle getroud is; of

(iii) 'n kind, ouer of broer of suster van 'n lid van die Raad.

### **Komitees van Raad**

**15.(1)** Die Raad kan een of meer komitees aanstel, nie beperk tot sy eie lede nie, om hom by te staan in die uitoefening van sy bevoegdhede en die uitvoering en verrigting

van sy pligte en funksies.

(2) Enige komitee aangestel ingevolge subartikel (1) moet onder voorsitterskap van 'n lid van die Raad wees.

(3) 'n Komitee in subartikel (1) bedoel, moet sodanige pligte en funksies uitvoer en verrig soos deur die Raad bepaal.

(4) Die Raad kan, te eniger tyd, sodanige komitee ontbind of hersaamstel.

(5) Die Raad –

(a) kan enige van sy bevoegdhede, pligte of funksies aan 'n komitee aangestel ingevolge subartikel (1) delegeer;

(b) word nie vrygeskeld van die uitoefening, uitvoering of verrigting van enige bevoegdheid, plig of funksie aldus gedelegeer nie; en

(c) kan enige besluit van 'n komitee wysig, hersien of terugtrek.

(6) Enige gedelegeerde of aangewese bevoegdheid, plig of funksie uitgeoefen, uitgevoer of verrig deur 'n komitee word beskou as deur die Raad uitgeoefen, uitgevoer of verrig.

### **Besoldiging van raadslede**

16.(1)(a) 'n Lid van die Raad kan sodanige besoldiging of toelaes ontvang soos die verantwoordelike lid van die Uitvoerende Raad in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies mag bepaal.

(b) 'n Lid van die Raad wat besoldiging, toelaes of ander voordele ontvang uit hoofde van sy of haar pos of werk by –

(i) die nasionale regering;

(ii) 'n provinsiale regering;

(iii) 'n munisipaliteit; of

(iv) 'n korporasie, liggaam of instelling waarin die nasionale of 'n provinsiale regering 'n beherende aandeel het,

wat voortgaan om sodanige besoldiging, toelaes of ander voordele te ontvang terwyl hy of sy as 'n lid van die Raad dien, mag slegs besoldiging en toelaes vermeld in paragraaf

(a) ontvang tot die mate wat vereis word om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou wees indien dit nie vir sodanige pos of werk was nie.

(2)(a) 'n Lid van die Raad en 'n lid van 'n komitee van die Raad kan, met betrekking tot sy of haar funksies as 'n lid, vergoeding ontvang vir redelike werklike reis-en-verblyf-uitgawes genoodsaak deur die werklike bywoning van 'n vergadering van die Raad of 'n komitee van die Raad.

(b) Die verantwoordelike lid van die Uitvoerende Raad moet prosedures, met inbegrip van beheermaatreëls, bepaal vir die bestuur, hantering en verwerking van eise vir reis-en-verblyf-uitgawes soos in paragraaf (a) bedoel.

#### **Administratiewe en sekretariële werk van Raad**

17. Die administratiewe en sekretariële werk verbonde aan die verrigting van die funksies van die Raad moet gedoen word deur beamptes in, of werknemers van, die Departement aangewys vir sodanige doel deur die departementshoof ooreenkomstig die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

### **HOOFSUK 5 PUBLIEKE REKORDS**

#### **Bestuur en versorging van publieke rekords**

18.(1) Die Provinsiale Argivaris is, onderhewig aan hierdie Wet, belas met die bevordering, koördinerende en monitering van behoorlike bestuur en versorging van publieke rekords in die bewaring van enige regeringsliggaam in die provinsie.

(2) Geen publieke rekord onder die beheer van enige regeringsliggaam mag –

- (a) na 'n argiefbewaarplek oorgeplaas word nie;
- (b) na 'n buiteterrein stoorfasiliteit of enige ander terrein buite die gewone perseel van die betrokke regeringsliggaam oorgeplaas word nie;
- (c) vernietig;
- (d) uitgevee; of
- (e) op 'n ander wyse oor beskik word nie,

sonder die Provinsiale Argivaris se skriftelike magtiging nie.



(3) Die Provinsiale Argivaris kan weier om die magtiging in subartikel (2) bedoel toe te staan met betrekking tot die oorpasing van rekords na 'n buiteterrein stoorfasiliteit of enige ander terrein buite die gewone perseel van die betrokke regeringsliggaam, indien hy of sy rede het om te glo dat –

(a) die aangewese buiteterrein stoorfasiliteit of enige ander terrein buite die gewone perseel van die betrokke regeringsliggaam nie geskik is vir die instandhouding van rekords nie; of

(b) die vervoer van die rekords na 'n buiteterrein stoorfasiliteit of enige ander terrein buite die gewone perseel van die betrokke regeringsliggaam op een of ander wyse kan lei tot die vernietiging van die betrokke rekords.

(4) Die Provinsiale Argivaris se magtiging vir die oorpasing van publieke rekords na 'n buiteterrein stoorfasiliteit of enige ander terrein buite die gewone perseel van die betrokke regeringsliggaam ingevolge subartikel (2) ontnem nie die hoof van die betrokke openbare liggaam van sy of haar pligte om te verseker dat sodanige rekords behoorlik ooreenkomstig hierdie Wet bestuur word nie.

(5) Die Provinsiale Argivaris moet –

(a) die rekordklassifikasiestelsel wat deur regeringsliggame toegepas moet word;

(b) die voorwaardes onderhewig waaraan rekords gemikrofotografeer of elektronies herproduseer mag word; en

(c) die voorwaardes onderhewig waaraan rekordstelsels bestuur moet word,

bepaal.

(6) Die Provinsiale Argivaris kan, met of sonder kennisgewing aan die hoof van 'n spesifieke regeringsliggaam, publieke rekords gedurende kantoorure inspekteer, in soverre sodanige inspeksie nodig mag wees vir die verrigting van sy of haar funksies ingevolge hierdie Wet: Met dien verstande dat –

(a) die inspeksie van die publieke rekords wat inligting bevat, waarvan die openbaarmaking ingevolge die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000) of enige ander wet beperk word, gedoen moet word met die toestemming van die hoof van die betrokke regeringsliggaam; en

(b) die bevoegdheids aan die Provinsiale Argivaris verleen ingevolge hierdie bepaling ook van toepassing is met betrekking tot publieke rekords wat in 'n

buiteterreinfasiliteit of enige ander terrein buite die gewone perseel van die regeringsliggaam gehou word.

(7) Die Provinsiale Argivaris kan skriftelike opdragte en instruksies aan die hoofde van regeringsliggame in die provinsie uitreik met betrekking tot die bestuur en versorging van publieke rekords in die bewaring van sodanige regeringsliggame: Met dien verstande dat sodanige opdragte en instruksies nie teenstrydig is met die bevoegdhede van die Provinsiale Argivaris ingevolge hierdie Wet en die regulasies nie.

(8)(a) Onderhewig aan –

(i) enige wet wat die indiensneming van personeel van die betrokke regeringsliggaam beheer; en

(ii) sodanige ander vereistes as wat voorgeskryf word,

moet die hoof van elke regeringsliggaam in die provinsie 'n beampte aanwys as die rekordsbestuurder van die betrokke regeringsliggaam.

(b) 'n Rekordsbestuurder in paragraaf (a) bedoel, is verantwoordelik daarvoor om te verseker dat die betrokke regeringsliggaam aan die –

(i) vereistes van hierdie Wet; en

(ii) skriftelike opdragte en instruksies uitgereik deur die Provinsiale Argivaris van tyd tot tyd soos in subartikel (7) bedoel,

voldoen.

(9)(a) Die hoof van die regeringsliggaam mag, in die geval waar so 'n regeringsliggaam, om enige regverdigte en kratige rede, nie aan enige bepaling van die Wet voldoen nie, skriftelike aansoek aan die Provinsiale Argivaris rig vir kwytskelding aan voldoening aan sodanige bepaling.

(b) 'n Aansoek om kwytskelding ingevolge ingevolge paragraaf (a), moet –

(i) genoegsame en gestaafde redes bevat waarom die regeringsliggaam nie kan voldoen nie; en

(ii) binne 14 dae na die datum waarop die hoof van die regeringsliggaam eerste verwittig is dat die regeringsliggaam nie kan voldoen nie, gerig word.

(c) Met besluitneming of die aansoek ingevolge paragraaf (a) toegestaan sal word, moet die Provinsiale Argivaris oorweeg of –

(i) die aansoek voldoen aan die vereistes soos bedoel in paragraaf (b); en

(ii) die nie-nakoming onafwendbaar.

(d) Enige hoof van enige regeringsliggaam veontreg deur die besluit van die Provinsiale Argivaris soos bedoel in paragraaf (c), mag binne 7 dae skriftelik appèlleer op die manier soos deur die verantwoordelike lid van die Uitvoerende Raad voorgeskryf word.

## HOOFTUK 6 NIE-PUBLIEKE REKORDS

### **Verkryging van nie-publieke rekords**

**19.(1)** Die Provinsiale Argivaris kan, onderhewig aan hierdie Wet, namens die Provinsiale Regering, nie-publieke rekords wat, na sy of haar mening, blywende waarde van provinsiale belang het en wat nie meer toepaslik deur 'n ander instelling in stand gehou kan word nie, hetsy onvoorwaardelik of onderhewig aan sodanige voorwaardes as waarop ooreengekom is, verkry deur die –

- (a) aankoop;
- (b) skenking; of
- (c) leen daarvan vir 'n tydelike of 'n langer tydperk.

(2) Onderhewig aan enige toepaslike voorwaardes moet nie-publieke rekords wat ingevolge subartikel (1) verkry is, in die argiefbewaarplek bepaal deur die Provinsiale Argivaris besorg word.

(3) Die Provinsiale Argivaris moet provinsiale lyste van nie-publieke rekords met blywende waarde in stand hou: Met dien verstande dat die Provinsiale Argivaris die instellings wat sodanige rekords in bewaring het, moet raadpleeg oor die instandhouding van die lyste van nie-publieke rekords.

## HOOFSTUK 7 BEWARING EN INSTANDHOUDING VAN, EN TOEGANG TOT, ARGIEFSTUKKE

### **Bewaring en instandhouding van argiefstukke**

20.(1) Die verantwoordelike lid van die Uitvoerende Raad kan, in oorleg met die Raad en by wyse van kennisgewing in die *Koerant* –

- (a) argiefbewaarplekke onder die beheer van die Provinsiale Argivaris instel; en
- (b) die jurisdiksiegebied vir elke argiefbewaarplek ingestel ingevolge paragraaf (a) bepaal.

(2)(a) Die Provinsiale Argivaris moet, met betrekking tot elke argiefbewaarplek en onderhewig aan die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), 'n beampte of werknemer in artikel 6 bedoel as die hoof van elke argiefbewaarplek aanwys.

