

**NORTHERN CAPE PROVINCE**

**PROFENSI YA KAPA-BOKONE**



**NOORD-KAAP PROVINSIE**

**IPHONDO LOMNTLA KOLONI**

**EXTRAORDINARY • BUITENGEWONE**

**Provincial Gazette  
Kasete ya Profensi**

**iGazethi YePhondo  
Provinsiale Koerant**

**Vol. 21**

**KIMBERLEY, 5**

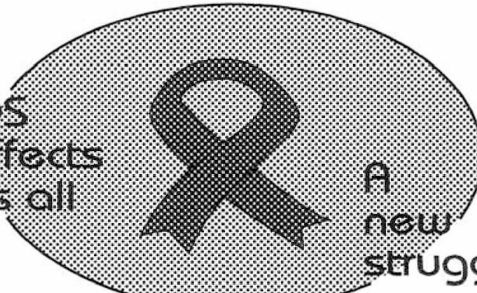
**MARCH  
MAART**

**2014**

**No. 1784**

**We all have the power to prevent AIDS**

AIDS affects us all



A new struggle

**AIDS  
HELPLINE**

**0800 012 322**

DEPARTMENT OF HEALTH

Prevention is the cure

*N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes*



9771682454009

### IMPORTANT NOTICE

**The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an “OK” slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender’s responsibility to phone and confirm that the documents were received in good order.**

**Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.**

### CONTENTS • INHOUD

No.

*Page Gazette  
No. No.*

#### PREMIER’S NOTICES

3	Northern Cape Use of Official Languages Act (5/2013): For general information.....	3	1784
4	Northern Cape Heritage Resources Authority Act (9/2013): For general information.....	13	1784
5	Northern Cape Arts and Culture Council Act (8/2013): For general information.....	31	1784
6	Northern Cape Provincial Archives Act (7/2013): For general information.....	52	1784

## PREMIER'S NOTICE

No. 3

5 March 2014

### OFFICE OF THE PREMIER

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

**No. 5 of 2013: Northern Cape Use of Official Languages Act, 2013**

been assented

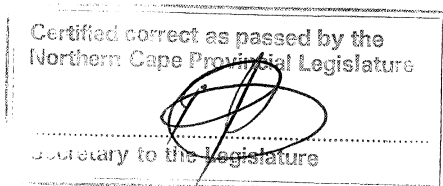
by me

REPUBLIC OF THE NORTHERN CAPE PROVINCE

**NORTHERN CAPE PROVINCE**

**NORTHERN CAPE USE OF OFFICIAL LANGUAGES ACT, 2013**

**( ACT No. 5 OF 2013 )**



**Northern Cape Use of Official Languages Act, 2013**

**ACT**

To provide for the regulation and monitoring of the use of official languages by Provincial Government for government purposes; to require the adoption of a provincial language policy by the Executive Council; to provide for the establishment and functions of a provincial language unit; to provide for monitoring of and reporting on use of official languages by Provincial Government; and to provide for matters connected therewith.

**PREAMBLE**

**WHEREAS** the use of die Republic's official languages must be promoted and pursued in accordance with the Constitution;

**AND WHEREAS** section 6 of the Constitution provides for 11 official languages of South Africa; recognises the diminished use and status of indigenous languages and requires the State to take practical and positive measures to elevate the status and advance the use of indigenous languages;

**AND WHEREAS** the Constitution requires all official languages to enjoy parity of esteem and be treated equitably;

**AND WHEREAS** section 6(4) of the Constitution provides that each Provincial Government must regulate and monitor its use of official languages by legislative and other measures,

**BE IT THEREFORE ENACTED** by the Northern Cape Provincial Legislature as follows

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Definitions
2. Objects of Act
3. Application of Act
4. Language policy for the Provincial Government
5. Establishment of provincial language unit
6. Functions of provincial language unit
7. Appointment of language officials in provincial departments
8. Functions of language officials in provincial departments

9. Monitoring, enforcing and reporting on use of official languages
10. Annual report to Provincial Legislature
11. Interdepartmental forum on use of official languages
12. Regulations
13. Short title and commencement

### Definitions

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

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

**“Department”** means the provincial Department of Sport, Arts and Culture;

**“Executive Council”** means the Executive Council of the Province contemplated in section 132 of the Constitution;

**“government purposes”** include legislation and matters referred to in section 4(2)(c);

**“language official”** means a language official appointed in terms of section 7;

**“official language”** means an official language contemplated in section 6(1) of the Constitution;

**“Premier”** means the Premier of the Northern Cape Province elected in terms of section 128 of the Constitution;

**“prescribe”** means prescribe by regulations;

**“Province”** means the Province of the Northern Cape established by section 103(l)(g) of the Constitution;

**“provincial department”** means a Northern Cape provincial department listed in Schedule 2 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), including the Office of the Premier listed in Schedule 1 of that Act;

**“Provincial Government”** means all Northern Cape provincial departments and provincial public entities;

**“provincial language committee”** means the provincial language committee established for the Province in terms of section 8(8) of the Pan South African Language Board Act, 1995 (Act No. 59 of 1995);

**“provincial language unit”** means the provincial language unit established in terms of section 5;

**“provincial public entity”** means a provincial public entity defined in section 1, listed in Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) and designated to a provincial department in terms of that Act;

**“responsible Member”** means the Member of the Executive Council responsible for language matters; and

**“this Act”** includes any regulations made in terms of this Act.

### **Objects of Act**

2. The objects of this Act are —
- (a) to regulate and monitor the use of official languages for government purposes by the Provincial Government;
  - (b) to promote parity, esteem and equitable treatment of official languages of the Province; and
  - (c) to promote good language management by Provincial Government for efficient public service administration and to meet the needs of the inhabitants of the Province.

### **Application of Act**

3. (1) This Act applies to all -
- (a) provincial departments; and
  - (b) provincial public entities.
- (2) This Act takes precedence over any inconsistent provision of any other provincial law on the use of official languages by Provincial Government.

### **Language policy for the Provincial Government**

4. (1) The Executive Council must, pursuant to section 125(2)(d) of the Constitution, adopt a language policy regarding the Provincial Government’s use of official languages for government purposes within 18 months of the commencement of this Act.
- (2) A language policy adopted in terms of subsection (1) must —
- (a) comply with the provisions of section 6(3)(a) of the Constitution;

- (b) identify at least 4 official languages that the Provincial Government will use for government purposes;
  - (c) stipulate how official languages will be used, amongst other things, in effectively communicating with the public, official notices, government publications and inter- and intra-departmental communications;
  - (d) describe how the Provincial Government will effectively communicate with members of the public whose language of choice is —
    - (i) not an official language contemplated in paragraph (b);
    - (ii) South African sign language; or
    - (iii) the Khoi, Nama and San languages;
  - (e) describe how members of the public can access the language policy;
  - (f) provide a complaints mechanism to enable members of the public to lodge complaints regarding the use of official languages by the Provincial Government;
  - (g) provide for any other matter that the responsible Member may prescribe; and
  - (h) be proclaimed by the Premier in the *Provincial Gazette* before it becomes operational.
- (3) In identifying at least 4 official languages as contemplated in subsection (2)(b), the Provincial Government must take into account its obligation to take practical and positive measures to elevate the status and advance the use of indigenous languages of historically diminished use and status in accordance with section 6(2) of the Constitution.
- (4) A language policy adopted in terms of subsection (1), binds and must be enforced by —
- (a) the responsible Member;
  - (b) all provincial departments; and
  - (c) all provincial public entities.
- (5) The Provincial Government must —
- (a) ensure that a copy of its language policy is available on request to members of the public at all its offices; and



- (b) display at all its offices a summary of its language policy in such manner and place that it can be read by the public.

#### **Establishment of provincial language unit**

- 5. The responsible Member must —
  - (a) establish a provincial language unit in the Department; and
  - (b) ensure that the provincial language unit is provided with human resources, administrative resources and other resources necessary for its effective functioning.

#### **Functions of provincial language unit**

- 6. The provincial language unit must —
  - (a) advise the responsible Member on policy and strategy —
    - (i) to regulate and monitor the use of official languages by Provincial Government for government purposes;
    - (ii) to promote parity of esteem and equitable treatment of the official languages of the Republic;
    - (iii) to promote good language management within the Provincial Government; and
    - (iv) regarding the functions of language officials contemplated in section 7;
  - (b) Raise with and promote the general co-ordination of language officials contemplated in section 7; and
  - (c) perform any other function that the responsible Member may prescribe.

#### **Appointment of language officials in provincial departments**

- 7. Every provincial department must appoint or designate a language official for that department.

#### **Functions of language officials in provincial departments**

- 8. A language official must —
  - (a) advise the head of the provincial department on the implementation of the language policy for the provincial department;

- (b) monitor and assess the use of official languages by the provincial department concerned;
- (c) monitor and assess compliance by the provincial department with the language policy;
- (d) compile and submit, through the head of the provincial department concerned, a report to the responsible Member in terms of section 9;
- (e) promote parity of esteem and equitable treatment of official languages of the Republic within the provincial department concerned;
- (f) promote good language management by the provincial department and all provincial public entities designated to that provincial department in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (g) perform any other functions that the responsible Member may prescribe.

