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PROVINCIAL NOTICE

OFFICE OF THE PREMIER

PROVINCE OF THE EASTERN CAPE

No. 5

14 September 1994

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

No. 5 of 1994(E.C.): Provincial Service Commission Act, 1994(Eastern Cape).

ACT

To provide for the establishment of a Provincial Service Commission; the powers and functions of the Commission; the appointment and conditions of service of members of the Commission; the appointment and duties of the staff of the Commission; and other matters connected therewith.

(Signed and assented to by the Premier on 14 September 1994)

BE IT ENACTED by the Provincial Legislature of the Province of the Eastern Cape, as follows:—

CHAPTER 1

PRELIMINARY PROVISIONS

Definitions

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

“calendar month” means a period extending from a day in one month to the day preceding the day corresponding numerically to that day in the following month, both days inclusive;

“Commission” means the Provincial Service Commission for the Province of the Eastern Cape established by section 2(1) and, in relation to any power or function conferred upon, assigned to, or imposed upon, the Commission by or in terms of the Constitution or this Act or the Public Service Act or the Public Service Commission Act or any other law, includes any member or members of the Commission or any officer or officers to whom the exercise of such power or the performance of such function has been delegated by the Commission in terms of section 5(2).

“Constitution” means the Constitution of the Republic of South Africa, 1993;

“employee” means a person referred to in section 8(1)(c) of the Public Service Act;

“fixed establishment” means the fixed establishment as defined in section 1(1) of the Public Service Act;

“head of department” means the person who is the incumbent of the post designated “Director-General: Provincial Administration: Eastern Cape” in the second column of the First Schedule to the Public Service Act;

"member of the Executive Council" means the Premier or a member of the Executive Council of the Province of the Eastern Cape appointed by the Premier in terms of section 149 of the Constitution;

"month" means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of the year;

"officer" means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post referred to in section 8(1)(a) of the Public Service Act, and includes a person referred to in section 8(1)(b) or 8(3)(c) of that Act;

"Premier" means the Premier of the Province of the Eastern Cape;

"Province" means the Province of the Eastern Cape as defined in section 124 of the Constitution;

"Provincial Administration" means the administration of the Province of the Eastern Cape encompassing all departments and offices of the said Province;

"Provincial Legislature" means the legislature of the Province of the Eastern Cape established by section 125(1) of the Constitution;

"Public Service Act" means the Public Service Act, 1994 published under Proclamation No. 103 of 3 June 1994;

"public service" means the public service established by section 212(1) of the Constitution;

"Public Service Commission" means the Public Service Commission established by section 209(1) of the Constitution.

CAPTER II

PROVINCIAL SERVICE COMMISSION AND STAFF

Establishment, constitution and powers and functions of Commission

2. (1) (a) There shall be a Provincial Service Commission for the Province, which shall exercise the powers and functions referred to in section 213 of the Constitution, this Act or any other law, and which shall in respect of the exercise and performance of its powers and functions be accountable to the Provincial Legislature.

(b) The Commission shall exercise its powers and perform its functions fairly, impartially and independently.

(c) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his or her functions.

(2) The Commission shall consist of five members appointed from time to time by the Premier by proclamation in the *Provincial Gazette* and after consultation with the Executive Council.

(3) The Premier shall, prior to the consideration of appointments contemplated in subsection (2), publish or advertise such contemplated appointments in the *Provincial Gazette* and in public media having a wide circulation, or listenership, in the Province and in languages widely used in the Province, at least 21 days prior to the processing, of any such appointments: Provided that, in considering such appointments, the Premier and the Executive Council shall ensure there is adequate representation of both men and women on the Commission, and shall also take into account the principles of the Constitution relating to equality between men and women and people of all races.

(4) A person shall be qualified to be appointed to the Commission if he or she—

- (a) is a South African citizen; and
- (b) is a person who has a sufficient knowledge of, or experience in, the administration, management or rendering of public services.

(5) The Premier shall designate a member as the chairperson of the Commission and during the absence of the chairperson for any reason, the member who has the longest service as a member or, if two or more members have the same length of service as members, the member designated by the Premier, shall act as chairperson of the Commission.

(6) Subject to the provisions of subsection (7), and section 3(3) and section 4(1), (2) and (4), a member of the Commission shall, at his or her first appointment as such member, hold office for a period of five years, but shall on the expiry of his or her period of office, with his or her consent, be eligible for reappointment for a further period not exceeding, or for further periods not exceeding in the aggregate, five years, as the Premier may determine.

(7) The Premier may, if he or she deems it in the public interest, with the consent of a member of the Commission, retain such member in his or her office beyond the date at which he or she shall, in accordance with subsection (6) vacate his or her office, for a period which shall not exceed in the aggregate two years, as the Premier may deem fit.

Conditions of service of members

3. (1) The remuneration and other conditions of service of the chairperson and other members of the Commission shall be determined by the Premier after consultation with the national Minister for the Public Service and Administration: Provided that—

- (a) the remuneration and other conditions of service of the chairperson or any other member of the Commission shall not be altered to his or her detriment during his or her term of office; and
- (b) the other conditions of service referred to in this section shall not be less favourable than those of the head of department.