(b) Die hoof van 'n argiefbewaarplek, as sodanig aangewys ingevolge paragraaf (a), moet –

- (i) die Provinsiale Argivaris bystaan met die administrasie en bestuur van 'n argiefbewaarplek; en
- (ii) sodanige bevoegdhede uitoefen en sodanige pligte uitvoer en funksies verrig as wat aan hom of haar deur die Provinsiale Argivaris ingevolge artikel 26(3) toegewys is.

(3) Publieke rekords wat in 'n beskikkingsmagtigingsgeïdentifiseer is as dat dit blywende waarde het, kan onderhewig aan die regulasies, na 'n argiefbewaarplek oorgeplaas word wanneer dit 20 jaar bestaan: Met dien verstande dat –

- (a) geen ander wet vereis dat sodanige rekords in die bewaring van 'n spesifieke regeringsliggaam of persoon gehou word nie;
- (b) die Provinsiale Argivaris, na oorleg met die hoof van 'n regeringsliggaam, sodanige rekords kan identifiseer wat –
  - (i) in die bewaring van 'n regeringsliggaam moet bly; of
  - (ii) na 'n argiefbewaarplek oorgeplaas moet word voordat dit 20 jaar bestaan; of
- (c) die Provinsiale Argivaris die oordrag van enige publieke rekord kan uitstel.

### **Toegang tot argiefstukke**

21.(1) Die Provinsiale Argivaris moet aan enige lid van publiek toegang gee tot enige argiefstukke wat –

- (a) 'n publieke rekord is: Met dien verstande dat –

- (i) sodanige toegang nie verbied word ingevolge die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000), of enige ander wet wat toegang tot enige publieke rekord beheer nie;
  - (ii) 'n tydperk van 20 jaar verstryk het sedert die einde van die jaar waarin die publieke rekord ontstaan het; of
  - (iii) die Provinsiale Argivaris op versoek toegang tot sodanige publieke rekord toegestaan het met betrekking waartoe 'n tydperk van minder as 20 jaar verstryk het sedert die einde van die jaar waarin die publieke rekord ontstaan het; of
- (b) 'n nie-publieke rekord is, onderhewig aan enige voorwaardes waarvoor ooreengekom is by die verkryging van sodanige publieke rekord ingevolge artikel 19.
- (2) Desondanks subartikel (1), kan die Provinsiale Argivaris toegang tot enige argiefstukke in sy of haar besit weier, indien –
- (a) die betrokke argiefstukke in 'n brose toestand is en dit onmoontlik is om toegang tot sodanige argiefstukke in enige ander formaat toe te staan;
  - (b) die voorwaardes in subartikel (1)(b) bedoel sodanige toegang verbied;
  - (c) enige van die redes vir weiering van toegang tot rekords in hoofstuk 4 van die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000) bedoel, voorkom; of
  - (d) toegang tot sodanige argiefstukke ingevolge enige ander wet verbied word.
- (3) Enige persoon wat deur die Provinsiale Argivaris se besluit benadeel word soos in subartikel (2) bedoel, mag binne 21 dae skriftelik appelleer op die manier soos deur die verantwoordelike lid van die Uitvoerende Raad voorgeskryf word.

## HOOFSTUK 8 JAARPLANNE EN VERSLAE

### **Jaarplanne**

**22.** Die Provinsiale Argivaris, in oorleg met die Raad, moet, voor die aanvang van enige finansiële jaar of op sodanige ander tyd as deur die verantwoordelike lid van die Uitvoerende Raad bepaal, 'n jaarplan van die Provinsiale Argief vir elke finansiële jaar

aan die verantwoordelike lid van die Uitvoerende Raad voorlê vir goedkeuring, wat –

- (a) besonderhede bevat van beplande werksaamhede van die Provinsiale Argief vir daardie finansiële jaar;
- (b) meetbare doelwitte, verwagte resultate, uitsette, prestasie-aanduiders en teikens bevat; en
- (c) sodanige verdere inligting bevat soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

### **Jaarverslae**

**23.(1)** Die Provinsiale Argivaris, na oorleg met die Raad, moet, deur die verantwoordelike lid van die Uitvoerende Raad, 'n jaarverslag oor die werksaamhede van die Provinsiale Argief in die Provinsiale Wetgewer ter tafel lê binne vyf maande na die einde van elke finansiële jaar.

(2) Die jaarverslag in subartikel (1) bedoel, moet –

- (a) die mate vermeld waartoe die Provinsiale Argief gedurende die betrokke finansiële jaar die oogmerke van hierdie Wet en die meetbare doelwitte bereik of bevorder het soos in sy jaarplan uiteengesit, soos in artikel 22 bedoel;
- (b) tersaaklike prestasie-inligting bevat aangaande die ekonomiese, doeltreffende en effektiewe aanwending van hulpbronne en spesifiek 'n vergelyking tussen beplande en werklike prestasie-aanduiders soos uiteengesit in daardie jaarplan; en
- (c) 'n verslag bevat –
  - (i) oor alle gevalle van ongemagtigde vernietiging van publieke rekords wat deur die Provinsiale Argief ondersoek is; en
  - (ii) wat die besonderhede verskaf van alle regeeringsliggame in die provinsie wat versuim het om aan 'n bepaling van hierdie Wet te voldoen.

## **HOOFSUK 9 PROVINSIALE REKORDBESTUURSBELEID**

### **Provinsiale Rekordbestuursbeleid**

**24.** Die verantwoordelike lid van die Uitvoerende Raad moet, na oorleg met die Raad, 'n Provinsiale Rekordbestuursbeleid ontwikkel, bepaal en goedkeur.

## HOOFSUK 10 ALGEMENE BEPALINGS

### **Regulasies en kennisgewings**

**25.(1)** Die verantwoordelike lid van die Uitvoerende Raad kan, by wyse van kennisgewing in die *Koerant* en na oorleg met die Raad, regulasies uitvaardig wat –

- (a) enige aangeleentheid wat ingevolge hierdie Wet vereis word of toegelaat word om voorgeskryf te word, voorskryf; of
- (b) enige administratiewe of prosedurele aangeleentheid wat nodig is om uitvoering te gee aan die bepalings van hierdie Wet, voorskryf.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, by wyse van kennisgewing in die *Koerant* –

- (a) in oorleg met die Lid van die Uitvoerende Raad verantwoordelik vir finansies; en
- (b) na oorleg met die Raad,

fooie bepaal wat die Provinsiale Argivaris mag hef vir –

- (i) die benutting van sekere fasiliteite in die Provinsiale Argief; of
- (ii) benutting of reproduksie van sekere argiefstukke vir kommersiële of inkomstegenereringsdoeleindes.

(3) Die verantwoordelike lid van die Uitvoerende Raad kan, by wyse van kennisgewing in die *Koerant* na die vereiste oorleg in subartikels (1) en (2) bedoel, na gelang van die geval, enige sodanige regulasie of kennisgewing –

- (a) wysig;
- (b) vervang;
- (c) onttrek; of
- (d) herroep.

### **Delegasies**

**26.(1)** Die verantwoordelike lid van die Uitvoerende Raad kan –

- (a) enige bevoegdheid wat deur hierdie Wet aan die verantwoordelike lid van die Uitvoerende Raad verleen is, aan die Departementshoof delegeer buiten die

bevoegdheid ingevolge –

- (i) artikel 25(1), om regulasies uit te vaardig;
- (ii) artikel 25(2), om 'n kennisgewing wat fooie bepaal, uit te reik; of
- (iii) artikel 25(3), om enige regulasies uitgereik ingevolge artikel 25(1) of (2) te wysig, vervang, onttrek of te herroep; of

(b) enige plig wat die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet opgelê is, buiten enige plig aangaande die aanstelling en beëindiging van amp, van die lede van die Raad in artikels 9 en 12 bedoel.

(2) Die Raad kan enige bevoegdheid of plig wat deur hierdie Wet aan die Raad verleen of opgelê is, aan die Provinsiale Argivaris delegeer.

(3) Die Provinsiale Argivaris kan enige bevoegdheid of plig wat deur hierdie Wet aan hom of haar verleen of opgelê is, aan die hoof van 'n argiefbewaarplek of enige personeellid van die Provinsiale Argief delegeer.

(4) Enige bevoegdheid of plig gedelegeer ingevolge subartikel (1), (2) of (3) moet uitgeoefen of uitgevoer word onderhewig aan sodanige voorwaardes soos die persoon of liggaam wat die delegasie gemaak het, nodig ag.

(5) Enige delegasie ingevolge subartikel (1), (2) of (3) –

- (a) moet skriftelik wees;
- (b) mag nie die persoon of liggaam wat die delegasie gemaak het, verbied om daardie bevoegdheid uit te oefen of daardie plig uit te voer nie; en
- (c) kan te eniger tyd skriftelik deur daardie persoon of liggaam onttrek of gewysig word.

### **Algemene misdrywe**

**27.** (1) Enige persoon wat –

- (a) enige publieke of nie-publieke rekord in die beheer van 'n regeringsliggaam opsetlik beskadig; of
- (b) buiten ooreenkomstig hierdie Wet of enige ander wet, enige publieke of nie-publieke rekord in die beheer van 'n regeringsliggaam verwyder, vernietig of uitvee,

is aan 'n misdryf skuldig.



(2) Enige persoon wat valslik beweer dat hy of sy gemagtig is om fooie namens of in opdrag van die Raad of die Provinsiale Argief te hef of in te samel, is aan 'n misdryf skuldig.

(3) Enige persoon wat die Provinsiale Argief of die Raad, met inbegrip van enige beampte of agent van die Provinsiale Argief of die Raad, in die uitoefening van enige bevoegdheide of verrigting van enige funksie wat ingevolge hierdie Wet verleen is, dwarsboom of verhinder, is aan 'n misdryf skuldig.

#### **Strawwe**

**28.** Enige persoon wat ingevolge hierdie Wet aan 'n misdryf skuldig bevind word, stel hom- of haarself bloot aan 'n boete of gevangenisstraf vir 'n tydperk wat nie twee jaar oorskry nie.

#### **Herroeping van wet**

**29.** Die KwaZulu-Natal Provinsiale Wet op Argiewe, 2000 (Wet No. 5 van 2000) word hiermee herroep.

#### **Oorgangsreëlings en bekragtiging**

**30.** (1) Enige handeling, bepaling, toewysing, besluit, aangeleentheid of enige ander ding wat deur die Provinsiale Argivaris, 'n beampte of personeellid van die Provinsiale Argief, die verantwoordelike lid van die Uitvoerende Raad ingevolge of ooreenkomstig die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000 (Wet No. 5 van 2000) gedoen, gemaak, geneem, verrig of uitgevoer is of na bewering gedoen, gemaak, geneem, verrig of uitgevoer is, tot die datum van inwerkingtreding van hierdie Wet, is nie ongeldig nie omrede –

(a) dit gedoen, gemaak, geneem, verrig of uitgevoer is voor die datum van inwerkingtreding van die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000;

(b) die regulasies vermeld in die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000, nie deur die verantwoordelike lid van die Uitvoerende Raad uitgevaardig en gepubliseer is nie; en

(c) enige prosedure, proses, vereiste, voorwaarde of detail vermeld in die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000, nie deur regulasie bepaal of voorgeskryf is nie, soos in die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000 bedoel.