#### **Monitoring, enforcing and reporting on use of official languages**

9. (1) The responsible Member must monitor and enforce the use of official languages by the Provincial Government for government purposes.
- (2) The head of a provincial department must monitor and enforce the Provincial Government's language policy in his or her department and in any provincial public entity designated to that department in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (3) The head of every provincial department must submit a report to the responsible Member and the provincial language committee on —
- (a) the activities of its language official;
  - (b) the implementation of its language policy;
  - (c) any complaints received regarding its use of official languages and the manner in which these complaints were dealt with; and
  - (d) any other matter that the responsible Member may prescribe.
- (4) The responsible Member may prescribe the form and content of a report to be submitted in terms of subsection (3) and the timeframes for submitting such report.

- (5) Notwithstanding the provisions of subsections (3) and (4), the responsible Member may at any time require the head of any provincial department to submit a report to the responsible Member on the department's use of official languages, within a time period determined by the responsible Member.
- (6) The responsible Member may instruct the head of a provincial department who has failed to comply with any provision of this Act to comply with the Act within a time period determined by the responsible Member.

#### **Annual report to Provincial Legislature**

10. The responsible Member must, each year, no later than the last day of March, table a report in the Provincial Legislature on the status and use of official languages by Provincial Government for government purposes.

#### **Interdepartmental forum on use of official languages**

11. (1) The responsible Member may —
- (a) establish an interdepartmental forum —
    - (i) to promote general coordination, cooperation and consultation between provincial departments on the use of official languages for government purposes;
    - (ii) to coordinate, align and monitor the implementation of the provincial language policy; and
    - (iii) to perform any other function that the responsible Member may prescribe;
  - (b) in respect of such forum
    - (i) determine its composition;
    - (ii) determine its terms of reference;
    - (iii) convene its meetings; and
    - (iv) determine any other matter necessary for its effective functioning.
- (2) The responsible Member is the chairperson of the interdepartmental forum established in terms of subsection (1).

**Regulations**

12. (1) The responsible Member may, with the approval of the Executive Council, make regulations, not inconsistent with the provisions of this Act, regarding —
- (a) the form and content of the language policy;
  - (b) timeframes for appointing a language official;
  - (c) the form and content of a report contemplated in section 9;
  - (d) any matter which in terms of this Act is required or permitted to be prescribed; and
  - (e) any matter in respect of which the responsible Member deems it necessary or expedient to make regulations in order to achieve the objects of this Act.
- (2) Before making regulations in terms of this Act, the responsible Member must —
- (a) publish the proposed regulations in the *Provincial Gazette* for public comment;
  - (b) grant a period of at least 30 days for written representations to the responsible Member on the proposed regulations; and
  - (c) consider any such written representations received.

**Short title and commencement**

13. This Act is called the Northern Cape Use of Official Languages Act, 2013, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

**No. 4**

**5 March 2014**

**OFFICE OF THE PREMIER**

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

**No. 9 of 2013: Northern Cape Heritage Resources Authority Act, 2013**

..... text of this Act has been asserec

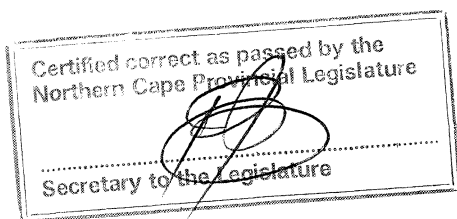
to by mejOn.....

PREMIER: NORTHERN CAPE PROVINCE

**NORTHERN CAPE PROVINCE**

**NORTHERN CAPE HERITAGE RESOURCES AUTHORITY ACT, 2013**

**(ACT No. 9 OF 2013)**



# ACT

To provide for the constitution of a council for the Northern Cape Heritage Resources Authority and for the governance thereof by the Council; to determine its objects, functions and operation; to regulate its staff and financial matters; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Northern Cape Province as follows:-

<b>ARRANGEMENT OF SECTIONS</b>		5
<b>Section</b>		
	<b>CHAPTER I INTERPRETATION</b>	10
1.	Definitions	
	<b>CHAPTER II THE AUTHORITY AND COUNCIL</b>	15
2.	Name and functioning of Authority	
3.	Object of the Authority	
4.	Powers, functions and duties of the Authority	
5.	Establishment of Council	20
6.	Composition of the Council	
7.	Term of office of members of the Council and filling of vacancies	
8.	Eligibility to serve on the Council	
9.	Conflicting interests	
10.	Removal from office	
11.	Remuneration of members of Council	
12.	Meetings of the Council	
13.	Committees of Council	
	<b>CHAPTER III STAFF MATTERS</b>	
14.	Staff of Authority and remuneration	
15.	Chief executive officer	
16.	Removal of chief executive officer from office	
17.	Employment contract and performance agreement of chief executive officer	
	<b>CHAPTER IV FINANCE AND PROCUREMENT</b>	
18.	Finances	40
19.	Accountability, audits and reports	
20.	Appropriation of income and property	
21.	Procurement	

**CHAPTER V**  
**GENERAL PROVISIONS**

22.	Delegation	
23.	Regulations	5
24.	Short title and commencement	

**CHAPTER I**  
**INTERPRETATION**

<b>Definitions</b>	10
--------------------	----

1.	In this Act, unless the context otherwise indicates, -	
	<b>“Authority”</b> means the Northern Cape Heritage Resources Authority referred to in section 2(a);	15
	<b>“chairperson”</b> means the chairperson of the Council appointed in terms of section 4(6);	20
	<b>“chief executive officer”</b> means the chief executive officer appointed in terms of section 14(1);	20
	<b>“committee”</b> means a committee of the Council appointed in terms of section 13;	25
	<b>“Constitution”</b> means the Constitution of the Republic of South Africa, 1996;	25
	<b>“Council”</b> means the Council of the Authority constituted in accordance with section 6;	30
	<b>“Department”</b> means the Provincial Department responsible for arts and culture in the Province;	30
	<b>“district municipality”</b> means a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);	35
	<b>“Executive Council”</b> means the Executive Council of the Province as referred to in section 132 of the Constitution;	40
	<b>“family member”</b> means a person’s -	40
	(a) spouse; or	
	(b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;	45
	<b>“financial year”</b> means the period commencing on the first day of April in any year to the thirty-first day of March in the ensuing year, both days inclusive;	45
	<b>“Head of Department”</b> means the Head of the Department responsible for arts and culture in the Province;	50



- “head of the provincial treasury”** means the head of the provincial treasury in the Province referred to in section 17(1) (a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “member”** means a member of the Council; 5
- “National Act”** means the National Heritage Resources Act, 1999 (Act No. 25 of 1999);
- “organ of state”** has the meaning set out in section 239 of the Constitution; 10
- “political office-bearer”** means -
- (a) a member of the National Assembly or the National Council of Provinces or the Cabinet; 15
  - (b) a member of a provincial legislature;
  - (c) a diplomatic representative of the Republic who is not a member of the public service;
  - (d) a member of a house or council of traditional leaders;
  - (e) a member of a municipal council; or 20
  - (f) a national or provincial office-bearer of any political party;
- “Premier”** means the Premier of the Province referred to in section 125 of the Constitution; 25
- “Province”** means the Northern Cape Province referred to in section 103(l)(g) of the Constitution, or any part thereof;
- “provincial estate”** means those heritage resources referred to in section 3 of the National Act, which have special qualities that make them significant in the context of the Province; 30
- “Provincial Gazette”* means the *Provincial Gazette* of the Province;
- “region”** means the area of jurisdiction of a district municipality; 35
- “Republic”** means the Republic of South Africa referred to in section 1 of the Constitution;
- “responsible Member”** means the Member of the Executive Council responsible for arts and culture in the Province; and 40
- “this Act”** includes any regulation made under this Act.

**CHAPTER II** 45  
**THE AUTHORITY AND COUNCIL**

**Name and functioning of Authority**

2. The heritage resources authority of the Province, established by the responsible Member as a body corporate in terms of section 23 of the National Act — 50

- (a) is to be known as the Northern Cape Heritage Resources Authority;
- (b) is governed by a council constituted in accordance with section 6; and
- (c) must function as provided for in this Act. 5

**Object of the Authority**

3. The object of the Authority is to identify and manage the provincial estate. 10

**Powers, functions and duties of Authority**

4. The Authority must, for the Province, exercise the powers, perform the functions and carry out the duties — 15
- (a) provided for in this Act or any other law; and
  - (b) conferred or imposed on a provincial heritage authority by the National Act.

**Establishment of Council** 20

5. (1) A Council for the Authority is hereby established - 25
- (a) to manage and control the affairs of the Authority;
  - (b) to be the accounting authority for the Authority as contemplated in section 49(2) (a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
  - (c) to exercise the powers and perform the functions conferred or imposed upon the Authority by this Act or any other law. 30
- (2) The Northern Cape Heritage Resources Council appointed by the responsible Member in terms of section 23 of the National Act, continues to exist and function as if established under subsection (1), until the responsible Member appoints a new Council in accordance with the provisions of section 6. 35

**Composition of the Council** 40

6. (1) The Council consists of 8 members to be appointed by the responsible Member, subject to subsection (4). 45
- (2) Every one of the 5 regions in the Province must be represented in the Council. 50
- (3) The responsible Member must, before appointing members, request nominations to be made for suitable persons to serve as members of the Council in at least one newspaper circulating in the Province and in the *Provincial Gazette*.

