

Western Cape, South Africa

## Western Cape Procurement (Business Interests of Employees) Act Act 8 of 2010

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# Western Cape South Africa

## Western Cape Procurement (Business Interests of Employees) Act Act 8 of 2010

*Published in Western Cape Provincial Gazette 6832 on 10 December 2010*

**Assented to on 8 December 2010**

**Not commenced**

*[This is the version of this document from 10 December 2010  
and includes any amendments published up to 12 April 2024.]*

## ACT

**To restrict the business interests of employees of the Provincial Government and of provincial public entities as well as members of the controlling bodies of such entities, in entities conducting business with the Provincial Government and provincial public entities; to provide for the disclosure of such interests; and to provide for matters incidental thereto.**

WHEREAS the provisions of section 217(1) of the [Constitution](#) of the Republic of South Africa, 1996, and section 62(1) of the [Constitution](#) of the Western Cape, 1997, require the Provincial Government and any other organ of state, when it contracts for goods or services, to do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;

AND WHEREAS it is considered necessary in order to impose and regulate a procurement system as required by those provisions to restrict the business interests that employees of the Provincial Government and of provincial public entities and members of the controlling bodies of provincial public entities are allowed to have in entities doing business with the Provincial Government and provincial public entities, and for that purpose to require the disclosure of any such interests,

NOW THEREFORE BE IT ENACTED by the Provincial Parliament of the Western Cape Province, as follows:—

### 1. Definitions

In this Act, unless the context otherwise indicates—

**"accounting authority"**, in relation to a provincial public entity, means the accounting authority referred to in section 49 of the Public Finance Management Act, 1999 ([Act 1 of 1999](#));

**"business interest"** means —

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit,

and includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

**"Cabinet Member"** means the Premier or a Provincial Minister;

**"employee"** means a person employed by the Provincial Government or a provincial public entity, whether permanently or temporarily, including —

- (a) an employee as contemplated in section 8 of the Public Service Act;
- (b) a person appointed in terms of section 12A of the Public Service Act;
- (c) a person transferred or seconded to the Provincial Government or a provincial public entity in terms of section 15 of the Public Service Act; and
- (d) an educator as defined in the Employment of Educators Act, 1998 ([Act 76 of 1998](#)),

and includes a member of the board or other controlling body of a provincial public entity;

**"entity"** means any —

- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or
- (b) sole proprietorship;

**"entity conducting business with the Provincial Government"** means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Provincial Government;

**"family member"** means a person's —

- (a) spouse; or
- (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;

**"intermediary"** means a person through whom an interest is acquired, and includes —

- (a) a person to whom is granted or from whom is received a general power of attorney; and
- (b) a representative or agent;

**"member"**, in relation to a provincial public entity, means a member of the board or other controlling body of the provincial public entity;

**"prescribe"** means prescribe by regulation under [section 8](#);

**"Provincial Government"** means the Provincial Government of the Western Cape, and includes a provincial public entity;

**"provincial public entity"** means a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999;

**"Public Service Act"** means the Public Service Act, 1994 ([Proclamation 103 of 1994](#));

**"responsible Cabinet Member"** means the Cabinet Member responsible for the relevant provincial department or provincial public entity, as the case may be;

**"spouse"** means a person's —

- (a) partner in marriage;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

**"this Act"** includes the regulations made under [section 8](#).

## **2. Disclosure of business interests of employees and family members of employees in entities conducting business with Provincial Government**

- (1) Before the Provincial Government enters into any contract with an entity for the sale, lease or supply of goods or services, the entity must provide an affidavit in the prescribed manner disclosing any business interest that an employee or a family member of an employee has in that entity.
- (2) An employee must disclose in the prescribed manner to the Provincial Government any business interest that the employee or any family member of the employee has in an entity conducting business with the Provincial Government.
- (3) An employee must make a disclosure referred to in subsection (2) forthwith on becoming aware of the business interest concerned, or when it is brought to his or her attention, and thereafter at the prescribed intervals.
- (4) An employee must disclose any business interest referred to in subsection (2) that exists at the commencement of this Act in the prescribed manner within three months after the commencement of this Act.