(2) A member of the Commission shall not, without the consent of the Premier, perform or engage himself or herself to perform any remunerative work outside the duties of his or her office.

- (3) If an officer or employee is appointed to the Commission—
- (a) the period of his or her service as such member shall be reckoned as part of and continuous with his or her employment in the public service for the purposes of leave and pension and any other condition of service, and the provisions of any pension law applicable to him or her as such officer or employee or, after his or her death, to his or her dependants, and which are not in conflict with the provisions of this Act, shall *mutatis mutandis* continue to apply; and
- (b) such member shall retain the same right to vacate his or her office and to retire as he or she would have had on the attainment of an age prescribed by the Public Service Act or any other law or on any later date on which he or she desires to do so, had he or she remained in the public service.

Discharge of, and vacation of office by, members

4. (1)(a) The Premier may remove a member of the Commission from office—

- (i) on account of continued ill-health; or
- (ii) on account of misconduct; or
- (iii) on account of neglect of duty or unfitness for his or her duties or incapacity or failure to carry them out efficiently; or
- (iv) if, for reasons other than his or her own unfitness or incapacity, his or her removal from office will promote efficiency.

Provided that the Premier shall, before taking such action, advise the member concerned of the proposed action and the reasons therefor, and afford him or her an opportunity to make representations thereon.

(b) The premier may require a member of the Commission to absent himself or herself temporarily from his or her duties in order to afford the Premier the opportunity to consider the possible removal of such member from office in terms of paragraph (a).

(c) The removal of a member of the Commission from office in terms of this subsection, and the particulars of the removal, and the reasons therefor, shall be submitted by the Premier to the Provincial Legislature within 14 days after such removal or, if the Provincial Legislature is not then sitting, within 14 days after the commencement of its next ensuing sitting.

(2) (a) The Premier may allow a member of the Commission at his or her request to vacate his or her office—

- (i) on account of continued ill-health; or
- (ii) for any other reason which the Premier may deem sufficient.

(b) If a member referred to in section 3(3)—

- (i) is allowed to vacate his or her office in terms of paragraph (a)(i), it shall be deemed that his or her services have been terminated on the grounds of ill-health and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if his or her services had been terminated on the grounds of ill-health;

- (ii) is allowed to vacate his or her office in terms of paragraph (a)(ii) during his or her first period of office, he or she shall be deemed to have been removed from his or her office in terms of subsection (1)(a)(iv) or to have been retired in terms of section 16(4) of the Public Service Act, as the Premier may direct, and he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if he or she had been removed from his or her office or had been so retired; or
 - (iii) is allowed to vacate his or her office in terms of paragraph (a)(ii) during his or her subsequent period or periods of office, he or she shall be deemed to have been removed from his or her office in terms of subsection (1)(a)(i) and he or she shall be entitled to such pension as contemplated in paragraph (b)(i).
- (3) A member of the Commission who—
- (a) immediately prior to his or her appointment as such was an officer in the public service;
 - (b) at the expiry of his or her period of office as a member of the Commission is not reappointed thereto; and
 - (c) at that expiry date has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission,

shall have the right to retire, or may be required by the Premier to retire, and if he or she so retires or is so required to retire, he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to, if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

(4) If a member of the Commission who immediately prior to his or her appointment as such was an officer or employee in the public service, is appointed under an Act of Parliament or a provincial law, and with his or her consent, to an office to which the provisions of this Act or the Public Service Act do not apply, he or she shall as from the date on which he or she is so appointed, cease to be a member of the Commission, and if at that date he or she has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire, he or she shall, subject to the provisions of section 4(3) of the Auditor-General Act, 1989 (Act No. 52 of 1989), in the case of the appointment of a member as Auditor-General, be deemed to have retired on that date and he or she shall, subject to the said provisions, be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her had he or she been compelled to retire from the public service owing to the abolition of his or her post.

Exercising and delegation of powers and functions of Commission

5. (1)(a) A recommendation or direction in respect of any matter made or given by at least three members shall, subject to the provisions of subsection (2), be deemed for the purposes of this Act or any other law to be a recommendation or direction of the Commission.

(b) The Commission shall decide on any matter by written consent of every member who is present to perform his or her duties, or by a majority of votes cast by the members present at a meeting of the Commission.

(c) In the event of an equality of votes on any matter considered by the Commission at a meeting thereof, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(2) (a) The Commission may, subject to the conditions determined by it, delegate any power conferred upon it or any function entrusted to it under this Act or the Public Service Act or any other law, except the powers conferred upon it by this subsection or by section 9(1) of this Act to—

- (i) one or more of its members; or
- (ii) an officer or officers.

(b) The Premier may, notwithstanding the provisions of paragraph (a), on the recommendation of the Commission, and by proclamation in the *Provincial Gazette*, exclude any power referred to in that paragraph from the restrictive operation of that paragraph, but a power which has been thus excluded may be delegated only to a member or members of the Commission.