- (4) Members of the Council must have special competence, experience and interest in the field of heritage resources and must be broadly representative of the gender, language and community composition of the Province.
- (5) The Head of Department or an official designated by the Head of Department to represent the Department and the chief executive officer are entitled to be present and take part in the discussions at meetings of the Council, but are not members of the Council and may not vote at such meetings. 5
- (6) The responsible Member must appoint a chairperson and deputy chairperson from amongst the members of the Council. 10
- (7) Before being appointed a member of the Council, the candidate must submit to the responsible Member an affidavit in which such candidate declares that he or she - 15
- (a) is eligible for such appointment; and
- (b) is not disqualified in terms of this Act from such appointment. 20
- (8) The responsible Member is at any time entitled to call for proof to his or her satisfaction of the continued eligibility of any member or prospective member of the Council, or to undertake or cause to be undertaken any investigation or enquiry in that regard. 25

#### **Term of office of members of the Council and filling of vacancies**

7. (1) A member may be appointed for a period of 5 years. 30
- (2) A member whose term of office has expired is eligible for reappointment, but may not serve more than 2 terms of office.
- (3) Any vacancy on the Council may be filled by appointment in the manner in which the member who vacates the office was required to be appointed, and any member so appointed holds office for the unexpired portion of the period for which the member who vacated the office was appointed. 35

#### **Eligibility to serve on the Council**

8. (1) To be eligible to serve as a member of the Council, and to continue to hold that office, a person must — 40
- (a) be a fit and proper person; 45
- (b) not be subject to any disqualification set out in subsection (2);
- (c) have submitted to the responsible Member the affidavit referred to in section 6(7); and

- (d) be a citizen of the Republic and ordinarily residing in the country.
- (2) A person may not be a member of the Council if that person -
- (a) is a political office-bearer; 5
- (b) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;
- (c) was once, or is removed from an office of trust on account of misconduct; 10
- (d) is subject to an order of a competent court holding that person to be mentally deranged; 15
- (e) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) or an offence involving dishonesty; or 20
- (f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine. 25
- (3) The provisions of subsections (1) and (2), read with the changes required by the context, apply to any official referred to in section 6(5). 30

### **Conflicting interests**

9. (1) A member of the Council must not — 35
- (a) engage in any activity that may undermine the integrity of the Council;
- (b) attend, participate in or influence the proceedings during a meeting of the Council if, in relation to the matter before the Council, that member has an interest that precludes the member from performing the duties of a member of the Council in a fair, unbiased and proper manner; 40
- (c) vote at any meeting of the Council in connection with a matter contemplated in paragraph (b); 45

- (d) make private use of, or profit from, any confidential information obtained as a result of performing duties as a member of the Council; or
  - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Council. 5
- (2) If, at any time, it appears to a member of the Council that a matter before the Council concerns an interest of that member referred to in subsection (1)(b), the member must - 10
- (a) immediately and fully disclose the nature of that interest to the meeting; and 15
  - (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter. 20
- Removal from office**
10. (1) The responsible Member may, by written notice, remove any member of the Council from office — 25
- (a) on the grounds of misconduct or incompetence;
  - (b) if the member becomes subject to a disqualification contemplated in section 8(2); 30
  - (c) if the member is absent for more than two meetings of the Council in one year without sound reason, or, in the case of absence due to medical reasons, without presenting a valid medical certificate.
- (2) A decision to remove a member of the Council on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the responsible Member. 35
- (3) A notice contemplated in subsection (1) must state the reasons for removal of the member. 40
- (4) The responsible Member may at any time disband the Council if he or she is, on reasonable grounds, convinced that the Council is not functioning properly or that it will be in the community's or public interest to do so.

### Remuneration of members of Council

- 11- (1) A member of the Council must be paid such reasonable remuneration and allowances out of the funds of the Council as the responsible Member, with the concurrence of the head of the provincial treasury, may from time to time determine. 5
- (2) A member of the Council, who is in the full-time employ of any organ of state, may not receive remuneration in terms of subsection (1). 10
- (3) Remuneration determined in terms of subsection (1) must be published in the *Provincial Gazette* by the responsible Member before it becomes effective. 10
- (4) Members of the Council are entitled to be reimbursed for any travelling and subsistence expenses reasonably incurred by them for the performance of their functions as members of the Council. 15

### Meetings of the Council

12. (1) The chairperson determines the date, time and place for the first meeting of the Council, and the chairperson, in consultation with the Council, determines the date, time and place for each subsequent meeting. 20
- (2) The chairperson, in consultation with the Council, may determine procedures at meetings of the Council, after due consideration of the principles of openness and transparency. 25
- (3) A majority of the members of the Council contemplated in section 6(1) is a quorum for a meeting of the Council. 30
- (4) The Council must attempt to reach its decision by consensus.
- (5) If the Council is unable to reach a consensual decision in any matter before it, the Council may resolve the matter by a simple majority vote on a motion. 35
- (6) In the event of an equality of votes regarding any matter put to the vote, the chairperson has a casting vote in addition to his or her deliberative vote.
- (7) Subject to subsections (4), (5) and (6), the Council may establish rules for its own proceedings. 40
- (8) The chief executive officer must take minutes or cause minutes to be taken at meetings of the Council. 45
- (9) Minutes of the proceedings of meetings of the Council must be retained at the offices of the Council and must be open to the public for inspection.

- (10) No person who has access to any information classified by the Council as confidential, may, without permission of the Council, divulge such information.
- (11) If a particular person is able to assist the Council in the consideration of a particular matter, the Council may co-opt that person for that purpose. 5
- (12) A person so co-opted is not entitled to vote at any meeting of the Council or a committee of the Council. 10
- (13) The Council must meet at least once every 3 months to, amongst other things, consider the report referred to in section 19(3).
- (14) The responsible Member may call a meeting of the Council if the Council fails to comply with subsection (13). 15
- (15) The chairperson must call an extraordinary meeting of the Council, if so requested by the responsible Member, the majority of members of the Council or chief executive officer. 20
- (16) Whenever any matter to be dealt with by the Council is of such a nature that it requires the immediate and urgent attention of the Council and it is not possible for the Council to meet in order to attend to the matter, a relevant documentation pertaining to such matter must forthwith be made available to each member by the chief executive officer for consideration. 25
- (17) A matter referred to in subsection (16) and agreed upon in writing by a simple majority of the Council members will, subject to subsection (18), be a resolution of the Council. 30
- (18) A resolution contemplated in subsection (17), must be reported to the Council by the chief executive officer at its next ensuing meeting and must be so recorded in the minutes of that meeting.
- Committees of Council** 35
13. (1) The Council may establish committees, with the power to co-opt other persons, for the purpose of assisting it with the due and proper exercise and performance of any of its powers and functions in terms of this Act, and may likewise dissolve, extend, enlarge or terminate any committee so established. 40
- (2) (a) A committee established under subsection (1), consists of no fewer than three members designated by the Council being suitable and appropriately qualified or experienced regarding matters relating to the functions of the committee in question. 45
- (b) The Council must designate a Council member serving on a committee as the chairperson of such committee.

- (3) A co-opted member of a committee serves in an advisory capacity, and may not vote at any meeting of such committee.

**CHAPTER III**  
**STAFF MATTERS**

5

**Staff of Authority and remuneration**

14. (1) The Council — 10
- (a) must, subject to sections 15, 16 and 17 and with the concurrence of the responsible Member, appoint a suitably qualified and experienced person as chief executive officer, who —
- (i) subject to the direction and control of the Council, is responsible for all financial and administrative responsibilities pertaining to the functions of the Authority; and 15
- (ii) is accountable to the Council; 20
- (b) must, with the concurrence of the responsible Member, determine a staff establishment for the Authority; and
- (c) may, on the establishment contemplated in paragraph (b), appoint any other staff as may be necessary to enable the Authority to perform its functions. 25
- (2) Section 8(1) and (2) and section 9, read with the changes required by the context, apply to the chief executive officer and each staff member to be appointed in terms of this Act. 30
- (3) The Council may, with the concurrence of the responsible Member and the head of the provincial treasury, determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of a person appointed in terms of subsection (1). 35
- (4) The Council may delegate its powers in terms of subsection (1)(c) to the chief executive officer. 40
- (5) The responsible Member may, after consultation with the Council, second any official on the establishment of the Department to the Authority in accordance with section 15(3) of the Public Service Act, 1994.
- (6) A person in the employ of the Authority when this Act comes into operation — 45
- (a) remains so employed;
- (b) retains his or her emoluments and other conditions of service; and 50



- (c) is employed additional to the staff establishment of the Authority determined in terms of subsection (1)(b).

