

Mpumalanga, South Africa

## Mpumalanga Commissions of Inquiry Act, 1998

Act 11 of 1998

Legislation as at 17 November 1998

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## Mpumalanga Commissions of Inquiry Act, 1998

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# Mpumalanga South Africa

## Mpumalanga Commissions of Inquiry Act, 1998

Act 11 of 1998

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Assented to on 28 October 1998

Commenced on 17 November 1998

*[This is the version of this document from 17 November 1998  
and includes any amendments published up to 7 March 2024.]*

### ACT

To provide for the appointment of Commissions of Inquiry as contemplated in section 127(2)(e) of the Constitution of the Republic of South Africa, 1996, and for matters incidental thereto

(English Text signed by the Premier)

BE IT ENACTED by the Provincial Legislature of Mpumalanga, as follows: —

#### 1. Definitions

In this Act, unless the context otherwise indicates—

“**Chairperson**” means the chairperson appointed in terms of section 3(2);

“**Commission**” means a Commission appointed in terms of section 2;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“**Member**” means a member of a Commission appointed in terms of section 3;

“**Premier**” means the Premier of the Province, including any acting Premier;

“**Province**” means Mpumalanga Province;

“**Provincial Legislature**” means the legislature of the Province;

“**Provincial Revenue Fund**” means the revenue fund of the Province;

“**High Court**” means the Transvaal Provincial Division of the Supreme Court of South Africa.

#### 2. Appointment of Commission and termination thereof

- (1) The Premier may, in terms of section 127(2)(e) of the Constitution, whenever he or she deems it expedient, appoint a Commission to inquire into any matter in respect of which the Province has legislative or executive authority as contemplated in sections 104 and 125 of the Constitution respectively, and shall publish a notice thereof in the *Provincial Gazette* within three days of such appointment.
- (2) Notwithstanding anything to the contrary contained in this Act, the Premier may at any time terminate the appointment of a Commission.

#### 3. Constitution of Commission

- (1) The Premier may appoint as many members to a Commission as he or she may deem expedient.

- (2) Where a Commission consists of more than one member, the Premier shall designate one of the members as the Chairperson thereof and where a Commission consists of only one member, any reference in this Act to a Chairperson shall refer to such member.
- (3) Where for any reason whatsoever, a member of a Commission is unable or unwilling to act or to continue to act as a member, the Premier shall either appoint a new member in his or her stead and give notice thereof in the *Provincial Gazette* or direct that the Commission shall continue without such member.
- (4) The Premier may appoint a secretary and such other officials to a Commission and render such other assistance as he or she may consider advisable to enable the Commission to function properly.

#### 4. Terms of reference

The Premier shall, in the notice referred to in [section 2\(1\)](#), define the matter to be inquired into by a Commission and the scope of such inquiry and may exercise such power from time to time.

#### 5. Sittings of Commission

- (1) A Commission may sit at any place within the Province.
- (2) The place, date and time of every sitting of a Commission shall be determined by the Chairperson and made known by him or her in any manner which he or she deems fit.
- (3) All the evidence and addresses heard by a Commission shall be heard in public: Provided that the Chairperson of the Commission may, in his or her discretion, and with due regard to the provisions of Chapter 2 to the [Constitution](#), exclude from the place where such evidence is to be given or such address is to be delivered, any person or all persons whose presence at the hearing of such evidence or address is, in his or her opinion, not desirable.

#### 6. Commission's powers as to witnesses

- (1) For the purpose of ascertaining any matter relating to the subject of its inquiry, a Commission shall have power to summon any witness, to cause an oath or affirmation to be administered to him or her, to examine him or her, and to call for the production of any book, plan, document, record or object.
- (2) Summons for the attendance of a witness or for the production of any book, plan, document, record or object before a Commission shall be signed and issued by the secretary of the Commission in a form prescribed by the Chairperson, and shall be served by the secretary or by a person authorised in writing by him or her to do so, upon the witness personally or at his or her residence or place of business or employment by delivering it to someone thereat who is apparently not less than sixteen years of age and apparently residing or employed thereat.
- (3) If the person to be served with the summons keeps his or her residence or place of business closed so as to prevent the service of the summons, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.
- (4) If required to do so by the Chairperson of a Commission, a witness shall, before giving evidence, take an oath or make an affirmation, which oath or affirmation shall be administered by the Chairperson of the Commission or such other person as the Chairperson may designate.
- (5) Any person who has been summoned to attend any sitting of a Commission as a witness or has given evidence before a Commission shall be entitled to the same witness fees from the Provincial Revenue Fund as if he or she has been summoned to attend a criminal trial in the High Court held at the place of such sitting.