(3) The Commission may designate one or more of its members or an officer or officers to conduct an inquiry into any matter in respect of which in terms of this Act or the Public Service Act or any other law, it may make a recommendation or give a direction.

(4) Any delegation or designation made by the Commission in terms of subsection (2) or (3), may at any time be amended or revoked by the commission.

Additional powers and functions of commission

6. (1) When a matter referred to in section 213(1)(b) of the Constitution has been referred to the Commission for advice in terms of that section, the Commission, or the officer or officers designated by the Commission for this purpose, shall have the power to inspect all such official documents and records and to obtain all such information from the officer or employee concerned, or from the executive head of the institution or body concerned, as in its opinion may be necessary to inspect or to obtain in order to advise the Premier or the relevant member of the Executive Council.

(2) The Commission shall, with the approval of the Premier, exercise such other powers and perform such other functions of the Public Service Commission as may be assigned to it by the President by proclamation in the *Gazette*, pursuant to a recommendation of the Public Service Commission.

Commission's power of inquiry

7. (1) The Commission may—

- (a) summon any person who, in the opinion of the majority of the members of the Commission, may be in possession of material information concerning the subject of any inquiry held by it in terms of section 5(3), or who such majority suspects or believes has in his or her possession or custody, or under his or her

control, any book, document or object which has any bearing upon the subject of the inquiry, to appear before it at the time and place specified in the summons, to be interrogated or to produce that book, document or object, and the Commission may keep any book, document or object thus produced, for the duration of the inquiry;

- (b) call, and administer an oath to, or accept an affirmation from, any person present at the inquiry who was or might have been summoned in terms of paragraph (a), and may interrogate him or her and require him or her to produce any book, document or object in his or her possession or custody or under his or her control which the Commission suspects or believes to have a bearing upon the subject of the inquiry.

(2) Summons of a person to appear before the Commission or to produce a book, document or object, shall be in the form prescribed by the Commission, shall be signed by the chairperson of the Commission or a person designated under section 5(3), and shall be served in the manner determined by the Commission from time to time.

(3) (a) If any person, having been summoned under subsection (1)(a), fails without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused by the Commission from further attendance, or if any person called in terms of subsection (1)(b), refuses to take the oath or make the affirmation as a witness, or fails without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her, or to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce, he or she shall, subject to the provisions of paragraph (b), be guilty of an offence and liable on conviction to a fine not exceeding R600.

(b) In connection with the interrogation of any such person or the production of such book, document or object before the Commission, the law relating to privilege, as applicable to a witness summoned to give evidence or to produce any book, document or object before a court of law, shall apply.

(4) Any person who, after having been sworn or after having made the affirmation as a witness, gives a false answer to any question lawfully put to him or her by the Commission, or makes a false statement on any matter, knowing that answer or statement to be false, shall be guilty of an offence and liable on conviction to the punishment which may be imposed for the crime of perjury.

(5) Any person who hinders or prevents any other person from obeying any summons issued under subsection (1)(a), or from giving any evidence or producing any book, document or object which he or she may be required to give or produce, shall be guilty of an offence and liable on conviction to a fine not exceeding R600.

(6) Any person who holds an inquiry pursuant to a delegation under section 5(2)(a)(i) or holds an inquiry pursuant to a designation under section 5(3) shall for the purposes of the inquiry have all the powers conferred upon the Commission by this section, and, in the application of the provisions of this section to any such an inquiry, every reference therein to the Commission shall be construed as including a reference to such person.

Staff of Commission

8. (1) Subject to the provisions of this Act and the Public Service Act, the Commission shall be assisted by as many other officers and employees as may from time to time be necessary to enable the Commission effectively to exercise its powers and to perform its functions.

(2) The officer put in charge of the officers and employees referred to in subsection (1) shall observe such directions and carry out such duties as may from time to time be given or assigned to him or her by the Commission.

CHAPTER III**GENERAL****Reports of Commission**

9. (1) The Commission shall as soon as possible after 31 December in each year frame a report on matters which have been dealt with by the Commission during the year ending on that day.

(2) The Commission may from time to time frame such special reports as may to the Commission seem desirable.

(3) Every report framed by the Commission pursuant to subsection (1) or (2), shall be submitted to the Premier who shall submit it to the Provincial Legislature within seven days after he or she has received it if the Provincial Legislature is then sitting, or if the Provincial Legislature is not then sitting, within seven days after the commencement of its next ensuing sitting.

Limitation of legal proceedings

10. (1) No legal proceedings of whatever nature shall be brought against the State or the Province or any body or person in respect of anything done, or of any failure to do anything which should have been done, in terms of this Act, unless the legal proceedings are brought before the expiry of a period of 12 calendar months after the date upon which the claimant had knowledge, or after the date on which the claimant might reasonably have been expected to have had knowledge, of the act or omission alleged, whichever is the earlier date.

(2) (a) No such legal proceedings shall be instituted before the expiry of at least one calendar month after written notice of the intention to bring such proceedings has been served on the defendant.

(b) Such notice shall contain full particulars of the alleged act or omission.

Short title

11. This Act shall be called the Provincial Service Commission Act, 1994(Eastern Cape).

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