**Chief executive officer**

- 5
15. (1) The chief executive officer, appointed in terms of section 14(1), must be a person who has appropriate qualifications, knowledge or experience regarding the business and operations of the Authority.
- (2) The chief executive officer must have thorough knowledge of the financial and provisioning administration prescripts incumbent on the Authority. 10
- (3) The Council must, when appointing a chief executive officer, through public invitation, request applications for that position. 15
- (4) The chief executive officer is appointed for such period and on such terms and conditions of service as the Council may, subject to section 14(3), determine, but -
- (a) the chief executive officer may not be so appointed for a period exceeding 5 years; 20
- (b) upon the expiration of the term of office of the chief executive officer, he or she is eligible for reappointment for one further term of 5 years only; 25
- (c) the chief executive officer may not undertake any other remunerative work, without the prior written consent of the Council. 30
- (5) The chief executive officer may, on 3 months' written notice tendered to the Council, resign from his or her office.
- (6) Whenever the office of chief executive officer is vacant or the chief executive officer is absent or incapacitated or refuses or fails to act, the powers and functions of the chief executive officer may be exercised and performed by any person designated as the acting chief executive officer by the responsible Member, but such person may not be the acting chief executive officer for a period exceeding 6 months in total. 35
- (7) Where a person appointed as contemplated in subsection (6) so acts, he or she may exercise the powers and perform the functions of the chief executive officer. 40

**Removal of chief executive officer from office**

45

16. (1) The Council may remove the chief executive officer from office —
- (a) on account of his or her improper conduct;

- (b) for unfitness for the functions of his or her office;
- (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly, 5
- (d) on the ground that he or she is or has become subject to a disqualification envisaged in section 8(2).
- (2) The Council may, in order to determine whether there exists sufficient cause for the removal of the chief executive officer from office as contemplated in subsection (1), initiate an inquiry or investigation for that purpose. 10
- (3) Whenever any inquiry or investigation, initiated as contemplated in subsection (2), is being undertaken, the Council may and with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), suspend the chief executive officer from his or her office pending the outcome of such an inquiry or investigation. 15
- (4) For the purposes of subsection (l)(a), non-compliance by the chief executive officer with any provision of this Act or the Public Finance Management Act, 1999 (Act No. 1 of 1999), amongst other things, constitutes improper conduct. 20
- Employment contract and performance agreement of chief executive officer** 25
17. (1) The appointment of the chief executive officer by the Council as contemplated in section 14(1) becomes effective from the date of the entering into a written employment contract with the Council, which employment contract must be for the duration of his or her term of office as chief executive officer. 30
- (2) The employment contract contemplated in subsection (1) must, as a minimum, contain the chief executive officer's personal particulars, term of office, conditions of service, powers, functions, responsibilities, duties as well as his or her remuneration, allowances and benefits. 35
- (3) In addition to the employment contract as contemplated in subsection (1), the chief executive officer must annually, prior to the commencement of the financial year concerned, conclude a performance agreement with the Council which performance agreement's term of operation must coincide with the financial year of the Council. 40
- (4) The performance agreement contemplated in subsection (3) must, as a minimum, contain a reference to the financial year to which such performance agreement pertains, the purpose of the chief executive officer's job, the key result areas, financial and management criteria, performance guidelines and targets of such job, as well as the standards for measuring the performance of the chief executive officer, by the Council, on at least a bi-annual basis. 45 50

CHAPTER IV  
FINANCE AND PROCUREMENT

Finances

18. (1) The Authority is financed from — 5
- (a) money appropriated by the Provincial Legislature for the Authority;
  - (b) any money payable to the Authority in terms of this Act; 10
  - (c) income derived by the Authority from its investment and deposit of surplus money in terms of subsection (6); and
  - (d) all other monies legally accruing to the Authority from any source. 15
- (2) The financial year of the Authority is the period from 1 April in any year to 31 March of the following year.
- (3) The prescripts incumbent on a provincial pubEc entity, contained in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the Treasury Regulations apply to the Authority. 20
- (4) The Council must open and maintain an account in the name of the Authority with a registered bank in the Republic and — 25
- (a) any money received by the Authority must be deposited into that account; and
  - (b) every payment on behalf of the Authority must be made from that account. 30
- (5) Withdrawals from the account of the Authority must be authorized on its behalf by two persons designated for that purpose by resolution of the Council. 35
- (6) The Council may invest or deposit money of the Authority that is not immediately required for contingencies or to meet current expenditures -
- (a) on a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or 40
  - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984). 45

- (7) Any money standing to the credit of the Authority at the end of any financial year of the Authority, excluding such money as has been approved by the responsible Member, being necessary for the reasonable immediate running expenses of the Authority, must be paid into the Provincial Revenue Fund. 5
- (8) No loan may be made out of the funds of the Authority, or from any other funds administered or held in trust by the Authority, to a member of the Council, or a member of the staff of the Authority, or to a family member of such member of the Council or member of the staff of the Authority. 10

### **Accountability, audits and reports**

19. (1) The Council must - 15
- (a) account for state and other money received by, or paid for, or on account of the Authority; and
- (b) cause the necessary accounting and related records to be kept, 20
- in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (2) The records referred to in subsection (1)(b) must be audited by the Auditor General. 25
- (3) The Authority must, through the Head of Department, report at least quarterly in writing to the responsible Member on its activities.
- (4) The Authority must submit the report and statements referred to in section 55(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the responsible Member in the way required by section 55(3) of that Act. 30
- (5) The responsible Member must, as soon as practicable after receiving the report and statements referred to in subsection (4), table it in the Provincial Legislature. 35
- (6) The Authority must, in the report contemplated in subsection (4), as far as the exercise and performance of its powers and functions during the year being reported on, are concerned, also include reference to - 40
- (a) its achievements;
- (b) its failures; 45
- (c) the financial implications of all such achievements and failures;
- (d) any recommendations pertaining to its objects, for consideration.

- (7) The Council must establish an audit committee for the Authority consisting of at least three persons in accordance with Treasury Regulation 27.
- (8) The audit committee must prepare, sign and submit to the Authority, within 15 days of the end of each quarter, a report in respect of the operations, including the income and expenditure of the Authority in respect of the preceding quarter. 5

#### **Appropriation of income and property**

20. The moneys appropriated by the Provincial Legislature to the Authority as contemplated in section 17(1)(a), must be utilized in accordance with such appropriation and all other income, property and profits of the Authority must be utilized exclusively for the achievement of its objects and in accordance with the provisions of this Act. 10  
15

#### **Procurement**

21. (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of the Authority, the Council must ensure that such procurement is effected in accordance with, and duly complies with — 20
- (a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4) (c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 25
- (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2) (a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; 30  
35
- (c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the Council, as contemplated in section 51(1) (a) (iii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and Treasury Regulation 16A; and 40
- (d) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- (2) The Council must adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system must be utilized for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods by the Council. 45

**CHAPTER V**  
**GENERAL PROVISIONS**

**Delegation**

- |            |  |    |
|------------|--|----|
| <b>22.</b> | (1) The Council may, subject to subsections (2) and (3), in writing, delegate any of the Authority's powers, functions or duties in terms of this Act, to the chief executive officer or a committee of the Council.       | 5  |
|            | (2) The chief executive officer may, with the written permission of the Council, sub-delegate any power, function or duty delegated to him or her in terms of subsection (1), to any member of the staff of the Authority. | 10 |
|            | (3) A delegation or sub-delegation, as the case may be, may be withdrawn by the Council or the chief executive officer with the concurrence of the Council, respectively.  | 15 |

**Regulations**

- |            |  |    |
|------------|--|----|
| <b>23.</b> | (1) The responsible Member may, by notice in the <i>Provincial Gazette</i> , make regulations regarding -  | 20 |
|            | (a) fees to be paid to the Authority or any institution administered by the Authority; and   | 25 |
|            | (b) any other matter that may be necessary or expedient in order to achieve the objects of this Act.   |    |
|            | (2) Any regulation made in terms of subsection (1)(a), may only be made with the concurrence of the head of the provincial treasury.   | 30 |
|            | (3) No less than 1 month before any regulation is made under this section, the responsible Member must cause the text thereof to be published in the <i>Provincial Gazette</i> together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish any comments thereon or any representation which they may wish to make in regard thereto, to the responsible Member on or before a date mentioned in the notice. | 35 |
|            | (4) The provisions of subsection (3) do not apply to an amendment made to any regulation published in terms of that subsection.  | 40 |

**Short title and commencement**

- |            |   |    |
|------------|---|----|
| <b>24.</b> | This Act is called the Northern Cape Heritage Resources Authority Act, 2013, and comes into operation on a date fixed by the Premier by proclamation in the <i>Provincial Gazette</i> . | 45 |
|------------|---|----|

**No. 5**

**5 March 2014**

**OFFICE OF THE PREMIER**

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

**No. 8 of 2013: Northern Cape Arts and Culture Council Act, 2013**





# ACT

To establish a juristic person to be known as the Northern Cape Arts and Culture Council; to determine its objects, functions and operation; to regulate its staff and financial matters; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Northern Cape Province as follows:-

## ARRANGEMENT OF SECTIONS

5

### Section

#### CHAPTER I INTERPRETATION

1. Definitions

#### CHAPTER II THE COUNCIL

15

2. Establishment of the Northern Cape Arts and Culture Council
3. Objects of the Council
4. Composition of the Council
5. Powers and functions of the Council
6. Term of office of members of the Council and filling of vacancies
7. Eligibility to serve on the Council
8. Conflicting interests
9. Removal from office
10. Remuneration of members of Council
11. Meetings of the Council
12. Committees of Council

#### CHAPTER III STAFF MATTERS

30

13. Staff of Council and remuneration
14. Chief executive officer
15. Removal of chief executive officer from office
16. Employment contract and performance agreement of chief executive officer

#### CHAPTER IV FINANCE AND PROCUREMENT

17. Finances
18. Accountability, audits and reports
19. Appropriation of income and property
20. Procurement

**CHAPTER V**  
**GENERAL PROVISIONS**

21.	Delegation	
22.	Regulations	5
23.	Repeal of laws	
24.	Transitional and founding arrangements	
25.	Short title and commencement	