(2)(a) Die aanstelling van enige beampte, werknemer of personeellid van die Provinsiale Argief ingestel ingevolge artikel 2 van die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000 (Wet No. 5 van 2000), ingevolge of ooreenkomstig die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000, tot die datum van inwerkingtreding van hierdie Wet, is nie ongeldig nie omrede –

(i) dit gemaak is voor die datum van inwerkingtreding van die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000;

(ii) die regulasies vermeld in die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000, nie deur die verantwoordelike lid van die Uitvoerende Raad uitgevaardig of gepubliseer is nie; of

(iii) enige prosedure, proses, vereiste, voorwaarde of detail vermeld in die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000, nie bepaal of voorgeskryf is deur regulasie nie, soos in die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000 bedoel.

(b) 'n Persoon wat, op die dag voor die datum van inwerkingtreding van hierdie Wet, 'n beampte, werknemer of personeellid vermeld in paragraaf (a) was, word beskou as aangestel ingevolge artikel 6 van hierdie Wet met behouding van alle regte en voordele.

(c) Die persoon wat, op die dag voor die datum van inwerkingtreding van hierdie Wet, die Provinsiale Argivaris van die Provinsiale Argief ingestel ingevolge artikel 2 van die herroepe KwaZulu-Natal Provinsiale Wet op Argiewe, 2000, was, word beskou as aangestel as die Provinsiale Argivaris ingevolge artikel 4 van hierdie Wet met behouding van alle regte en voordele.

### **Kort titel**

**31.** Hierdie Wet word genoem die KwaZulu-Natal Wet op Argief- en Rekorddiens, 2010.

No. 4

14 kuLwezi 2012

[Umbhalo weSingisi unyathelwe nguNdunankulu]

**UMTHETHO WOPHIKO LOKUGCINWA KOLWAZI  
NAMAREKHODI WAKWAZULU-NATALI, 2011**  
(Umthetho Na. 08 ka 2011)

Uvunywe mhlaka 02-10-2012

## UMTHETHO

Wokuhlinzekela ukusungulwa koPhiko lokuGcinwa koLwazi namaRekhodi KwaZulu-Natali; wokuhlinzekela ukuphathwa ngendlela nokunakekelwa kwamarekhodi kahulumeni esiFundazweni saKwaZulu-Natali; wokuhlinzekela ukongiwa nokusetshenziswa kwegugu eliwulwazi yibo bonke abantu besiFundazwe saKwaZulu-Natali; wokuchitha uMthetho wokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000 (uMthetho No. 5 ka 2000), nokuhlinzekela okunye okuphathelene nalokho.

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

## UKUHLELEKA KWEZIGABA

*Isigaba*ISAHLUKO 1  
IZINCAZELO

## 1. Izincazelo

ISAHLUKO 2  
UPHIKO LOKUGCINWA KOLWAZI NAMAREKHODI LWAKWAZULU-NATALI (ULWAZI  
OLUGCINIWE LWESIFUNDAZWE)

2. Ukusungulwa koPhiko lokuGcinwa koLwazi namaRekhodi lwesiFundazwe saKwaZulu-Natali
3. Izinhloso nemisebenzi yoLwazi oluGciniwe lwesiFundazwe

ISAHLUKO 3  
UMGCINI WOLWAZI NABASEBENZI BESIFUNDAZWE

4. Ukuqokwa koMgcini woLwazi wesiFundazwe
5. Amandla nemisebenzi yoMgcini woLwazi wesiFundazwe
6. Abasebenzi boPhiko lokuGcinwa koLwazi lwesiFundazwe

ISAHLUKO 4  
UMKHANDLU WOKWELULEKA NGOKUGCINWA KOLWAZI KWAZULU-NATALI

7. Ukusungulwa koMkhandlu wokweLuleka uPhiko lokuGcinwa koLwazi KwaZulu-Natali
8. Amandla, amajoka nemisebenzi yoMkhandlu
9. Ukubunjwa koMkhandlu
10. Ukuhoxiswa ekuqokelweni eMkhandlwini
11. Isikhathi sokuba sesikhundleni samaLungu oMkhandlu
12. Izikhala zomsebenzi, ukuxoshwa nokwesula kwamalungu oMkhandlu
13. Imihlangano yoMkhandlu
14. Ukuzihoxisa kwelungu loMkhandlu
15. Amakomidi oMkhandlu

## 3

16. Ukukhokhelwa kwamalungu oMkhandlu
17. Imisebenzi yezokuphatha neyobubhalane yoMkhandlu

ISAHLUKO 5  
AMAREKHODI KAHULUMENI

18. Ukuphathwa nokunakekelwa kwamaRekhodi kaHulumeni

ISAHLUKO 6  
AMAREKHODI OKUNGEWONA AKAHULUMENI

19. Ukutholakala kwamaRekhodi okungewona akahulumeni

ISAHLUKO 7  
UKUGCINWA NOKUVIKELWA KANYE NOKUTHOLAKALA KOLWAZI OLUGCINIWE

20. Ukugcinwa nokuvikelwa kolwazi olugciniwe
21. Ukutholakala kolwazi olugciniwe

ISAHLUKO 8  
AMASU NEMIBIKO YAMINYAKA YONKE

22. Amasu aminyaka yonke
23. Imibiko yaminyaka yonke

ISAHLUKO 9  
INQUBOMGOMO YESIFUNDAZWE YOKUPHATHWA KWAMAREKHODI

24. INqubomgomo yesiFundazwe yokuPhathwa kwamaRekhodi

ISAHLUKO 10  
IZINHLINZEKO EZEJWAYELEKILE

25. Imithethonqubo nezaziso
26. Ukudluliselwa kwamandla
27. Amacala ejwayelekile
28. Izigwebo
29. Ukuchithwa komthetho
30. Izinhlelo zesikhashana nokusebenza komthetho
31. Isihloko esifingqiwe

ISAHLUKO 1  
IZINCAZELO

**Izincazelo**

**1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile –**

**"ukunquma"** kushiwo umsebenzi womgcini wolwazi wokunquma mayelana nokudalulwa kwamarekhodi;

**"ulwazi olugciniwe"** kushiwo amarekhodi kahulumeni nokungewona akahulumeni agcinwe endaweni yokugcinwa kolwazi;

**"indawo yokugcinwa kolwazi"** kushiwo indawo yokugcinwa kolwazi ehlongozwe esigabeni 20;

**"uMthethosisekelo"** kushiwo uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika ka 1996;

**"uMkhandlu"** kushiwo uMkhandlu woKwaluleka ngokuGcinwa kwamaRekhodi waKwaZulu-Natali ohlongozwe esigabeni 7;

**"ukugcina amarekhodi"** kushiwo ukulawula amarekhodi ngokuwagcina ngqo;

**"uMnyango"** kushiwo uMnyango esiFundazweni saKwaZulu-Natali obhekele ukugcinwa kolwazi lwesifundazwe;

**"imvume yokudalula"** kushiwo imvume ebhalwe phansi ekhishwe uMgcini woLwazi wesiFundazwe ngokwesigaba 18(2) ecacisa amarekhodi okumele avikelwe noma izincwadi ezingadalulwa;

**"uhlelo lokugcinwa kwamarekhodi lomshini"** kushiwo uhlelo lokugcinwa kwamarekhodi lapho ulwazi lutholakala emshinini futhi lugcinwa ngokusebenzisa amakhompyutha;

**"uMkhandlu oPhethe"** kushiwo uMkhandlu oPhethe esiFundazweni saKwaZulu-Natali;

**"unyaka wezimali"** kushiwo isikhathi esiqala mhla lu-1 kuMbasa onyakeni ngamunye size siphela mhla zingama-31 kuNdasa wangonyaka olandelayo;

**"iGazethi"** kushiwo iGazethi esemthethweni yesiFundazwe saKwaZulu-Natali;

**"iNhloko yoMnyango"** kushiwo umuntu oqokwe njengesikhulu esinesibopho sokubika soMnyango;

**"inhloko yomgwamanda kahulumeni"** kushiwo isikhulu esinesibopho sokubika somgwamanda kahulumeni nanoma imuphi omunye umuntu obambe kuleso sikhundla;

**"umgwamanda kahulumeni"** kushiwo noma iluphi uhlaka lukahulumeni okungaba olomthetho, olweziphathimandla, olwezobulungiswa noma olwezokuphatha, kubandakanya noma imuphi umgwamanda osemthethweni, ikhomishana, ibhodi noma umkhandlu ezingeni likahulumeni wesifundazwe noma lohulumeni basekhaya esiFundazweni saKwaZulu-Natali;

**"ilungu"** kushiwo ilungu loMkhandlu elihlongozwe esigabeni 9;

**"iLungu loMkhandlu oPhethe elibhekele ezezimali"** kushiwo ilungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezezimali;

**"amarekhodi okungewona akahulumeni"** kushiwo amarekhodi akhiwe noma atholakale kumuntu noma emgwamandeni ozimele okungewona umgwamanda kahulumeni njengoba kuchazwe kulo Mthetho;

**"iKomidi leziKhundla ePhalamende"** kushiwo iKomidi leziKhundla esiShayamthetho sesiFundazwe elibhekele ulwazi olugciniwe lwesifundazwe;

**"okunqunywe"** kushiwo okunqunywe umthethonqubo ngaphansi kwesigaba 25,

kanti **"ukunquma"** kunencazelo efanayo;

**"isiFundazwe"** kushiwo isifundazwe saKwaZulu-Natali esihlongozwe esigabeni 103 soMthethosisekelo, kanti **"okwesifundazwe"** kunencazelo efanayo;

**"uPhiko lokuGcinwa koLwazi lwesiFundazwe"** kushiwo uPhiko lokuGcinwa koLwazi namaRekhodi KwaZulu-Natali olusungulwe ngokwesigaba 2;

**"uHulumeni wesifundazwe"** kushiwo uhulumeni wesifundazwe saKwaZulu-Natali;

**"isiShayamthetho sesiFundazwe"** kushiwo isiShayamthetho sesiFundazwe njengoba kuhlangezwe esigabeni 105 soMthethosisekelo, esinamandla okushaya umthetho esiFundazweni njengoba kuhlangezwe esigabeni 104(1) soMthethosisekelo;

**"irekhodi likahulumeni"** kusho irekhodi elenziwe noma elitholwe umgwamanda kahulumeni ngesikhathi wenza imisebenzi yawo nangesikhathi ufeza amajoka awo;

**"irekhodi"** kushiwo ulwazi oluqoshiwe kungakhathaleki indlela nomthombo elitholakale kuwo futhi lubandakanya ulwazi oluqoshwe ngomshini noma olushuthiwe;

**"uhlelo lokuhlelwa ngokuhlukana kwamarekhodi"** kushiwo isu lokuhlela ngokuhlukana ukuze kuhlonzwe, kuhlelwe, kugcinwe futhi kutholakale amarekhodi;

**"imithethonqubo"** kusho imithethonqubo esungulwe ngokwesigaba 25;

**"ilungu loMkhandlu oPhethe"** kushiwo ilungu loMkhandlu oPhethe esiFundazweni elibhekele ukugcinwa kolwazi lwesifundazwe; futhi

**"lo Mthetho"** kubandakanya imithethonqubo.



**ISAHLUKO 2**  
**UPHIKO LOKUGCINWA KOLWAZI NAMAREKHODI KWAZULU-NATALI (ULWAZI**  
**OLUGCINIWE LWESIFUNDAZWE)**

**Ukusungulwa koPhiko lokuGcinwa koLwazi namaRekhodi lwesiFundazwe saKwaZulu-Natali**

2.(1) Ngalokhu kusungulwa uPhiko lokuGcinwa koLwazi namaRekhodi lwesiFundazwe saKwaZulu-Natali, ngemuva kwalokhu oluzobizwa ngoPhiko lokuGcinwa koLwazi lwesiFundazwe.

