



PROVINCE OF THE EASTERN CAPE
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PROVINSIE OOS-KAAP

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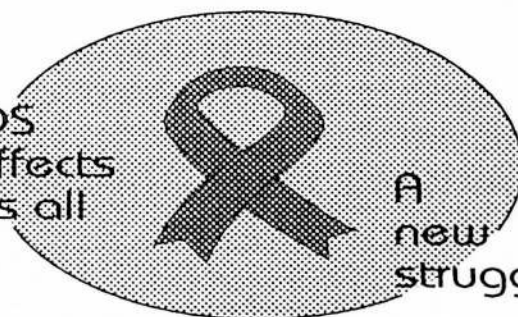
Vol. 12

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No. 1330
(Extraordinary)

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AIDS
affects
us all



A
new
struggle

Prevention is the cure

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in due course.

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PROCLAMATION*by the Premier*

No. 2, 2005

**COMMISSION OF INQUIRY INTO THE FINANCES OF THE
PROVINCE OF THE EASTERN CAPE**

I, **Nosimo Balindlela**, Premier of the Province of the Eastern Cape, acting in terms of section 1 of the Provincial Commissions Act (Eastern Cape), 1994 (Act No. 3 of 1994), hereby declare that the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), are applicable *mutatis mutandis* to the Commission of Inquiry into the Finances of the Province of the Eastern Cape, and hereby make regulations as set out in the Schedule hereto with reference to the said Commission.

**NOSIMO BALINDLELA****PREMIER: PROVINCE OF THE EASTERN CAPE**

SCHEDULE

1. In these regulations, unless the context indicates otherwise -

"Chairperson" means the Chairperson of the Commission;

"Commission" means the Commission of Inquiry into the Finances of the Province of the Eastern Cape;

"document" includes an electronic document, and any book, pamphlet, record, list, circular, plan, placard, poster, publication, drawing, photograph, picture, invoice or receipt;

"inquiry" means the inquiry conducted by the Commission;

"member" means a member of the Commission;

"officer" means a person in the full-time service of the State who has been appointed or designated to assist the Commission in the execution of its functions;

"premises" includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.

2. The proceedings of the Commission shall be recorded in the manner determined by the Chairperson.

3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded shall, at the outset, take an oath or make an affirmation in the following form:

"I, XY, declare under oath/affirm and declare-

- (a) that I shall faithfully and to the best of my ability take down/record the proceedings of the Commission of Inquiry

into the Finances of the Province of the Eastern Cape in shorthand/by mechanical means as ordered by the Chairperson of the Commission;

- (b) that I shall transcribe fully and to the best of my ability any shorthand notes/mechanical record of the proceedings of the said Commission made by me or by any other person.”.

(2) No shorthand notes or mechanical record of the proceedings of the Commission shall be transcribed except by order of the Chairperson.

4. Every person employed in the execution of the functions of the Commission, including any person referred to in regulations 3(1) and 6, shall help to preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, unless the publication of information is authorized by the Chairperson, and every such person, except the Chairperson, shall before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath of fidelity or secrecy in the following form:

“I, XY, declare under oath/affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into the Finances of the Province of the Eastern Cape or by order of a competent court, I shall not communicate to any person any matter or information which may come to my knowledge in connection with the inquiry of the said Commission, or suffer or permit any person to have access to any records of the Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any officer.”.

5. No person shall communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry of the Commission, or suffer or permit any other person to have access to any records of the Commission, except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.

6. The Chairperson may designate one or more knowledgeable persons to assist the Commission in the performance of some of its functions, in a capacity other than that of a member.
7. The Chairperson or an officer generally or specially authorized thereto by the Chairperson shall administer an oath to, or accept an affirmation from, any witness appearing before the Commission.
8. (1) If any person who gave or is giving evidence before the Commission, or who has been summoned so to give evidence, so requests the Commission, the Chairperson may direct that no person shall in any manner whatsoever divulge the name or any information likely to reveal his or her identity.

(2) No person shall contravene any provision of a directive referred to sub-regulation (1).
9. Any witness appearing before the Commission may be cross-examined by any person only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functioning of the Commission.
10. Any witness appearing before the Commission may, in the discretion of the Chairperson and in such manner as may be determined by him, be assisted by an advocate or an attorney.
11. An officer, attorney or advocate designated thereto by the Chairperson may be present at the hearing of evidence at the inquiry and may adduce evidence and arguments relating to the inquiry.
12. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's inquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation shall be dealt with by the Commission in such a manner as not to affect adversely such legal proceedings or investigations.
13. The Chairperson, any member or any officer of the Commission may, for the purpose of the inquiry, at all reasonable times, enter, inspect and

search any premises and demand and seize any document or object which is on such premises.

14. (1) If the Commission finds that any acquisitive act, transaction, measure or practice referred to in the terms of reference of the Commission is unlawful, irregular or unapproved or otherwise tainted, or incompatible with the ordinary course of business or trade or that it is or was in *fraudem legis or contra bonos mores* or contrary to public policy, as the case may be, it may nullify or declare invalid or set aside such act, transaction, measure or practice.

(2) If the Commission during the course of the inquiry considers the possibility of making a finding contemplated in sub-regulation(1) and of exercising any one or more of the powers therein contained, the Commission shall give notice to any interested or affected person or party of such a possibility.

(3) Any person or party referred to in sub-regulation (2) shall be entitled to examine the information in the possession of the Commission on which the possibly referred to in the sub-regulation is based, to adduce evidence, to request to cross-examine any witness available to the Commission whose evidence may have a bearing upon such information and to address the Commission on the evidence before it and on whether or not it could make such a finding or exercise such powers.