**CHAPTER I**  
**INTERPRETATION** 10

**Definitions**

1.	In this Act, unless the context otherwise indicates, —	15
	“ <b>chairperson</b> ” means the chairperson of the Council appointed in terms of section 4(6);	
	“ <b>chief executive officer</b> ” means the chief executive officer appointed in terms of section 13(1);	20
	“ <b>committee</b> ” means a committee of the Council appointed in terms of section 12;	
	“ <b>Constitution</b> ” means the Constitution of the Republic of South Africa, 1996;	25
	“ <b>Council</b> ” means the Northern Cape Arts and Culture Council established by section 2;	
	“ <b>Department</b> ” means the Provincial Department responsible for arts and culture in the Province;	30
	“ <b>district municipality</b> ” means a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);	35
	“ <b>Executive Council</b> ” means the Executive Council of the Province as referred to in section 132 of the Constitution;	
	“ <b>family member</b> ” means a person’s -	40
	(a) spouse; or	
	(b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;	
	“ <b>financial year</b> ” means the period commencing on the first day of April in any year to the thirty-first day of March in the ensuing year, both days inclusive;	45
	“ <b>Head of Department</b> ” means the Head of the Department responsible for arts and culture in the Province;	

- “head of the provincial treasury”** means the head of the provincial treasury in the Province referred to in section 17(1)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “member”** means a member of the Council; 5
- “organ of state”** has the meaning set out in section 239 of the Constitution;
- “political office-bearer”** means - 10
- (a) a member of the National Assembly or the National Council of Provinces or the CabiiliiL;
  - (b) a member of a provincial legislature;
  - (c) a diplomatic representative of the Republic who is not a member of the public service; 15
  - (d) a member of a house or council of traditional leaders;
  - (e) a member of a municipal council; or
  - (f) a national or provincial office-bearer of any political party;
- “Premier”** means the Premier of the Province referred to in section 125 of the Constitution; 20
- “Province”** means the Northern Cape Province referred to in section 103(l)(g) of the Constitution, or any part thereof; 25
- “Provincial Gazette”* means the *Provincial Gazette* of the Province;
- “region”** means the area of jurisdiction of a district municipality;
- “Republic”** means the Republic of South Africa referred to in section 1 of the Constitution; 30
- “responsible Member”** means the Member of the Executive Council responsible for arts and culture in the Province; 35
- “the arts”** includes all forms of music, dance, drama, theatre, craft, visual art, literature and community art; and
- “this Act”** includes any regulation made under this Act. 40

## CHAPTER II THE COUNCIL

- Establishment of the Northern Cape Arts and Culture Council** 45
2. A juristic person to be known as the Northern Cape Arts and Culture Council is hereby established.

### Objects of the Council

3. The objects of the Council are, within the Province, to —
- (a) encourage and provide opportunities for persons to practice the arts; 5
  - (b) promote the appreciation, understanding and the enjoyment of the arts;
  - (c) promote the general application of the arts in the community; 10
  - (d) uphold and promote the right of persons to freedom in the practice of the arts;
  - (e) address historical imbalances in the provision of infrastructure and funding for the promotion of the arts; 15
  - (f) develop and promote the arts and encourage excellence in performance and expression in art works and forms;
  - (g) provide financing for facilities where art and cultural activities may be practiced; and 20
  - (h) encourage and recognise innovations and creativity in all art works and forms. 25

### Composition of the Council

4. (1) The Council consists of 8 members to be appointed by the responsible Member, subject to subsection (4). 30
- (2) Every one of the 5 regions in the Province must be represented in the Council.
- (3) The responsible Member must, before appointing members, request nominations to be made for suitable persons to serve as members of the Council in at least one newspaper circulating in the Province and in the *Provincial Gazette*. 35
- (4) Members of the Council must have special knowledge or experience in — 40
- (a) music;
  - (b) dance;
  - (c) theatre; 45
  - (d) film and video;
  - (e) literary arts; 50
  - (f) spoken wordarts;

- (g) visual arts;
- (h) crafts;
- (i) community art and culture;5
- (j) art education;
- (k) technical knowledge of the arts; 10
- (l) law;
- (m) finance; or
- (n) management, 15
- and must be broadly representative of the gender, language and community composition of the Province.
- (5) The Head of Department or an official designated by the Head of Department to represent the Department and the chief executive officer are entitled to be present and take part in the discussions at meetings of the Council, but are not members of the Council and may not vote at such meetings. 20
- (6) The responsible Member must appoint a chairperson and deputy chairperson from amongst the members of the Council. 25
- (7) Before being appointed a member of the Council, the candidate must submit to the responsible Member an affidavit in which such candidate declares that he or she — 30
- (a) is eligible for such appointment; and
- (b) is not disqualified in terms of this Act from such appointment. 35
- (8) The responsible Member is at any time entitled to call for proof to his or her satisfaction of the continued eligibility of any member or prospective member of the Council, or to undertake or cause to be undertaken any investigation or enquiry in that regard. 40

#### **Powers and functions of the Council**

5. In order to achieve its objects, the Council may - 45
- (a) give financial support, advice and information to persons, organisations and institutions that may approach it for that purpose;
- (b) investigate and determine the need of, and give support, advice and information to persons, organisations and institutions; 50

- |  |  |    |
|--|--|----|
| (c)  | promote and encourage equity in arts and culture;  |    |
| (d)  | conduct research into various fields of art;   |    |
| (e)  | estabEsh, compEe and maintain a database of persons, organisations, institutions, equipment and faciEties connected with the arts;   | 5  |
| (f)  | raise funds with the written consent of the responsible Member to promote the objects of this Act;   | 10 |
| (g)  | enter into agreements with persons, organisations or institutions with written consent of the responsible Member;  |    |
| (i)  | estabEsh, maintain and administer, or, with the written consent of the responsible Member, take over any enterprise or institution operating within the scope of its objects, powers or functions;   | 15 |
| (i)  | provide training in any form of the arts and may estabEsh, maintain and administer any institution providing such training;  | 20 |
| (j)  | purchase, acquire, possess, hire, aEenate or let, pledge or encumber movable property and with the approval of the responsible Member, with the concurrence of the head of the provincial treasury, purchase, acquire, possess, hire, aEenate or let pledge or encumber, immovable property; | 25 |
| (k)  | on request advise the responsible Member on matters and poEcy regarding the arts and culture;  |    |
| (l)  | pubEsh information on its objects and functions;   | 30 |
| (m)  | report quarterly on its activities to the responsible Member; and  |    |
| (n)  | perform such other functions that are necessary to achieve the objects of this Act.  | 35 |
| <br>   |  |    |
| <b>Term of office of members of the Council and filling of vacancies</b> |  |    |
| 6.   | (1) A member may be appointed for a period of 5 years.   |    |
| (2)  | A member whose term of office has expired is eEgible for reappointment, but may not serve more than 2 terms of office.   | 40 |
| (3)  | Any vacancy on the Council may be fiEed by appointment in the manner in which the member who vacates the office was required to be appointed, and any member so appointed holds office for the unexpired portion of the period for which the member who vacated the office was appointed.    | 45 |

**Eligibility to serve on the Council**

7. (1) To be eligible to serve as a member of the Council, and to continue to hold that office, a person must — 5
- (a) be a fit and proper person;
  - (b) not be subject to any disqualification set out in subsection (2);
  - (c) have submitted to the responsible Member the affidavit referred to in section 4(7); and 10
  - (d) be a citizen of the Republic and ordinarily residing in the country.
- (2) A person may not be a member of the Council if that person - 15
- (a) is a political office-bearer;
  - (b) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate; 20
  - (c) was once, or is removed from an office of trust on account of misconduct;
  - (d) is subject to an order of a competent court holding that person to be mentally deranged; 25
  - (e) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) or an offence involving dishonesty; or 30
  - (f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine. 35
- (3) The provisions of subsections (1) and (2), read with the changes required by the context, apply to any official referred to in section 4(5). 40

### Conflicting interests

8. (1) A member of the Council must not —
- (a) engage in any activity that may undermine the integrity of the Council; 5
  - (b) attend, participate in or influence the proceedings during a meeting of the Council if, in relation to the matter before the Council, that member has an interest that precludes the member from performing the duties of a member of the Council in a fair, unbiased and proper manner; 10
  - (c) vote at any meeting of the Council in connection with a matter contemplated in paragraph (b); 15
  - (d) make private use of, or profit from, any confidential information obtained as a result of performing duties as a member of the Council; or 20
  - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Council.
- (2) If, at any time, it appears to a member of the Council that a matter before the Council concerns an interest of that member referred to in subsection (1)(b), the member must - 25
- (a) immediately and fully disclose the nature of that interest to the meeting; and 30
  - (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter. 35

### Removal from office

9. (1) The responsible Member may, by written notice, remove any member of the Council from office — 40
- (a) on the grounds of misconduct or incompetence;
  - (b) if the member becomes subject to a disqualification contemplated in section 7(2); 45
  - (c) if the member is absent for more than two meetings of the Council in one year without sound reason, or, in the case of absence due to medical reasons, without presenting a valid medical certificate.