- (6) In connection with the giving of any evidence or the production of any book, plan, document, record or object before a Commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in the High Court, shall apply.

## **7. Offences by witness**

- (1) Any person summoned to attend and give evidence or to produce any book, plan, document, record or object before a Commission, who, without sufficient cause (the onus of proof whereof shall rest upon him or her)—
- (a) fails to attend at the time and place specified in the summons;
  - (b) fails to remain in attendance until the completion of the inquiry before the Commission or until he or she is excused by the Chairperson of that Commission from further attendance;
  - (c) having attended that Commission, refuses to be sworn or to make affirmation as a witness after he or she has been required by the Chairperson of that Commission to do so;
  - (d) having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her; or
  - (e) fails to produce any book, plan, document, record or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce,
- shall be guilty of an offence.
- (2) Any person who after having been sworn or having made affirmation, gives false evidence before a Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

## **8. Offences in respect of witness**

- (1) Any person who procures, induces, intimidates, corrupts or bribes any witness to refrain from giving evidence or to give false evidence before a Commission, or who by any means or contrivance whatsoever keeps a witness away from any sitting of a Commission, or who destroys or conceals any book, plan, document, record or object which to his or her knowledge might be of assistance to a Commission in any matter relating to the subject of its inquiry, shall be guilty of an offence.

## **9. Hindering or obstructing a Commission**

Any person who wilfully interrupts the proceedings of a Commission or wilfully hinders or obstructs a Commission in the performance of its functions or wilfully disturbs the peace and order of such proceedings shall be guilty of an offence.

## **10. Circumstances in which evidence not to be divulged**

Any person appointed in terms of this Act, who, without the consent of the Chairperson or the Premier or otherwise than in the discharge of his or her functions to such Commission, divulges to any other person any evidence given at a sitting of such Commission, which is not open to the public, shall be guilty of an offence.

## **11. Penalties**

Any person who is convicted of an offence under this Act shall be liable to a fine or to imprisonment for a period not exceeding twelve (12) months or to both such fine and imprisonment.

## **12. Division of opinion of members of a Commission**

If the members of a Commission are in any case equally divided on any question that arises during or in respect of the proceedings of a Commission, the Chairperson of the Commission shall have a casting vote in addition to his or her deliberative vote.

## **13. Commission's power for regulating proceedings**

The members of a Commission may, subject to the provisions of this Act, make such rules for their own guidance and the conduct and management of proceedings before them as they may, from time to time, deem fit.

## **14. Commission's report**

- (1) After having done everything reasonably required for the due performance of its functions, the Commission shall in due course report, in writing, to the Premier.
- (2) Any member of a Commission may prepare a minority report which shall be submitted to the Premier with the Commission's report or any such member may require that his or her disagreement with any part of the Commission's report, be recorded.
- (3) The Commission's report and every minority report shall before submission to the Premier be signed by every member of the Commission agreeing therewith.

## **15. Cost of Commission**

- (1) The remuneration, allowances and transport expenses of a member or an official of a Commission, and all other costs which the Premier deems necessary for the proper performance by the Commission of its functions, shall be paid out of moneys appropriated for that purpose by the Provincial Government and shall be in accordance with the relevant provisions of the Treasury Instructions: Provided that the Premier, before appointing any Commission, may require that the person, local authority or other body asking for or interested in such Commission shall undertake to pay the whole or such portion of the costs thereof as the Premier may determine.
- (2) The tariff for the remuneration, allowances and transport claims of a member or an official of a Commission shall be in accordance with the relevant provisions of the Treasury instructions.

## **16. Application of this Bill to existing Commissions:**

Whenever the Premier has, before the commencement of this Act, appointed a Commission in terms of any other law, for the purposes of investigating any matter, such Commission shall from the date of the commencement of this Act be deemed to have been appointed in terms of this Act.

## **17. Repeal of Laws**

The Commissions of Inquiry Ordinance, 1960 ([Ordinance No. 9 of 1960](#)), is hereby repealed as far as it is applicable in the Province.

## **18. Short title**

This Act shall be called the Mpumalanga Commissions of Inquiry Act, 1998.