(4) Any finding made pursuant to the provisions of sub-regulation (1) shall have the effect of a judgment given in a civil matter by a Provincial Division of the High Court of South Africa.

(5) The Commission shall at any time refer to the appropriate Director of Public Prosecutions any evidence, information or document indicating that a crime has, or may have, been committed for further investigation and action.

15. (1) The Commission may suspend any, or the operation of any, acquisitive act, transaction, measure or practice or any attempt thereto contemplated in regulation 14 if, in its discretion, the purpose or objects of the Commission would be frustrated without such suspension.

(2) The Chairperson shall prescribe the procedure to be followed

by the Commission regarding the notification of parties to which such suspension relates.

16. No person shall, without the written permission of the Chairperson

- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
- (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document or statement while it is being taken or forwarded to the Chairperson.

17. No person shall insult, disparage or belittle the Chairperson or any member or any officer of the Commission or prejudice, influence or anticipate the proceedings or findings of the Commission.

18. No person shall, except in so far as may be necessary in the execution of the terms of reference of the Commission, publish or furnish to any other person the report of the Commission or a copy or part thereof or information appertaining to the consideration of evidence or deliberations thereon by the Commission until the Premier of the Province of the Eastern Cape has published such report for general information or has tabled it before the Provincial Legislature, whichever takes place first.

19. Any person who-

- (a) hinders or obstructs the Chairperson, or any officer in the exercise of any power referred to in regulation 13; or
- (b) contravenes a provision of regulation 5, 8(2), 16 or 18; or
- (c) contravenes a provision of regulation 17, shall be guilty of any offence and liable on conviction-
 - (i) in the case of an offence referred to in paragraph (a) or (b), to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment; and
 - (ii) in the case of an offence referred to in paragraph (c), to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

PROVINCIAL NOTICE

NOTICE 12 OF 2005

APPOINTMENT OF COMMISSION OF INQUIRY INTO FINANCES OF THE EASTERN CAPE PROVINCIAL ADMINISTRATION

I, **Nosimo Balindlela**, Premier of the Province of the Eastern Cape, acting in terms of section 127(2)(e) of the Constitution of the Republic of South Africa, 1996(Act No.108 of 1996), hereby-

1. appoint **Judge Rajarithina Pillay** as Chairperson, and **Mzimtsha Vizia Nkonki** and **Noluyolo Nonkwelo** as members of the Commission of Inquiry into the Finances of the Eastern Cape Provincial Administration;
2. determine that –
 - (a) the terms of reference of the Commission are to inquire into, and report to me on-
 - (i) the systems and norms used by the Eastern Cape Provincial Treasury for budget determination, that inform allocations to various Provincial departments;
 - (ii) the monitoring tools, systems and practices of Provincial Treasury and Provincial departments with respect to-
 - (aa) unveiling the causes of over-expenditure by Provincial departments;
 - (bb) preventing recurrence of such incidences of over-expenditure in the future; and

- (cc) identifying measures taken by Provincial departments to prevent such recurrence of over-expenditure, if any;
- (iii) reasons for, or activities which have resulted or could have resulted in, over-spending by all Provincial departments, particularly the Department of Education and the Department of Social Department, including contraventions of the provisions of the Public Finance Management Act, 1999(Act No.1 of 1999), and individuals or officials who are responsible for such activities or contraventions;
- (iv) details of State property, movable and immovable (belonging to the Province), and assets including funds and investments regarding how they are acquired, utilized and managed by the relevant Provincial departments and entities;
- (v) financial transfers of the Provincial Treasury and all Provincial departments, as well as the procurement processes of such departments and the Provincial public entities, and any indications of conflict of interest, and any disclosures thereof, or a need for recusal by person concerned;
- (vi) any incidents of fraud or corruption in all Provincial departments and public entities regarding -
 - (aa) how they were dealt with;
 - (bb) whether they were resolved;
 - (cc) the steps that should have been taken and must be taken in respect of those that were not resolved;
- (vii) whether current cases of fraud and corruption that are being investigated are being reported to the Premier and the Executive Council in terms of the law;

- (viii) the role of the joint anti-corrupt unit vis-à-vis the responsibility of Government officials to report to the Premier in terms of the law;
- (ix) the reasons why the Auditor-General's recommendations and forensic reports to Provincial departments were not acted upon;
- (x) the expenditure patterns of the Eastern Cape Provincial departments and public entities from 1994 to date, in relation to –
 - (aa) compliance with tender procedures and all relevant legislation;
 - (bb) consultation with, and approval of, the Executive Council;
 - (cc) existence of conflict of interest in respect of Government officials, or any incidents of fraud or corruption;
- (xi) such matters as are contemplated in sub-paragraphs (a)(i) to (a)(x) above and have taken place before the date of appointment of the Commission and those matters which take place after such appointment;
- (xii) such matters as may be reported to it by any person or referred to it by any institution pertaining to such matters as are contemplated in sub-paragraphs (a)(i) to (a)(x);
- (b) the Commission shall, in the execution of its responsibilities and tasks, have regard to the provisions of the regulations published under the Proclamation issued by me in respect of Commission in terms of section 1 of the Provincial Commission Act, 1994(Act No.3 of 1994);
- (c) the Commission shall formulate and submit to me interim reports from time to time at such intervals as the Commission

may deem fit or at my request; and

3. determine that the duration of the Commission shall be six months, commencing on the date of publication hereof;
4. invite any person wishing to submit either oral or written evidence to the Commission to write to, or phone:

THE SECRETARY
COMMISSION OF INQUIRY INTO THE FINANCES
OF THE EASTERN CAPE PROVINCIAL ADMINISTRATION
EAST LONDON

Nosimo Balindlela

NOSIMO BALINDLELA
PREMIER: PROVINCE OF THE EASTERN CAPE

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