(2) UPhiko lokuGcinwa koLwazi lwesiFundazwe –

- (a) luwuphiko olungaphakathi eMnyangweni; futhi
- (b) aluyena umuntu ngokomthetho.

**Izinhloso nemisebenzi yoPhiko lokuGcinwa koLwazi lwesiFundazwe**

3. Izinhloso nemisebenzi yoPhiko lokuGcinwa koLwazi lwesiFundazwe –

- (a) ukuvikela amarekhodi kahulumeni nokungewona akahulumeni ukuze agcinelwe ukusetshenziswa umphakathi nohulumeni;
- (b) ukulungiselela ukutholakala kolwazi olugciniwe oluhlongozwe endimeni (a) kumalungu omphakathi, kuncike kulo Mthetho, kwimithethonqubo nakunoma imuphi omunye umthetho olawula ukutholakala kwamarekhodi kahulumeni;
- (c) ukugqugquzela ukusetshenziswa kolwazi olugciniwe oluhlongozwe endimeni (a) amalungu omphakathi;
- (d) ukuqinisekisa ukusetshenziswa ngendlela efanele nokunakekelwa kwamarekhodi kahulumeni kuyo yonke imigwamanda kahulumeni esiFundazweni;
- (e) ukuqoqa amarekhodi okungewona akahulumeni kodwa abalulekile ukuthi agcinwe ukuze asize isifundazwe angeke akwazi ukugcineka ngendlela efanele kwesinye isikhungo, kubhekelelwa kakhulu isidingo sokugcina izingxenye zomlando wesizwe ebezikade zinganakiwe abagcini bolwazi phambilini;
- (f) ukugcina amarejista esifundazwe amarekhodi okungewona akahulumeni kodwa abalulekile ukuthi agcinwe;

- (g) ukugqugquzela ukusebenzisana nokubambisana phakathi kwezikhungo ezigcine amarekhodi okungewona akahulumeni kodwa abalulekile;
- (h) ukuqala nokudidiyela ukuqoqwa kolwazi olukhulunywe ngomlomo noluqoshwe ngemishini;
- (i) ukubamba iqhaza oHlelweni lukaZwelonke lokuThola uLwazi oluGcinwe ngeMishini ngokwesigaba 3(e) soMthetho kaZwelonke woPhiko lokuGcinwa koLwazi namaRekhodi eNingizimu Afrika, 1996 (uMthetho No. 43 ka 1996);
- (j) ukuqwashisa ngokuphathwa kolwazi olugciniwe namarekhodi;
- (k) ukugqugquzela nokuhlela imisebenzi yokuphathwa kolwazi olugciniwe namarekhodi esiFundazweni; kanye
- (l) nokugqugquzela isiko lokongiwa nokusetshenziswa kolwazi olugciniwe lwesifundazwe.

### ISAHLUKO 3 UMGCINI WOLWAZI NABASEBENZI BESIFUNDAZWE

#### **Ukuqokwa koMgcini woLwazi wesiFundazwe**

4.(1)(a) ULwazi olugciniwe lwesiFundazwe kumele luphathwe uMgcini woLwazi wesiFundazwe oqokwe yiLungu loMkhandlu oPhethe ngokoMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994).

(b) UMgcini woLwazi wesiFundazwe, njengenhloko yoPhiko lokuGcinwa koLwazi esiFundazweni okuwuphiko olungaphakathi eMnyangweni, ubika kwiNhloko yoMnyango.

(2) UMgcini woLwazi wesiFundazwe oqokwe ngokwesigatshana (1) kumele -

- (a) abe umuntu onekhono futhi ofanele; futhi
- (b) abe neziqo nesipiliyoni okudingekayo ekuphathweni kolwazi olugciniwe namarekhodi.

#### **Amandla nemisebenzi yoMgcini woLwazi wesiFundazwe**

5.(1) UMgcini woLwazi wesiFundazwe kumele -

- (a) aphaathe uLwazi olugciniwe lwesiFundazwe;
- (b) athathe izinyathelo ezidingekayo ukugcina, ukonga, ukuhlela, ukuchaza

kanye nokukhipha ulwazi olugciniwe;

(c) ahlinzeke ulwazi, ukubonisana, ucwaningo neminye imisebenzi ephathelene nokuphathwa, nokugcinwa, nokongiwa, kanjalo nokutholakala kolwazi olugciniwe;

(d) aveze obala imininingwane mayelana nokugcinwa kolwazi ngokushicilela, ngemibukiso nangokubolekisa ngolwazi olugciniwe agxile kakhulu ezinhlelweni ezakhelwe ukuba zifinyelele ezingxenyeni zomphakathi oncishwe amathuba;

(e) kuncike esigabeni 17, eseke uMkhandlu kwezokuphatha nakwezobubhalane; futhi

(f) ngokujwayelekile –

(i) athathe izinyathelo futhi enze nokunye okungabonakala kubalulekile, noma kuwusizo, ukuze kufezekiswe izinhloso zalo Mthetho; noma

(ii) enze noma yini –

(aa) okubonakala inesidingo noma iwusizo; noma

(bb) ehambisana noma ehlobene,

nokusebenzisa ngendlela efanele amandla akhe nokwenza ngendlela efanele imisebenzi yakhe namajoka akhe ngokwalo Mthetho.

(2) UMgcini woLwazi wesifundazwe –

(a) angaqeqesha mayelana namasu okugcina ulwazi, okuphatha ulwazi nawokugcina amarekhodi;

(b) angasebenzisana nezinye izinhlangano ezinentshisekelo mayelana nokugcinwa kolwazi noma mayelana nokuphathwa kwamarekhodi;

(c) angeseka imisebenzi nezinhlelo zokugcinwa kolwazi nokugcinwa kolwazi yimiphakathi;

(d) kuncike esigabeni 18(9), angakhulula noma imuphi umgwamanda kahulumeni esiFundazweni kunoma imuphi umyalelo walo Mthetho;

(e) angayalela inhloko yomgwamanda kahulumeni ukuba ilethe imibiko njengoba ingadingwa uPhiko lokuGcinwa koLwazi lwesiFundazwe izikhathi ngezikhathi;

(f) angacela umuntu osebenzise amarekhodi agcinwe uPhiko lokuGcinwa kwamaRekhodi ngesikhathi enza ucwaningo ngenhloso yokushicilela incwadi noma umbhalo wakhe, ukuba anikele ngekhophi yencwadi noma yombhalo wakhe oPhikweni lokuGcinwa koLwazi lwesiFundazwe; futhi

(g) kuncike esigabeni 25(2), angabiza imali –

- (i) ngokusetshenziswa kwezinsiza ezithile oPhikweni lokuGcinwa koLwazi lwesiFundazwe; kanye
- (ii) nanganoma ikuphi ukusetshenziswa noma ukuhlelwa kabusha kolwazi olugciniwe ngenhloso yokwenza ibhizinisi noma yokuthola inzuzo.

#### **Abasebenzi boPhiko lokuGcinwa koLwazi lwesiFundazwe**

6. UMgcini woLwazi lwesiFundazwe kumele, uma enza imisebenzi namajoka akhe ngokwalo Mthetho, asizwe yizikhulu nabasebenzi eMnyangweni abaqokwe ngokoMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994).

### **ISAHLUKO 4**

#### **UMKHANDLU WOKWELULEKA NGOKUGCINWA KOLWAZI KWAZULU-NATALI**

#### **Ukusungulwa koMkhandlu wokweLuleka ngokuGcinwa koLwazi KwaZulu-Natali**

7.(1) Ngalokhu kusungulwa umkhandlu wokweluleka ozokwaziwa ngoMkhandlu wokweLuleka ngokuGcinwa koLwazi KwaZulu-Natali.

(2) UMkhandlu awuyena umuntu ngokomthetho.

#### **Amandla, amajoka nemisebenzi yoMkhandlu**

8. UMkhandlu kumele –

- (a) weluleke iLungu loMkhandlu oPhethe nganoma iluphi udaba oluphathelele nokusebenza kwalo Mthetho;
- (b) weluleke uMgcini woLwazi lwesiFundazwe mayelana nokufezwa kwezinhloso nemisebenzi yoPhiko lokuGcinwa koLwazi lwesiFundazwe;
- (c) ubonisane noMvikeli woMphakathi ngophenyo olumayelana nokuhlakazwa kwamarekhodi okungagunyaziwe ngaphandle uma kuvikelwe ngaphansi kwalo Mthetho;
- (d) uphenye futhi wenze izincomo kwiLungu loMkhandlu oPhethe mayelana nanoma iluphi udaba oluphathelele nokugcinwa kwamarekhodi kahulumeni esiFundazweni; futhi
- (e) ngokujwayelekile wenze noma yini –

- (i) okubonakala inesidingo noma iwusizo; noma
  - (ii) ehambisana noma ehlobene,
- nokusebenzisa ngendlela efanele amandla awo nokwenza ngendlela efanele imisebenzi yawo namajoka awo ngokwalo Mthetho.

### **Ukubunjwa koMkhandlu**

#### **9.(1) UMkhandlu ubunjwe –**

- (a) amalungu aphakathi kwayisihlanu nayisikhombisa aqokwe iLungu loMkhandlu oPhethe; kanye
- (b) noMgcini woLwazi wesiFundazwe, njengelungu elengeziwe loMkhandlu, elingenalo ilungelo lokuvota emihlanganweni yawo.