- (2) A decision to remove a member of the Council on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the responsible Member.
- (3) A notice contemplated in subsection (1) must state the reasons for removal of the member. 5
- (4) The responsible Member may at any time disband the Council if he or she is, on reasonable grounds, convinced that the Council is not functioning properly or that it will be in the community's or public interest to do so. 10
- Remuneration of members of Council**
10. (1) A member of the Council must be paid such reasonable remuneration and allowances out of the funds of the Council as the responsible Member, with the concurrence of the head of the provincial treasury, may from time to time determine. 15
- (2) A member of the Council, who is in the full-time employ of any organ of state, may not receive remuneration in terms of subsection (1). 20
- (3) Remuneration determined in terms of subsection (1) must be published in the *Provincial Gazette* by the responsible Member before it becomes effective.
- (4) Members of the Council are entitled to be reimbursed for any travelling and subsistence expenses reasonably incurred by them for the performance of their functions as members of the Council. 25
- Meetings of the Council**
11. (1) The chairperson determines the date, time and place for the first meeting of the Council, and the chairperson, in consultation with the Council, determines the date, time and place for each subsequent meeting. 30
- (2) The chairperson, in consultation with the Council, may determine procedures at meetings of the Council, after due consideration of the principles of openness and transparency. 35
- (3) A majority of the members of the Council contemplated in section 4(1) is a quorum for a meeting of the Council. 40
- (4) The Council must attempt to reach its decision by consensus.
- (5) If the Council is unable to reach a consensual decision in any matter before it, the Council may resolve the matter by a simple majority vote on a motion. 45

- (6) In the event of an equality of votes regarding any matter put to the vote, the chairperson has a casting vote in addition to his or her deliberative vote.
- (7) Subject to subsections (4), (5) and (6), the Council may establish rules for its own proceedings. 5
- (8) The chief executive officer must take minutes or cause minutes to be taken at meetings of the Council.
- (9) Minutes of the proceedings of meetings of the Council must be retained at the offices of the Council and must be open to the public for inspection. 10
- (10) No person who has access to any information classified by the Council as confidential, may, without permission of the Council, divulge such information. 15
- (11) If a particular person is able to assist the Council in the consideration of a particular matter, the Council may co-opt that person for that purpose.
- (12) A person so co-opted is not entitled to vote at any meeting of the Council or a committee of the Council. 20
- (13) The Council must meet at least once every 3 months to, amongst other things, consider the report referred to in section 5(m). 25
- (14) The responsible Member may call a meeting of the Council if the Council fails to comply with subsection (13).
- (15) The chairperson must call an extraordinary meeting of the Council, if so requested by the responsible Member, the majority of members of the Council or chief executive officer. 30
- (16) Whenever any matter to be dealt with by the Council is of such a nature that it requires the immediate and urgent attention of the Council and it is not possible for the Council to meet in order to attend to the matter, all relevant documentation pertaining to such matter must forthwith be made available to each member by the chief executive officer for consideration. 35
- (17) A matter referred to in subsection (16) and agreed upon in writing by a simple majority of the Council members will, subject to subsection (18), be a resolution of the Council. 40
- (18) A resolution contemplated in subsection (17), must be reported to the Council by the chief executive officer at its next ensuing meeting and must be so recorded in the minutes of that meeting. 45

### Committees of Council

12. (1) The Council may establish committees, with the power to co-opt other persons, for the purpose of assisting it with the due and proper exercise and performance of any of its powers and functions in terms of this Act, and may likewise dissolve, extend, enlarge or limit any committee so established. 5
- (2) (a) A committee established under subsection (1), consists of no fewer than three members designated by the Council being suitable and appropriately qualified or experienced regarding matters relating to the functions of the committee in question. 10
- (b) The Council must designate a Council member serving on a committee as the chairperson of such committee. 15
- (3) A co-opted member of a committee serves in an advisory capacity, and may not vote at any meeting of such committee.

### CHAPTER III STAFF MATTERS

20

### Staff of Council and remuneration

13. (1) The Council — 25
- (a) must, subject to sections 14, 15 and 16 and with the concurrence of the responsible Member, appoint a suitably qualified and experienced person as chief executive officer, who —
- (i) subject to the direction and control of the Council, is responsible for all financial and administrative responsibilities pertaining to the functions of the Council; and 30
- (ii) is accountable to the Council; 35
- (b) must, with the concurrence of the responsible Member, determine a staff establishment for the Council; and
- (c) may, on the establishment contemplated in paragraph (b), appoint any other staff as may be necessary to enable the Council to perform its functions. 40
- (2) Section 7(1) and (2) and section 8, read with the changes required by the context, apply to the chief executive officer and each staff member to be appointed in terms of this Act. 45

- (3) The Council may, with the concurrence of the responsible Member and the head of the provincial treasury, determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of a person appointed in terms of subsection (1). 5
- (4) The Council may delegate its powers in terms of subsection (l)(c) to the chief executive officer. 5
- (5) The responsible Member may, after consultation with the Council, second any official on the establishment of the Department to the Council in accordance with section 15(3) of the Public Service Act, 1994. 10

**Chief executive officer**

14. (1) The chief executive officer, appointed in terms of section 13(1), must be a person who has appropriate qualifications, knowledge or experience regarding the business and operations of the Council. 15
- (2) The chief executive officer must have thorough knowledge of the financial and provisioning administration prescripts incumbent on the Council. 20
- (3) The Council must, when appointing a chief executive officer, through public invitation, request applications for that position.
- (4) The chief executive officer is appointed for such period and on such terms and conditions of service as the Council may, subject to section 13(3), determine, but - 25
- (a) the chief executive officer may not be so appointed for a period exceeding 5 years; 30
- (b) upon the expiration of the term of office of the chief executive officer, he or she is eligible for reappointment for one further term of 5 years only; 35
- (c) the chief executive officer may not undertake any other remunerative work, without the prior written consent of the Council.
- (5) The chief executive officer may, on 3 months' written notice tendered to the Council, resign from his or her office. 40
- (6) Whenever the office of chief executive officer is vacant or the chief executive officer is absent or incapacitated or refuses or fails to act, the powers and functions of the chief executive officer may be exercised and performed by any person designated as the acting chief executive officer by the responsible Member, but such person may not be the acting chief executive officer for a period exceeding 6 months in total. 45

- (7) While a person appointed as contemplated in subsection (6) so acts, he or she may exercise the powers and perform the functions of the chief executive officer.

**Removal of chief executive officer from office** 5

15. (1) The Council may remove the chief executive officer from office —
- (a) on account of his or her improper conduct; 10
  - (b) for unfitness for the functions of his or her office;
  - (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly; 15
  - (d) on the ground that he or she is or has become subject to a disqualification envisaged in section 7(2).
- (2) The Council may, in order to determine whether there exists sufficient cause for the removal of the chief executive officer from office as contemplated in subsection (1), initiate an inquiry or investigation for that purpose. 20
- (3) Whenever any inquiry or investigation, initiated as contemplated in subsection (2), is being undertaken, the Council may and with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), suspend the chief executive officer from his or her office pending the outcome of such an inquiry or investigation. 25
- (4) For the purposes of subsection (1)(a), non-compliance by the chief executive officer with any provision of this Act or the Public Finance Management Act, 1999 (Act No. 1 of 1999), amongst other things, constitutes improper conduct. 30

**Employment contract and performance agreement of chief executive officer** 35

16. (1) The appointment of the chief executive officer by the Council as contemplated in section 13(1) becomes effective from the date of the entering into a written employment contract with the Council, which employment contract must be for the duration of his or her term of office as chief executive officer. 40
- (2) The employment contract contemplated in subsection (1) must, as a minimum, contain the chief executive officer's personal particulars, term of office, conditions of service, powers, functions, responsibilities, duties as well as his or her remuneration, allowances and benefits. 45
- (3) In addition to the employment contract as contemplated in subsection (1), the chief executive officer must annually, prior to the commencement of the financial year concerned, conclude a performance agreement with the Council which performance agreement's term of operation must coincide with the financial year of the Council. 50

- (4) The performance agreement contemplated in subsection (3) must, as a minimum, contain a reference to the financial year to which such performance agreement pertains, the purpose of the chief executive officer's job, the key result areas, financial and management criteria, performance guidelines and targets of such job, as well as the standards for measuring the performance of the chief executive officer, by the Council, on at least a bi-annual basis. 5

**CHAPTER IV**  
**FINANCE AND PROCUREMENT**

10

## Finances

17. (1) The Council is financed from — 15
- (a) money appropriated by the Provincial Legislature for the Council;
  - (b) any money payable to the Council in terms of this Act;
  - (c) income derived by the Council from its investment and deposit of surplus money in terms of subsection (6); and 20
  - (d) all other monies legally accruing to the Council from any source.
- (2) The financial year of the Council is the period from 1 April in any year to 31 March of the following year. 25
- (3) The prescripts incumbent on a provincial public entity, contained in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the Treasury Regulations apply to the Council. 30
- (4) The Council must open and maintain an account in the name of the Council with a registered bank in the Republic and —
- (a) any money received by the Council must be deposited into that account; and 35
  - (b) every payment on behalf of the Council must be made from that account. 40
- (5) Withdrawals from the account of the Council must be authorized on its behalf by two persons designated for that purpose by resolution of the Council. 40
- (6) The Council may invest or deposit money of the Council that is not immediately required for contingencies or to meet current expenditures — 45
- (a) on a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or