#### **(2) Amalungu oMkhandlu kumele -**

- (a) kube abantu abafanelekile futhi abakulungele ukusebenzela isiFundazwe;
- (b) kube ngabantu abazimele, abangachemile futhi abaneqiniso; futhi
- (c) ewonke abe -
  - (i) nolwazi, neziqo nesipiliyoni okudingekayo kule mikhakha noma le misebenzi elandelayo:
    - (aa) ukuphathwa kolwazi olugciniwe namarekhodi;
    - (bb) ukongiwa nokugcinwa kwamarekhodi;
    - (cc) ezobuchwepheshe bemishini;
    - (dd) ezomlando wamasiko ehluahlukene;
    - (ee) nakwezomthetho; kanye
  - (ii) nanoma imaphi amanye amakhono, ubungoti, isipiliyoni neziqo ngokubona kweLungu loMkhandlu oPhethe, okungahlomulisa uMkhandlu.

#### **(3) Uma seliqoka amalungu oMkhandlu, iLungu loMkhandlu oPhethe, kumele liqinisekise ukuthi –**

- (a) kubhekelelwa ukungalingani kwaphambilini; futhi
- (b) uMkhandlu uwonke unolwazi, iziqu, isipiliyoni, amakhono nobungoti obudingekayo.

#### **(4) ILungu loMkhandlu oPhethe kumele, ngesaziso kwi-Gazethi nasemaphephandabeni**

okungenani amabili afundwa kakhulu esiFundazweni, umeme izinhlangothi ezinentshisekelo esiFundazweni ukuba ziphakamise amagama abantu abazosebenza njengamalungu oMkhandlu.

(5) Isimemo seziphakamiso ngokwesigatshana (4) kumele sicacise –

- (a) inqubo yokuphakamisa;
- (b) okudingekayo ukuze uphakanyiswe;
- (c) usuku iziphakamiso okumele zifinyelele ngalo kwiLungu loMkhandlu oPhethe; kanye
- (d) nendlela okuyothunyelwa ngayo ubufakazi bokuvuma ukuphakanyiswa kwalowo ophakanyisiwe.

(6) ILungu loMkhandlu oPhethe kumele liqoke ithimba lokuhlunga elibunjwe –

- (a) izikhulu ezimnkantsh'ubomvu zoMnyango; kanye
- (b) nanoma imuphi omunye umuntu iLungu loMkhandlu oPhethe elingambona efanele, ukuze –
  - (i) kubuyekezwe zonke iziphakamiso;
  - (ii) kuncishiswe, kuhlolwe noma kuvivinywe abaphakanyisiwe; futhi
  - (iii) kwenziwe izincomo kwiLungu loMkhandlu oPhethe mayelana nabaphakanyisiwe.

(7) ILungu loMkhandlu oPhethe kumele, kuncike esigatshaneni (6), liqoke amalungu oMkhandlu futhi liqoke –

- (a) oyedwa kumalungu oMkhandlu njengoSihlalo; kanye
- (b) noyedwa kumalungu oMkhandlu njengesekela likaSihlalo.

(8) ILungu loMkhandlu oPhethe kumele lishicilele amagama abantu abaqokelwe eMkhandlwini kwiGazethi nasemaphephandabeni okungenani amabili atholakala esiFundazweni, ngokushesha ngemuva kokuba labo bantu bazisiwe ngezincwadi mayelana nokuqokelwa kwabo eMkhandlwini.

(9) ILungu loMkhandlu oPhethe kumele, ezinyangeni ezimbili ngemuva kokuqokwa kwamalungu oMkhandlu, lazise uMkhandlu oPhethe kanye neKomidi lasePhalamende ngamagama amalungu aqokiwe kubandakanya isikhathi sawo sokuba sezikhundleni.

(10) Lesi sigaba sisebenza nezinguquko ezidingekayo, uma kugcwaliswa isikhala somsebenzi eMkhandlwini.

#### **Ukuhoxiswa ekuqokelweni eMkhandlwini**

**10.(1)** Umuntu uyahoxiswa ekutheni aqokelwe eMkhandlwini noma aqhubeke nokuba seMkhandlwini, ngenxa yokuthi –

- (a) usezikweletini noma ucwila ezikweletini ngokungenakuhlengeka;
- (b) umenyazelwa noma umenyazelwe yinkantolo yomthetho njengongaphilile kahle engqondweni;
- (c) ungumuntu ozinto zakhe uziphathelwe umthetho;
- (d) useke waxoshwa esikhundleni esithile ngenxa yokungaziphathi kahle okubandakanya ukuntshontsha nokukhwabanisa; noma
- (e) uke watholakala necala futhi wagwetshwa isikhathi ebhadla ejele ngaphandle kokubonelelwa ngenhlawulo, ngaphandle kokuthi uma lowo muntu ophakanyiselwa ukuthi aqokwe edalula yonke imininingwane yecala ngenchwadi efungelwe, iLungu loMkhandlu oPhethe lingakushaya indiva lokho kutholakala necala ngendlela ehambisana nesigaba 106(1)(e) soMthethosisekelo.

(2) Ukuhoxiswa ngokwesigatshana (1)(e) kuphela ngemuva kweminyaka emihlanu kuphothulwe isigwebo.

#### **Isikhathi sokuba sesikhundleni samalungu oMkhandlu**

**11.(1)** Abantu abaqokelwe eMkhandlwini basebenza kulezo zikhundla iminyaka eyisihlanu noma ngaphansi kwalokho njengoba kunganquma iLungu loMkhandlu oPhethe futhi, kuncike esigabeni 9, bangaphinde baqokwe ngemuva kokuphela kwaleso sikhathi.

(2) Akekho umuntu ongaphinde aqokwe uma esesebenze eMkhandlwini amahlandla angaphezu kwamabili.

**Izikhala zomsebenzi, ukuxoshwa nokwehla esikhundleni kwamalungu oMkhandlu**

**12.**(1) ILungu loMkhandlu kumele lishiye esikhundleni uma lihoxiswa njengoba kuhlongozwe esigabeni 10.

(2) ILungu loMkhandlu oPhethe, ngemuva kokunikeza ilungu ithuba lokubeka uhlangothi lwalo, noma nini lingaxosha lelo lungu, uma ngokubona kwalo, kunezizathu ezifanele zokwenza lokho.

(3) ILungu kumele lishiye isikhundla salo uma, ngaphandle kokuthola imvume yokuphutha kuqala eMkhandlwini, liphutha emihlanganweni emithathu elandelayo yoMkhandlu lapho kwakhishwa khona isaziso esifanele sanikezwa amalungu esandleni noma ngeposi.

(4) ILungu lingesula esikhundleni ngencwadi ngokuthi linikeze iLungu loMkhandlu oPhethe isaziso sezinsuku ezingekho ngaphansi kwama-30.

(5) ILungu loMkhandlu oPhethe lingasichitha isaziso sokwesula esihlongozwe esigatshaneni (4), uma ukusichitha kwalo kungeke kube nomthelela omubi ekusebenzeni ngendlela koMkhandlu.

(6) Noma nini uma kuvela isikhala somsebenzi eMkhandlwini, iLungu loMkhandlu oPhethe kumele, kuncike esigabeni 9, liqoke umuntu ozovala leso sikhala kuleyo ngxenye yesikhathi esasele esikhathini lelo lungu elishiyayo ebeliqokelwe sona lisesikhundleni.

(7) ILungu loMkhandlu oPhethe –

(a) kuncike esigatshaneni (2);

(b) ngemuva kokubonisana noMkhandlu oPhethe; futhi

(c) kuncike ezinhlinzekweni ezifanele zoMthetho wokuGqugquzela uBulungiswa kwezokuPhatha, 2000 (uMthetho No. 3 ka 2000),

lingaxosha –

(i) wonke amalungu oMkhandlu; noma

(ii) iningi lamalungu oMkhandlu, okungenza ukuthi uMkhandlu ungabe usasebenza.



(8) Uma kwenzeka iLungu loMkhandlu oPhethe lisebenzisa amandla alo ngokwesigatshana (7), ngale kokulandela inqubo yokuqokwa kwamalungu oMkhandlu ebekwe esigabeni 9, kuncike esigabeni 9(2) no (3), lingaqoka abantu abazosebenza njengamalungu oMkhandlu okwesikhashana: Kuncike ekutheni –

(a) abantu abaqokwayo ngokwalesi sigatshana angeke babe seMkhandlwini isikhathi esingaphezu kwezinsuku ezingama-90 kusukela osukwini lokuqokwa kwabo; futhi

(b) iLungu loMkhandlu oPhethe kumele, kuncike esigabeni 9, liqoke amalungu oMkhandlu ezinsukwini ezingama-90 kuqokwe abantu abahlongozwe kulesi sigatshana.

#### **Imihlangano yoMkhandlu**

**13.**(1)(a) ILungu loMkhandlu oPhethe kumele libize umhlangano wokuqala woMkhandlu.

(b) UMkhandlu kumele ngemuva kwalokho umhlangane njalo uma kunesidingo, kodwa okungenani kathathu ngonyaka ngezikhathi nasendaweni engashiwo uMkhandlu.

(2) Wonke amalungu oMkhandlu kumele aziswe ngomhlangano ngamunye, kusasele okungenani izinsuku eziyi-14 ngaphambi kwalowo mhlangano, futhi lezo zaziso kumele zihambisane nohlelo lwalowo mhlangano.

(3) Uma kwenzeka uSihlalo kanye nosekelo kaSihlalo woMkhandlu bengekho kunoma imuphi umhlangano woMkhandlu, amalungu akhona kulowo mhlangano kumele aqoke oyedwa kuwona ozokwengamela umhlangano.

(4) Umhlangano oyisipesheli woMkhandlu ungabizwa uma kucela –

(a) uSihlalo; noma

(b) iningi lamalungu oMkhandlu ngephethishini, lapho uSihlalo, kumele azise wonke amalungu oMkhandlu ngencwadi, mayelana nesikhathi nendawo yomhlangano oyisipesheli.

(5) Isibalo sabantu abangabamba umhlangano woMkhandlu iningi lamalungu awo.

(6) Noma isiphi isinqumo soMkhandlu kumele sithathwe ngesivumelwano seningi lamalungu akhona kunoma imuphi umhlangano woMkhandlu futhi, uma kuba nokulingana kwamavoti kunoma iluphi udaba, ilungu elengamele kulowo mhlangano liyoba nevoti elingujuqu ngaphezu kwevoti lalo elisemthethweni njengalungu loMkhandlu.

(7) Asikho isinqumo soMkhandlu esingekisebenze ngenxa yokuthi kunesikhala somsebenzi eMkhandlwini: Kuncike ekutheni isinqumo sithathwe yiningi lamalungu oMkhandlu akhona futhi afanelekile ukuhlala njengamalungu oMkhandlu.

(8) Zonke izingxoxo ezidingidwa emihlanganweni kumele ziqoshwe, zifakwe kumaminithi futhi zigcinwe kwifayela.

(9)(a) Amaminithi omhlangano owedlule kumele afundwe ekuqaleni komhlangano ngamunye.

(b) Amaminithi angathathwa njengafundiwe uma amakhophi awo edluliselwe kumalungu oMkhandlu ngaphambi kokuqala komhlangano.

(c) Usihlalo angasayina amaminithi kuphela uma sekuphikisiwe noma eselungisiwe.

(10) Usihlalo kumele anqume ngohlu lwezindaba noma ngenqubo: Kuncike ekutheni uma kwenzeka noma iliphi ilungu liphikisa lesi ninqumo, lolo daba luyovotelwa kanti isinqumo seningi lamalungu siyoba ngujuqu futhi siyobophezela uMkhandlu.

(11) Ilungu loMkhandlu elinokuthinteka kunoma iluphi udaba oluzodingidwa emihlanganweni woMkhandlu, okungathi uma kubhekwa, kutholakale ukuthi kuzoliphazamisa ekwenzeni imisebenzi yalo ngendlela engenzeleli, engachemile futhi efanele, kumele lizihoxise lona kulowo mhlangano.

(12) Noma iliphi ilungu labasebenzi boPhiko lokuGcinwa koLwazi lwesiFundazwe, uma limenywe uMkhandlu, lingawethamela umhlangano woMkhandlu.

(13) UMkhandlu ungamema noma ubani ukuthi ethamele noma imuphi umhlangano wawo.

**Ukuhoxa kwelungu loMkhandlu**

14.(1) Ilungu loMkhandlu kumele lizihoxise lona kunoma iluphi udaba noma izingxoxo lapho lona, ilungu lomndeni walo noma elisondelene naye ehlomla noma kungenzeka ahlomule kwezezimali noma ngandlela thile esinqumweni esithathwa uMkhandlu.

(2) Noma imuphi umuntu angafaka isicelo, ngomlomo noma ngenchwadi, sokuthi ilungu loMkhandlu lizihoxise uma lowo muntu enobufakazi bokuthi ilungu loMkhandlu, ilungu lomndeni noma osondelene nalo bayahlomula noma kungenzeka bahlomule ngokwezezimali noma ngandlela thile esinqumweni esithathwa uMkhandlu.

(3) Umuntu ofaka isicelo okukhulunywe ngaso kwisigatshana (2) kumele anikeze izizathu zesicelo sakhe.

(4) Uma kuba nesicelo okukhulunywe ngaso kwisigatshana (2), uSihlalo woMkhandlu kumele anqume ngalolo daba, ngaphandle uma isicelo sithinta yena uSihlalo woMkhandlu, lolo daba luyonqunywa usekela kasihlalo.

(5) Noma ikuphi okudalulwe ngokwesigatshana (1) kumele kuqoshwe kumaminithi akhona.

(6) Uma kwenzeka kuvela ukuthi uMkhandlu uthathe isinqumo ngodaba lapho ilungu loMkhandlu lehlulekile ukudalula ukuhlomula kwalo okuhlongozwe esigatsheneni (1), lesi sinqumo soMkhandlu ngeke sisebenze.

(7) Ngokwezinhloso zalesi sigaba –

(a) “**osondelene naye**” kubandakanya, phakathi kokunye, umlingani wakho ebhizinisini noma umqashi wakho; futhi

(b) “**ilungu lomndeni**” kubandakanya, phakathi kokunye –

(i) oganene nelungu loMkhandlu;

(ii) oganene nelungu ngokwesintu noma umuntu ilungu loMkhandlu elihlala naye sabantu abashadile; noma

(iii) ingane, umzali noma ozalana nelungu loMkhandlu.

**Amakomidi oMkhandlu**

15.(1) UMkhandlu ungaqoka ikomidi elilodwa noma ngaphezulu, angabunjiwe amalungu alo kuphela, elizowekelele ekusebenziseni amandla awo nasekwenzeni imisebenzi namajoka awo.

(2) Noma iliphi ikomidi eliqokwe ngokwesigatshana (1) kumele liholwe ilungu loMkhandlu.

(3) Ikomidi elihlongozwe kwisigatshana (1) kumele lenze imisebenzi namajoka alo njengoba kunganquma uMkhandlu.

(4) UMkhandlu, noma nini, ungahlakaza noma ubumbe kabusha lelo komidi.

(5) UMkhandlu –

(a) ungalulisele noma imaphi amandla, amajoka nemisebenzi yawo ekomidini eliqokwe ngokwesigatshana (1);

(b) awenqatshelwe ukusebenzisa noma imaphi amandla noma ukwenza imisebenzi namajoka owadlulisile; futhi

(c) ungachibiyela, ungabuyekeza noma uhoxise noma isiphi isinqumo sekomidi.

(6) Noma imaphi amandla, imisebenzi noma amajoka okudlulisiwe kwase kwenziwa yikomidi kuthathwa njengokwenziwe uMkhandlu.

**Ukukhokhelwa kwamalungu oMkhandlu**

16.(1)(a) Ilungu loMkhandlu lingakhokhelwa iholo noma isibonelelo njengoba kunganquma iLungu loMkhandlu oPhethe elibhekele ezezimali.

(b) Ilungu loMkhandlu eliholayo noma elithola izibonelelo noma eminye imihlomulo ngenxa yesikhundla salo –

(i) kuhulumeni kazwelonke;

(ii) kuhulumeni wesifundazwe;

(iii) kumasipala; noma

(iv) enhlanganweni, emgwamandeni noma esikhungweni lapho uhulumeni

kazwelonke noma wesifundazwe kunguyena olawulayo, eliqhubekayo ukuthola lelo holo, leso sibonelelo noma eminye imihlomulo ngesikhathi lisebenza njengelungu loMkhandlu, liyothola kuphela iholo kanye nesibonelelo okubalulwe endimeni (1) ngendlela efanele ukuze lelo lungu libe sesimweni sezimali ebelivele lizoba kusona ukube belingaqashiwe kulowo msebenzi.

(2)(a) Ilungu loMkhandlu nelungu lekomidi loMkhandlu, mayelana nemisebenzi yalo njengelungu, lingathola isibonelelo sezindleko zokuhamba ngokomsebenzi ngenxa yokwethamela kwalo umhlangano woMkhandlu noma wekomidi loMkhandlu.

(b) ILungu loMkhandlu oPhethe kumele linqume izinqubo, kubandakanya namazinga, zokulawula, zokuphatha nokwenziwa kwezicelo zokuthola izibonelelo zezindleko zokuhamba ngokomsebenzi ezihlongozwe endimeni (a).

#### **Imisebenzi yokuphatha neyobubhalane yoMkhandlu**

**17.** Imisebenzi yezokuphatha neyobubhalane mayelana nokwenziwa kwemisebenzi yoMkhandlu kumele yenziwe izikhulu, noma abasebenzi boMnyango abaqokelwe ukwenza lowo msebenzi iNhloko yoMnyango ngokuhambisana noMthetho wemiSebenzi kaHulumeni, 1994 (isiMemezelo No. 103 sika 1994).

### **ISAHLUKO 5 AMAREKHODI KAHULUMENI**

#### **Ukuphathwa nokunakekelwa kwamaRekhodi kaHulumeni**

**18.(1)** Kuncike kulo Mthetho, uMgcini woLwazi ujutshelwe ukugqugquzela, ukudidiyela nokuqapha ukuphathwa ngendlela nokunakekelwa kwamarekhodi kahulumeni agcinwe kunoma imuphi umgwamanda kahulumeni esiFundazweni.

(2) Alikho irekhodi likahulumeni elisezandleni zanoma imuphi umgwamanda kahulumeni

–

(a) eliyodluliselwa endaweni yokugcina ulwazi;

(b) eliyodluliselwa endaweni yokugcina amarekhodi engekho lapho kugcinwa khona amarekhodi noma kwenye indawo engaphandle kwezakhiwo ezisemthethweni zomgwamanda kahulumeni othintekayo;

(c) eliyohlakazwa;

(d) eliyocishwa; noma

(e) eliyolahlwa,

ngaphandle kwemvume esemthethweni yoMgcini woLwazi wesiFundazwe.

(3) UMgcini woLwazi wesiFundazwe angenqaba ukukhipha imvume ehlongozwe esigatshaneni (2) mayelana nokudlulisela amarekhodi kwenye indawo yokuwagcina noma kwenye indawo engekho ezakhiweni ezisemthethweni zomgwamanda kahulumeni othintekayo, uma enesizathu sokukholwa ukuthi –

(a) enye indawo yokuwagcina noma indawo engaphandle kwezakhiwo zomgwamanda kahulumeni othintekayo, ayikufanele ukugcina lawo marekhodi; noma

(b) ukuthuthwa kwamarekhodi eyiswa kwenye indawo noma ezakhiweni ezingaphandle kwezakhiwo ezisemthethweni zomgwamanda kahulumeni othintekayo, kungenzeka kuholele ekutheni amarekhodi onakale.

(4) Imvume yoMgcini woLwazi wesiFundazwe yokudlulisela amarekhodi kahulumeni kwenye indawo noma kwezinye izakhiwo ezingaphandle kwezakhiwo ezisemthethweni zomgwamanda kahulumeni othintekayo ngokwesigatshana (2) akuphuci inhloko yomgwamanda kahulumeni othintekayo amandla ayo okuqinisekisa ukuthi lawo marekhodi agcinwa kahle ngokuhambisana nalo Mthetho.

(5) UMgcini woLwazi wesiFundazwe kumele anqume –

(a) uhlelo lokuhlukanisa amarekhodi oluyosetshenziswa imigwamanda kahulumeni;

(b) imibandela amarekhodi ayoqoshwa ngayo nayokhiqizwa ngayo kabusha; kanye

(c) nemibandela okuyolawulwa ngayo izinhlelo zamarekhodi.

(6) UMgcini woLwazi wesiFundazwe, yazisiwe noma ingaziswanga inhloko yalowo mgwamanda kahulumeni, angahlola amarekhodi kahulumeni ngezikhathi zokusebenza ezijwayelekile, uma lokho kuhlola kungadingeka ukuze enze imisebenzi yakhe ngokwalo Mthetho: Kuncike ekutheni –

(a) ukuhlolwa kwamarekhodi kahulumeni aqukethe ulwazi, ukudalulwa kwawo okwenqatshelwe ngokoMthetho wokuGqugquzela ukuTholakala koLwazi, 2000

(uMthetho No. 2 ka 2000) noma omunye umthetho, kumele kwenziwe ngemvume yenhloko yalowo mgwamanda kahulumeni othintekayo; futhi  
 (b) amandla anikezwe uMgcini woLwazi wesiFundazwe ngokwalesi sigatshana ayasebenza mayelana namarekhodi kahulumeni agcinwe kwenye indawo noma kunoma yisiphi isakhiwo esingaphandle kwezakhiwo ezisemthethweni zomgwamanda kahulumeni.