- (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (7) Any money standing to the credit of the Council at the end of any financial year of the Council, excluding such money as has been approved by the responsible Member, being necessary for the reasonable immediate running expenses of the Council, must be paid into the Provincial Revenue Fund. 5
- (8) No loan may be made out of the funds of the Council, or from any other funds administered or held in trust by the Council, to a member of the Council, or a member of the staff of the Council, or to a family member of such member of the Council or member of the staff of the Council. 10
- Accountability, audits and reports** 15
- 18.** (1) The Council must —
- (a) account for state and other money received by, or paid for, or on account of the Council; and 20
- (b) cause the necessary accounting and related records to be kept, in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999). 25
- (2) The records referred to in subsection (1)(b) must be audited by the Auditor General.
- (3) The Council must, through the Head of Department, report at least quarterly in writing to the responsible Member on its activities. 30
- (4) The Council must submit the report and statements referred to in section 55(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the responsible Member in the way required by section 55(3) of that Act. 35
- (5) The responsible Member must, as soon as practicable after receiving the report and statements referred to in subsection (4), table it in the Provincial Legislature. 40
- (6) The Council must, in the report contemplated in subsection (4), as far as the exercise and performance of its powers and functions during the year being reported on, are concerned, also include reference to -
- (a) its achievements; 45
- (b) its failures;
- (c) the financial implications of all such achievements and failures;

- (d) any recommendations pertaining to its objects, for consideration.
- (7) The Council must establish an audit committee for the Council consisting of at least three persons in accordance with Treasury Regulation 27. 5
- (8) The audit committee must prepare, sign and submit to the Council, within 15 days of the end of each quarter, a report in respect of the operations, including the income and expenditure of the Council in respect of the preceding quarter. 10

#### **Appropriation of income and property**

19. The moneys appropriated by the Provincial Legislature to the Council as contemplated in section 17(1)(a), must be utilized in accordance with such appropriation and all other income, property and profits of the Council must be utilized exclusively for the achievement of its objects and in accordance with the provisions of this Act. 15

#### **Procurement**

20. (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of the Council as contemplated in section 5, the Council must ensure that such procurement is effected in accordance with, and duly complies with — 20
- (a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 30
- (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; 35
- (c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the Council, as contemplated in section 51 (l)(a)(iii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and Treasury Regulation 16A; and 40
- (d) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000). 45
- (2) The Council must adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system must be utilized for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods by the Council. 50



CHAPTER V  
GENERAL PROVISIONS

**Delegation**

21. (1) The Council may, subject to subsections (2) and (3), in writing, delegate any of its powers, functions or duties in terms of this Act, to the chief executive officer or a committee of the Council. 5
- (2) The chief executive officer may, with the written permission of the Council, sub-delegate any power, function or duty delegated to him or her in terms of subsection (1), to any member of the staff of the Council. 10
- (3) A delegation or sub-delegation, as the case may be, may be withdrawn by the Council or the chief executive officer with the concurrence of the Council, respectively. 15

**Regulations**

22. (1) The responsible Member may, by notice in the *Provincial Gazette*, make regulations regarding - 20
- (a) fees to be paid to the Council or any institution administered by the Council; and 25
- (b) any other matter that may be necessary or expedient in order to achieve the objects of this Act.
- (2) Any regulation made in terms of subsection (1)(a), may only be made with the concurrence of the head of the provincial treasury. 30
- (3) No less than 1 month before any regulation is made under this section, the responsible Member must cause the text thereof to be published in the *Provincial Gazette* together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish any comments thereon or any representation which they may wish to make in regard thereto, to the responsible Member on or before a date mentioned in the notice. 35
- (4) The provisions of subsection (3) do not apply to an amendment made to any regulation published in terms of that subsection. 40

**Repeal of laws**

23. The laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column of the Schedule. 45

**Transitional and founding arrangements**

24. (1) For the purpose of this section, “**previous Act**” means the Cultural Promotion Act, 1983 (Act No. 35 of 1983). 5
- (2) With effect from the date on which this Act comes into operation —
- (a) the Northern Cape Arts and Culture Council established in terms of the previous Act continues to exist and function as if established under the corresponding provision of this Act, until the responsible Member appoints a new Council in accordance with the provisions of section 4; 10
- (b) all assets, charges, rights, obligations and liabilities of any institution created in terms of the previous Act or administered by such institution, are transferred from that institution to the Council and the Council becomes the successor-in-law of the institution; and 15
- (a) anything done under a provision of the previous Act and which may be done under the corresponding provision of this Act is regarded to have been done under the latter provision. 20

**Short title and commencement**

25. This Act is called the Northern Cape Arts and Culture Council Act, 2013, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*. 25

**SCHEDULE**

**Laws repealed in terms of section 23(1)**

<b>No. and Year of Act</b>	<b>Short title of Act</b>	<b>Extent of repeal</b>
Act No. 35 of 1983	Culture Promotion Act, 1983	The whole
Act No. 65 of 1989	Cultural Affairs Act (House of Assembly), 1989	The whole

**OFFICE OF THE PREMIER**

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

**No. 7 of 2013: Northern Cape Provincial Archives Act, 2013**

.....text of this Act has been assented

to by.....

'-RGV' 'CA

**NORTHERN CAPE PROVINCE**

**NORTHERN CAPE PROVINCIAL ARCHIVES ACT, 2013**

**( ACT No. 7 OF 2013)**



# ACT

To provide for a Provincial Archives for the Northern Cape Province; the proper management and care of the records of governmental bodies; the preservation and use of a provincial archival heritage; and to provide for matters connected therewith.

**BE IT ENACTED** by the Provincial Legislature of the Northern Cape Province as follows:-

<b>ARRANGEMENT OF SECTIONS</b>	5
<b>Section</b>	
<b>CHAPTER I</b>	
<b>INTERPRETATION</b>	w
1. Definitions	
<b>CHAPTER II</b>	
<b>THE PROVINCIAL ARCHIVES</b>	f5
2. Establishment of the Northern Cape Provincial Archives	
3. Objects and functions of the Provincial Archives	
4. Provincial Archivist and staff	
5. Powers and duties of Provincial Archivist	
<b>CHAPTER III</b>	
<b>RECORDS</b>	
6. Custody and preservation of records	
7. Access and use of records	
8. Management of public records	
9. Acquisition and management of non-public records	
<b>CHAPTER IV</b>	
<b>GENERAL PROVISIONS</b>	
10. Offences and penalties	
11. Regulations	
12. Short title and commencement	or

CHAPTER I  
INTERPRETATION

Definitions

1. In this Act, unless the context otherwise indicates, — 5
- “**appraisal**” means the archival function of determining the eventual disposal of records; 10
- “**archives**” means records in the custody of an archives repository;
- “**archives repository**” means any archives repository contemplated in section 6(1);
- “**custody**” means the control of records based upon their physical possession; 15
- “**Department**” means the Northern Cape Department responsible for cultural matters;
- “**disposal authority**” means a written authority issued in terms of section 8(2)(a) specifying records to be transferred into the custody of the Provincial Archives or specifying records to be otherwise disposed off; 20
- “**electronic records system**” means any records system in which information is generated electronically and stored by means of computer technology; 25
- “**governmental body**” means any legislative, executive, judicial or administrative organ of state (including a statutory body) at the provincial or local level of government in the Province; 30
- “**head of a governmental body**” means the chief executive officer of a governmental body or the person who is acting as such;
- “**Head of Department**” means the Head of the Department responsible for cultural matters; 35
- “**National Archives**” means the National Archives and Records Service of South Africa established by section 2 of the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996); 40
- “**non-public record**” means a record created or received by a private individual or a body other than one defined as a governmental body in terms of this Act or the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996); 45
- “**organ of state**” has the meaning set out in section 239 of the Constitution of the Republic of South Africa, 1996;
- “**prescribe**” means prescribe by regulation; 50
- “**Province**” means the Northern Cape Province referred to in section 103(l)(g) of the Constitution of the Republic of South Africa, 1996;

- “Provincial Archives”** means the Northern Cape Provincial Archives established by section 2;
- “Provincial Archivist”** means the Provincial Archivist appointed in terms of section 4(1); 5
- “Provincial Gazette”* means the *Provincial Gazette* of the Province;
- “Provincial Legislature”** means the Provincial Legislature of the Province referred to in section 104 of the Constitution of the Republic of South Africa, 1996; 10
- “public record”** means a record created or received by a governmental body in pursuance of its activities;
- “Public Service Act”** means the Public Service Act, 1994 (Proclamation No. 103 of 1994); 13
- “record”** means recorded information regardless of form or medium;
- “records classification system”** means a classification plan for the identification, arrangement, storage and retrieval of records; 20
- “regulation”** means any regulation made under this Act;
- “responsible Member”** means the Member of the Executive Council of the Province responsible for the administration of this Act; and 25
- “this Act”** includes any regulation made under this Act.