(7) UMgcini woLwazi wesiFundazwe anganikeza izinhloko zemigwamanda kahulumeni iziqondiso nemiyalelo ebhalwe phansi mayelana nokuphathwa nokunakekelwa kwamarekhodi kahulumeni agcinwe yimigwamanda kahulumeni: Kuncike ekutheni lezo ziqondiso nemiyalelo ngeke kwenzekwe kushayisane namandla oMgcini woLwazi wesiFundazwe ngokwalo Mthetho nemithethonqubo.

(8)(a) Kuncike –

(i) kunoma imuphi umthetho olawula ukuqashwa kwabasebenzi balowo mgwanda othintekayo; kanye

(ii) nakwezinye izidingo ezinganqunywa,

inhloko yomgwamanda ngamunye kahulumeni kumele iqoke isikhulu njengomphathi wamarekhodi kulowo mgwamanda kahulumeni.

(b) Umphathi wamarekhodi ohlongozwe endimeni (a) ubhekele ukuqinisekisa ukuthi lowo mgwamanda kahulumeni uyahambisana –

(i) nezidingo zalo Mthetho; kanye

(ii) neziqondiso nemiyalelo ebhalwe phansi ekhishwe uMgcini woLwazi wesiFundazwe izikhathi ngezikhathi njengoba kuhlongozwe esigatshaneni (7).

(9)(a) Inhloko yomgwamanda kahulumeni ingafaka isicelo esibhalwe phansi kuMgcini woLwazi wesiFundazwe ukuze ukhululwe ekutheni ulandele izinhlinzeko zomthetho, uma lowo mgwamanda kahulumeni, ngezizathu ezizwakalayo nezisobala, ungeke ukwazi ukuhambisana nezinhlinzeko zalo Mthetho.

(b) Isicelo sokukhululwa esifakwe ngokwendima (a) kumele -

(i) sibe nezizathu ezanele futhi ezichazayo ukuthi kungani lowo mgwamanda kahulumeni ungeke ukwazi ukulandela izinhlinzeko zomthetho; futhi

(ii) senziwe ezinsukwini eziyi-14 kusukela osukwini lowo mgwamanda kahulumeni obone ngalo ukuthi angeke ukwazi ukulandela izinhlinzeko

zomthetho.

- (c) Ekunqumeni mayelana nokugunyazwa kwesicelo esenziwe ngokwendima (a), uMgcini woLwazi wesiFundazwe kumele abheke ukuthi -
- (i) isicelo siyahambisana yini nezidingo ezihlongozwe endimeni (b); futhi
  - (ii) ukungahambisani kwaso kungagwemeka yini.
- (d) Noma iyiphi inhloko yomgwamanda kahulumeni, engeneme ngesinqumo soMgcini woLwazi wesiFundazwe esihlongozwe endimeni (c) ingafaka isikhalazo esibhalwe phansi ngendlela ebekiwe kwiLungu loMkhandlu oPhethe ezinsukwini eziyisikhombisa.

## ISAHLUKO 6 AMAREKHODI OKUNGEWONA AKAHULUMENI

### **Ukutholakala kwamarekhodi okungewona akahulumeni**

**19.(1)** UMgcini woLwazi wesiFundazwe, kuncike kulo Mthetho, egameni likaHulumeni wesiFundazwe, –

- (a) angathenga;
- (b) anganikelelwa; noma
- (c) aboleke isikhashana noma isikhathi eside,

ngaphandle kwemibandela noma kuncike kwimibandela okungavunyelwana ngayo, amarekhodi okungewona akahulumeni, okungathi ngokubona kwakhe, abe ngabalulekile ekugqamiseni isifundazwe futhi okungeke kube yisinyathelo esifanele ukuthi agcinwe esinye isikhungo.

(2) Kuncike kunoma imiphi imibandela engaba khona, amarekhodi okungewona akahulumeni atholakale ngokwesigatshana (1) kumele afakwe endaweni yokugcina ulwazi enqunywe uMgcini woLwazi wesiFundazwe.

(3) UMgcini woLwazi wesiFundazwe kumele akhe uhlu lwamarekhodi abalulekile okungewona akahulumeni esifundazweni: Kuncike ekutheni uMgcini woLwazi wesiFundazwe kumele, uma esakha uhlu lwamarekhodi okungewona akahulumeni, abonisane nezikhungo ebezicine lawo marekhodi.



**ISAHLUKO 7**  
**UKUGCINWA NOKONGIWA, KANJALO NOKUTHOLAKALA KOLWAZI OLUGCINIWE**

**Ukugcinwa nokongiwa kolwazi olugciniwe**

**20.(1)** ILungu loMkhandlu oPhethe, ngokubonisana noMkhandlu nangesaziso kwiGazethi –

- (a) lingakha indawo yokugcina ulwazi ezolawulwa uMgcini woLwazi wesiFundazwe; futhi
- (b) linganquma imingcele ezokwenganyelwa yindawo yokugcinwa kolwazi ngayinye eyakhiwe ngokwendima (a).

(2)(a) UMgcini woLwazi wesiFundazwe kumele, mayelana nendawo yokugcina ulwazi ngayinye futhi kuncike eMthethweni wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994), aqoke isikhulu noma umsebenzi, ohlongozwe esigabeni 6, njengenhloko yendawo yokugcina ulwazi ngayinye.

(b) Inhloko yendawo yokugcina ulwazi, eqokelwe lokho ngokwendima (a), kumele -

- (i) ilekelele uMgcini woLwazi wesiFundazwe ngokuphatha nokulawula indawo yokugcina ulwazi; futhi
- (ii) isebenzise amandla yenze nemisebenzi namajoka enikezwe wona uMgcini woLwazi wesiFundazwe ngokwesigaba 26(3).

(3) Amarekhodi kahulumeni ahlonzwe ngesikhathi kulahlwa izinto njengabalulekile, kuncike kwimithethonqubo, angadluliselwa endaweni yokugcina ulwazi uma esehlale iminyaka engaphezu kwama-20: Kuncike ekutheni –

- (a) awukho omunye umthetho odinga ukuthi lawo marekhodi agcinwe emgwamandeni othile kahulumeni noma kumuntu othile;
- (b) uMgcini woLwazi wesiFundazwe, ngemuva kokubonisana nenhloko yomgwamanda kahulumeni, angabheka lawo marekhodi okumele –
  - (i) aqhubeke nokugcinwa umgwamanda kahulumeni; noma
  - (ii) adluliselwe endaweni yokugcina ulwazi ngaphambi kokuthi kuphele iminyaka engama-20 ekhona; noma
- (c) uMgcini woLwazi wesiFundazwe angahoxisa ukudluliselwa kwanoma iliphi irekhodi likahulumeni.

**Ukutholakala kolwazi olugciniwe**

21.(1) UMgcini woLwazi wesiFundazwe anganika noma iliphi ilungu lomphakathi ulwazi olugciniwe –

(a) okuyirekhodi likahulumeni: Kuncike ekutheni –

(i) ukutholakala kwalelo rekhodi akwenqatshelwe ngokoMthetho wokuGqugquzela ukuTholakala koLwazi, 2000 (uMthetho No. 2 ka 2000), noma ngokomunye umthetho olawula ukutholakala kwanoma imaphi amarekhodi kahulumeni;

(ii) sekuphele isikhathi esiyiminyaka engama-20 kusukela onyakeni okwasungulwa ngalo lelo rekhodi; noma

(ii) uMgcini woLwazi wesiFundazwe, ngemuva kokuthola isicelo, ugunyaze ukutholakala kwalelo rekhodi ingakapheli iminyaka engama-20 kusukela osukwini lelo rekhodi elisungulwe ngalo; noma

(b) okuyirekhodi okungelona elikahulumeni, kuncike kunoma imiphi imibandela okuvunyelwene ngayo ngesikhathi kutholakala lelo rekhodi ngokwesigaba 19.

(2) Ngale kokulandela isigatshana (1), uMgcini woLwazi wesiFundazwe angenqaba ukudedela noma iluphi ulwazi olugcinwe uyena, uma –

(a) lolo lwazi olugciniwe lusengcupheni yokonakala futhi ingekho enye indlela olungakhishwa ngayo;

(b) izimo ezihlongozwe kwisigatshana (1)(b) zikwenqabela ukudalulwa kwalo;

(c) kuba nanoma isiphi isizathu sokwenqaba ukudalula amarekhodi esihlongozwe kwiSahluko 4 soMthetho wokuGqugquzela ukuTholakala koLwazi, 2000 (uMthetho No. 2 ka 2000); noma

(d) ukutholakala kwalolo lwazi olugciniwe kwenqatshelwe ngokwanoma imuphi omunye umthetho.

(3) Noma ubani ongahambisani nesinqumo soMgcini woLwazi wesiFundazwe esihlongozwe esigatshaneni (2) angafaka isikhalo esibhalwe phansi ngendlela ebekiwe kwiLungu loMkhandlu oPhethe ezinsukwini ezingama-21.

## ISAPHLUKO 8 AMASU NEMIBIKO YAMINYAKA YONKE

### **Amasu aminyaka yonke**

**22.** UMgcini woLwazi wesifundazwe, ngemuva kokubonisana noMkhandlu, kumele ngaphambi kokuqala konyaka kwezimali noma ngesinye isikhathi esinganqunywa iLungu loMkhandlu oPhethe, alethe kwiLungu loMkhandlu oPhethe isu lokusebenza lonyaka loPhiko lokuGcinwa koLwazi lonyaka ngamunye wezimali ukuze lugunyazwe, oluqukethe –

- (a) imininingwane yemisebenzi ehleliwe yoPhiko lokuGcinwa koLwazi kulowo nyaka wezimali;
- (b) izinhloso ezicacile, imiphumela elindelekile, okuzofezwa, izimpokophelo nezinkomba zamazinga okusebenza; kanye
- (c) nolunye ulwazi olunganqunywa iLungu loMkhandlu oPhethe.

### **Umbiko waminyaka yonke**

**23.(1)** UMgcini woLwazi wesifundazwe, ngemuva kokubonisana noMkhandlu, kumele, ngokuyalelwa iLungu loMkhandlu oPhethe, ethule umbiko wonyaka neminye imisebenzi yoPhiko lokuGcinwa koLwazi kwisiShayamthetho sesiFundazwe ezinyangeni ezintathu kuphele unyaka wezimali ngamunye.

(2) Umbiko wonyaka ohlongozwe kwisigatshana (1) kumele –

- (a) usho ukuthi woPhiko lokuGcinwa koLwazi lwesifundazwe luzifeze noma luziphumelelise kangakanani izinhloso zalo Mthetho, kanye nezilinganiso ebezibekwe kwisu lokusebenza lonyaka, njengoba kuhlangozwe esigabeni 22, ngonyaka wezimali othintekayo;
- (b) ube nolwazi ngamazinga okusebenza mayelana nokusetshenziswa ngendlela enokonga, esheshayo nefanele kwezinsiza kanye nokuqhathanisa phakathi kwemisebenzi ebihlelwe ukwenziwa naleyo eyenziwe njengoba kubekwe kwisu lokusebenza lonyaka; futhi
- (c) ube nombiko –
  - (i) ngazo zonke izigameko zokuhlakazwa okungekho emthethweni kwamarekhodi kahulumeni okuphenywe uPhiko lokuGcinwa koLwazi lwesifundazwe; futhi

- (ii) ohlinzeka imininingwane yayo yonke imigwamanda kahulumeni ehlulekile ukulandela izinhlinzeko zalo Mthetho.

**ISAHLUKO 9**  
**INQUBOMGOMO YOKUPHATHWA KWAMAREKHODI YESIFUNDAZWE**

**INqubomgomo yokuPhathwa kwamaRekhodi yesiFundazwe**

**24.** ILungu loMkhandlu oPhethe kumele, ngemuva kokubonisana noMkhandlu, lisungule linqume futhi ligunyaze iNqubomgomo yokuPhathwa kwamaRekhodi yesiFundazwe.

**ISAHLUKO 10**  
**IZINHLINZEKO EZEJWAYELEKILE**

**Imithethonqubo nezaziso**

**25.(1)** ILungu loMkhandlu oPhethe, ngesaziso kwiGazethi futhi ngemuva kokubonisana noMkhandlu, lingasungula imithethonqubo enquma –

- (a) nganoma iluphi udaba okudingeka noma okuvunyelwe ukuthi kunqunywe ngalo ngokwalo Mthetho; noma
- (b) nganoma iluphi udaba lwezokuphatha noma lwenqubo olubalulekile ukuze kuqale ukusebenza izinhlinzeko zalo Mthetho.

(2) ILungu loMkhandlu oPhethe, ngesaziso kwiGazethi –

- (a) ngemuva kokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali;
- (b) nangemuva kokubonisana noMkhandlu,

linganquma izimali ezingabizwa uMgcini woLwazi wesiFundazwe ukuze –

- (i) kusetshenziswe izinsiza ezithile oPhikweni lokuGcinwa koLwazi lwesiFundazwe; noma
- (ii) kusetshenziswe noma kuhlewe kabusha ulwazi olugciniwe ngenhloso yebhizinisi noma yokwenza inzuzo.

(3) ILungu loMkhandlu oPhethe, ngesaziso kwiGazethi ngemuva kokubonisana okuhlongozwe kwisigatshana (1) no (2), njengoba kungaba njalo –

- (a) lingachibiyela;

- (b) lingashintsha;
  - (c) lingahoxisa; noma
  - (d) lichithe,
- noma imuphi umthethonqubo noma isaziso.

### **Ukudluliselwa kwamandla**

**26.(1)** ILungu loMkhandlu oPhethe lingadlulisela kwiNhloko yoMnyango –

- (a) noma imaphi amandla eliwanikezwe ilo Mthetho njengeLungu loMkhandlu oPhethe, ngaphandle kwamandla –
  - (i) ngokwesigaba 25(1), okusungula imithethonqubo;
  - (ii) ngokwesigaba 25(2), okukhipha isaziso sokunquma izimali ezikhokhwayo; noma
  - (iii) ngokwesigaba 25(3), okuchibiyela, okushintsha, okuhoxisa noma okuchitha imithethonqubo nesungulwe ngokwesigaba 25(1) noma (2); noma
- (b) noma iliphi ijoka elibekwe kwiLungu loMkhandlu oPhethe yilo Mthetho, ngaphandle kwejoka elimayelana nokuqasha nokuxoshwa kwamalungu oMkhandlu okuhlongozwe kwizigaba 9 no 12.

(2) UMkhandlu ungadlulisela kuMgcini woLwazi wesiFundazwe noma imaphi amandla noma amajoka anikwe noma ethweswe uMkhandlu yilo Mthetho.

(3) UMgcini woLwazi wesiFundazwe angadlulisela kwinhloko yendawo yokugcina ulwazi noma kwilungu labasebenzi boPhiko lokuGcinwa koLwazi lwesiFundazwe noma imaphi amandla noma amajoka anikwe noma awaphathiswe yilo Mthetho.

(4) Noma imaphi amandla noma amajoka adluliselwe ngokwesigatshana (1), (2) noma (3) kumele enziwe noma afezwe ngokuncike kuleyo mibandela lowo muntu noma lowo mgwamanda obona ifanele.

(5) Noma ikuphi ukudluliswa kwamandla ngokwesigatshana (1), (2), noma (3) –

- (a) kumele kubhalwe phansi;
- (b) angeke kwenqabele umuntu noma umgwamanda odlulisele amandla awo

ukuthi usebenzise lawo mandla noma ufeze lawo majoka; futhi  
(c) noma nini kungahoxiswa noma kuchitshiyelwe ngokubhalwe phansi yilowo muntu noma yilowo mgwamanda.

### **Amacala ejwayelekile**

**27.(1)** Noma imuphi imuntu –

(a) olimaza ngabomu noma iliphi irekhodi likahulumeni noma okungelona elikahulumeni elisezandleni zomgwamanda kahulumeni; noma

(b) ngaphandle uma kuhambisana nalo Mthetho noma omunye umthetho, olimaza noma ocisha noma iliphi irekhodi likahulumeni noma okungelona elikahulumeni kodwa elisezandleni zomgwamanda kahulumeni;

uyothweswa icala.

(2) Noma imuphi umuntu oqamba amanga ngokuthi ugunyaziwe ukuthatha izimali egameni noma ngomyalelo woMkhandlu noma woPhiko lokuGcinwa koLwazi wesiFundazwe, uyothweswa icala.

(3) Noma imuphi umuntu ophazamisa noma ovimba uPhiko lokuGcinwa koLwazi wesiFundazwe noma uMkhandlu, kubandakanya noma isiphi isikhulu noma osebenzela uPhiko lokuGcinwa koLwazi noma uMkhandlu, ekutheni asebenzise noma imaphi amandla noma enze imisebenzi aphathiswe yona ngokwalo Mthetho, uyothweswa icala.

### **Izinhlawulo**

**28.** Noma ubani oyotholakala necala ngokwalo Mthetho uyohlawuliswa noma abhadle ejele isikhathi esingeqile eminyakeni emibili.

### **Ukuchithwa kwemithetho**

**29.** UMthetho woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000 (uMthetho No. 5 ka 2000), ngalokhu uyachithwa.

### **Izinhlelo zezikhashana nokusebenza komthetho**

**30.** (1) Noma imuphi uMthetho, inhloso, isinqumo, udaba nanoma yini enye eyenziwe, eqhutshwe noma efezwe noma okukholakala ukuthi yenziwe, iqhutshwe noma ifezwe uMgcini woLwazi wesiFundazwe, isikhulu noma ilungu labasebenzi boPhiko lokuGcinwa koLwazi esiFundazweni, iLungu loMkhandlu oPhethe ngenhloso yokufeza izinhlinzeko zoMthetho woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000 (uMthetho No. 5 ka 2000) osuchithiwe, ngeke kungasebenzi ngenxa yokuthi –

(a) wenze, uthathe, noma ufeze lokho ngemuva kosuku lokuqala kokusebenza koMthetho woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000 osuchithiwe;

(b) imithethonqubo okukhulunywe ngayo eMthethweni woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000, osuchithiwe ingakashaywa futhi yachitshiyelwa iLungu loMkhandlu oPhethe;

(c) noma iyiphi inqubo, uhlelo, isidingo umbandela noma imidanti okukhulunywe ngayo eMthethweni woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000, osuchithiwe, bekungakanqunywa umthethonqubo njengoba kuhlongozwe eMthethweni woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000, osuchithiwe.

(2)(a) Ukuqashwa kwanoma isiphi isikhulu, umsebenzi noma ilungu labasebenzi boPhiko lokuGcinwa koLwazi lwesiFundazwe olusungulwe ngokwesigaba 2 soMthetho woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000 (uMthetho No. 5 ka 2000), osuchithiwe, mayelana nokufeza izinhloso zoMthetho woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000, osuchithiwe, kuze kube usuku lokuqala kokusebenza kwalo Mthetho, ngeke kungasebenzi ngenxa yokuthi –

(i) kwenziwe ngemuva kokuqala kokusebenza koMthetho woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000, osuchithiwe;

(ii) imithethonqubo okukhulunywe ngayo eMthethweni woPhiko lokuGcinwa koLwazi wesiFundazwe saKwaZulu-Natali, 2000, osuchithiwe, ayikasungulwa noma ayikakashicilelwa iLungu loMkhandlu oPhethe; noma

(iii) noma iyiphi inqubo uhlelo, isidingo, umbandela noma imidanti okukhulunywe ngakho eMthethweni woPhiko lokuGcinwa koLwazi wesiFundazwe waKwaZulu-Natali, 2000, osuchithiwe, akukakanqunywa ngomthethonqubo, njengoba kuhlongozwe eMthethweni woPhiko lokuGcinwa koLwazi wesiFundazwe

waKwaZulu-Natali, 2000, osuchithiwe.

(b) Umuntu, ngaphambi kosuku lokuqala kokusebenza kwalo Mthetho, obeyisikhulu, obengumsebenzi noma obeyilungu labasebenzi okukhulunywe ngabo endimeni (a), uthathwa njengomuntu oqokwe ngokwesigaba 6 salo Mthetho ofanele ukuthola wonke amalungelo nemihlomulo.

(c) Umuntu, ngaphambi kosuku lokuqala kokusebenza kwalo Mthetho, obenguMgcini woLwazi wesiFundazwe woPhiko lokuGcinwa koLwazi lwesiFundazwe olwasungulwa ngokwesigaba 2 soMthetho woPhiko lokuGcinwa koLwazi wesiFundazwe waKwaZulu-Natali, 2000, osuchithiwe, uthathwa njengoqokwe njengoMgcini woLwazi wesiFundazwe ngokwesigaba 4 salo Mthetho ofanele ukuthola wonke amalungelo nemihlomulo.

#### **Isihloko esifingqiwe**

**31.** Lo Mthetho ubizwa ngoMthetho woPhiko lokuGcinwa koLwazi namaRekhodi waKwaZulu-Natali, 2011.

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