**CHAPTER II** 30  
**THE PROVINCIAL ARCHIVES**

**Establishment of the Northern Cape Provincial Archives**

2. There is hereby, within the Department, established the Northern Cape Provincial Archives. 35

**Objects and functions of the Provincial Archives**

3. The objects and functions of the Provincial Archives are to — 40
- (a) preserve public and non-public records with enduring value for use by the public and the State;
  - (b) make such records accessible and promote their use by the public; 45
  - (c) ensure the proper management and care of all public records;
  - (d) 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 Province’s experience neglected by archives repositories in the past; 50



- (e) promote co-operation and co-ordination between institutions having custody of non-public records with enduring value; and
- (f) promote an awareness of archives and records management and encourage archival and record management activities. 5

**Provincial Archivist and staff**

- 4. (1) The Provincial Archives must be managed by a Provincial Archivist appointed by the responsible Member on the basis of relevant experience and an appropriate archival qualification. 10
- (2) The Provincial Archivist manages the Provincial Archives under the direction of the Head of Department. 15
- (3) The Provincial Archivist must, in the performance of his or her functions, be assisted by officials appointed in terms of the Public Service Act.
- (4) (a) The Provincial Archivist may, in writing and subject to any conditions, delegate a power or assign a duty to a member of the staff and may at any time cancel such delegation or assignment. 20
- (b) A delegation or assignment does not divest the Provincial Archivist of the power delegated or duty assigned and he or she may at any time exercise the power or perform the duty concerned. 25

**Powers and duties of Provincial Archivist**

- 5. (1) The Provincial Archivist must — 30
  - (a) take measures to arrange, describe and retrieve records;
  - (b) provide information, consultation, research and other services related to records; 35
  - (c) maintain a provincial list of non-public records in the Province, which, in the opinion of the Head of Department, have enduring value;
  - (d) draft an appraisal policy for the Provincial Archives; 40
  - (e) generally, take such other steps and perform such other acts as may be necessary for or conducive to the achievement of the objects of the Provincial Archives. 45
- (2) The Provincial Archivist may —
  - (a) provide training in archival techniques and the management of records;

- (b) co-operate with organisations interested in archival matters or the management or records;
- (c) provide professional and technical support in aid of archival activities and the archival community; 5
- (d) with the concurrence of the responsible Member, exempt a governmental body from any provision of this Act;
- (e) require of a person who has made use of records in the custody of the Provincial Archives while researching a publication or dissertation to furnish a copy of die publication or dissertation to the Provincial Archives; 10
- (f) publish, in the *Provincial Gazette*, the appraisal policy and lists of records that may be destroyed; 15
- (g) make known information concerning records by means such as publications, exhibitions and the lending of records, with special emphasis on activities designed to reach out to less privileged sectors of society. 20

### **CHAPTER III** **RECORDS**

- 25
- Custody and preservation of records**
6. (1) The responsible Member may from time to time establish archives repositories under the control of the Provincial Archivist for the custody of records. 30
- (2) Public records identified in a disposal authority as having enduring value must be transferred to an archives repository when they have been in existence for 20 years: Provided that — 35
- (a) no other Act of Parliament or the Provincial Legislature 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 — 40
    - (i) must remain in the custody of a governmental body; or
    - (ii) must be transferred to an archives repository before they have been in existence for 20 years; 45
  - (c) the Provincial Archivist may defer the transfer of any such records; and

- (d) the Provincial Archivist may grant permission for any public record to be transferred to an archives repository before they have been in existence for 20 years.
- (3) The Provincial Archivist must take measures to preserve and restore records. 5

#### Access and use of records

- 7. (1) Subject to any other Act of Parliament or the Provincial Legislature which deals with access to public records — 10
  - (a) a public record in the custody of the Provincial Archives is available for public access if a period of 20 years has elapsed since the end of the year in which the record came into existence; 15
  - (b) access to a public 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 may be given by the Provincial Archivist upon request. 20
- (2) A non-public record in the custody of the Provincial Archives is available for public access subject to any conditions agreed upon at its acquisition in terms of section 9(1). 25
- (3) Notwithstanding subsections (1) and (2), the Provincial Archivist may refuse access to a record on the grounds of its fragile condition, provided that there shall be a right of appeal to the Head of Department against the refusal. 30
- (4) The responsible Member may make regulations as to the admission of the public to archives repositories, the making available of records for public access and the use of equipment for the making of copies of or extracts from records in the custody of the Provincial Archives. 35

#### Management of public records

- 8. (1) Subject to the provisions of this Act, the Provincial Archivist is charged with the proper management and care of public records in the custody of governmental bodies. 40
- (2) Without limiting the generality of subsection (1) —
  - (a) no public record under the control of a governmental body may be transferred to an archives repository, destroyed, erased or otherwise disposed off without the written authorization of the Provincial Archivist; 45

- (b) the Provincial Archivist must -
- (i) determine records classification systems to be applied by governmental bodies; 5
  - (ii) determine the conditions subject to which records may be microfilmed or electronically reproduced; and
  - (iii) determine the conditions subject to which electronic records systems should be managed; 10
- (c) the Provincial Archivist must inspect public records in so far as such inspection may be necessary for the performance of his or her functions under the Act: Provided that the inspection of public records which contain information, the disclosure of which is restricted by any other Act of Parliament or the Provincial Legislature, may be done only with the consent of the head of the governmental body concerned. 15
- (3) The responsible Member may make regulations as to the management and care of public records in the custody of governmental bodies. 20
- (4) The Provincial Archivist may from time to time issue directives and instructions, not inconsistent with this Act, as to the management and care of public records in the custody of governmental bodies. 25
- (5) The head of a governmental body must, subject to any law governing the employment of personnel of the governmental body concerned and such requirements as may be prescribed, designate an official of the body to be the records manager of the body. 30
- (6) The records manager is responsible to see to it that the governmental body complies with the requirements of this Act.
- (7) Additional powers and functions may be prescribed to a records manager. 35

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

9. (1) The Provincial Archivist may, on behalf of the State, acquire by purchase or donation or on loan for a temporary period or in perpetuity, 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 are not more appropriately preserved by another institution. 40
- (2) Subject to any such conditions as may be applicable, non-public records acquired under subsection (1), must be deposited in the archives repository determined by the Provincial Archivist. 45

- (3) No person or institution having non-public records in his or her custody, which are recorded on the provincial list referred to in section 5(1)(c), may destroy, export or otherwise dispose off such records without -
- (a) reporting to the Provincial Archivist his or her intention to so dispose off such records at least 90 days in advance of such action; and 5
- (b) securing the approval of the Provincial Archivist for such action. 10

**CHAPTER IV**  
**GENERAL PROVISIONS**

**Offences and penalties**

10. (1) Any person who - 15
- (a) wilfully damages any public or non-public record in the control of a governmental body; or 20
- (b) otherwise than in accordance with this Act or any other law, removes, destroys or erases such record, 25
- is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 2 years, or both such fine and imprisonment. 25
- (2) Any person who fails to comply with section 9, is guilty of an offence and liable on conviction to a fine not exceeding RIO 000.00 or imprisonment for a period not exceeding 2 years, or both such fine and imprisonment. 30
- (3) The Provincial Archivist may refuse to allow any person convicted of an offence in terms of subsection (1), access to an archives repository for such period as he or she may deem fit, subject to an appeal to the Head of Department. 35

**Regulations**

11. (1) The responsible Member may, by notice in the *Provincial Ga^ette^* make regulations regarding - 40
- (a) the establishment of a Provincial Advisory Archives Council and to provide for its constitution, functions and remuneration; 45
- (b) the terms and conditions governing the transfer of records under section 6(2); 50
- (c) the admission of the public to archives repositories, the making available of records for public access and the use of equipment for the making of copies of or extracts from records in the custody of the Provincial Archives; 50

- (d) the management and care of public records in the custody of governmental bodies;
- (e) requirements regarding the designation of an official on the establishment of a governmental body to be the records manager of the body; 5
- (f) additional powers and functions of record managers; and
- (g) any matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act. 10

**Short title and commencement**

12. This Act is called the Northern Cape Provincial Archives Act, 2013, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*. 15



**NOTICE - CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS**

As the mandated government security printer, providing world class security products and services, Government Printing Works has adopted some of the highly innovative technologies to best serve its customers and stakeholders. In line with this task, Government Printing Works has implemented a new telephony system to ensure most effective communication and accessibility. As a result of this development, our telephone numbers will change with effect from 3 February 2014, starting with the Pretoria offices.

The new numbers are as follows:

- Switchboard : 012 748 6001/6002
- **Advertisin:** Contact telephone and email address

Decease Estate Gazette	012 748 6210 <a href="mailto:Estates@gpw.gov.za">Estates@gpw.gov.za</a>
Legal Gazette	012 748 6211 <a href="mailto:LegalGazette@gpw.gov.za">LegalGazette@gpw.gov.za</a>
Tender Bulletin Gazette	012 748 6209 <a href="mailto:TenderBulletin@gpw.gov.za">TenderBulletin@gpw.gov.za</a>
Gauteng Provincial Gazette	012 748 6205 <a href="mailto:ProvincialGazetteGauteng@gpw.gov.za">ProvincialGazetteGauteng@gpw.gov.za</a>
National and Liquor Gazette	012 748 6208 <a href="mailto:GovGazette&amp;LiquorLicense@gpw.gov.za">GovGazette&amp;LiquorLicense@gpw.gov.za</a>
Kzn and Eastern Cape Liquor	012 748 6207 <a href="mailto:ProvincialGazetteNCKZN@gpw.gov.za">ProvincialGazetteNCKZN@gpw.gov.za</a>
ECLPMPNW Provincial Gazette	012 748 6212 <a href="mailto:ProvincialGazetteECLPMPNW@gpw.gov.za">ProvincialGazetteECLPMPNW@gpw.gov.za</a>

Publications •	012 748 6052/6053/6054/6055/6066
SCM :	012 748 6380/6373/6218
Debtors :	012 748 6236/6242
Creditors .	012 748 6246/6274

Please consult our website at [www.gpwonline.co.za](http://www.gpwonline.co.za) for more contact details.

**NB** The numbers for our provincial offices in Cape Town, Polokwane, East London and Mmabatho will not change at this stage.