## **3. Restriction of business interests of employees in entities conducting business with Provincial Government**

- (1) Subject to section 30 of the Public Service Act, section 33 of the Employment of Educators Act, 1998, and subsection (3) of this section, an employee may not have a business interest in any entity conducting business with the Provincial Government if the employee himself or herself or together with one or more —
  - (a) family members of the employee;
  - (b) partners or other business associates of the employee; or
  - (c) other employees,directly or indirectly owns or controls more than five per cent of the shares, stock, membership or other interest of that entity.
- (2) Subsection (1) does not apply in respect of a business interest acquired from a binding contract which was concluded with the Provincial Government before the commencement of this Act, and where the contractual period has not expired.
- (3) The responsible Cabinet Member may, on application in the prescribed manner by an employee, after consultation with the Head of the provincial department concerned and on good cause shown, grant permission for that employee, or any category of employees, to have a business interest exceeding the limit referred to in subsection (1) in an entity that conducts or intends conducting business with the Provincial Government.
- (4) In considering an application contemplated in subsection (3), the responsible Cabinet Member must take into account —
  - (a) the nature of goods or services to be supplied to the Provincial Government by the entity concerned;
  - (b) the nature and extent of the business interest of the employee or employees concerned in that entity;
  - (c) the nature and extent of any adverse financial, operational and other circumstances for the state, the employee or employees concerned or members of the public if the application is not approved; and

- (d) whether the approval of the application will be consistent with —
  - (i) fair, equitable, transparent, competitive and cost effective procurement of goods or services; and
  - (ii) applicable procurement legislation and policy.
- (5) The Provincial Government may not —
  - (a) enter into any contract which is inconsistent with subsection (1); or
  - (b) extend any contract which was concluded before the commencement of this Act and which is inconsistent with subsection (1).

#### 4. Database

The Head of the provincial department responsible for finance must compile and maintain a database of all business interests disclosed in terms of [section 2](#) by employees and by entities conducting business with the Provincial Government.

#### 5. Failure to comply with Act

- (1) Failure by an entity doing business with the Provincial Government to disclose any interest that an employee has in that entity, and of which the entity was aware or should reasonably have been aware when making the affidavit referred to in [section 2](#)(1), is a ground for the Provincial Government, without detracting from any other available remedy, to cancel the contract concerned and claim damages, if any, or to reject the application or tender of that entity, as the case may be.
- (2) In the event of an alleged failure by an employee, excluding a member of a provincial public entity and a Head of a provincial department, to comply with a provision of this Act, the Head of a provincial department or the accounting authority of the provincial public entity concerned, as the case may be, must —
  - (a) investigate the matter or cause the matter to be investigated; and
  - (b) if the evidence gathered in the investigation supports the alleged contravention, institute disciplinary action against the employee.
- (3) In the event of an alleged failure by a Head of a provincial department to comply with a provision of this Act, the Premier must —
  - (a) investigate the matter or cause the matter to be investigated; and
  - (b) if the evidence gathered in the investigation supports the alleged contravention, institute disciplinary action against that Head of a provincial department.
- (4) In the event of an alleged failure by a member of a provincial public entity to comply with a provision of this Act, the responsible Cabinet Member must —
  - (a) investigate the matter or cause the matter to be investigated; and
  - (b) if the evidence gathered in the investigation supports the alleged contravention, take appropriate steps against that member of the provincial public entity.

#### 6. Delegation

- (1) A Cabinet Member may delegate in writing any function assigned to him or her by this Act, excluding the functions referred to in [section 5](#)(3) or (4) or [section 8](#), to the Head of Department or a senior manager of the provincial department concerned, or the accounting authority of the provincial public entity concerned, as the case may be.

- (2) The Head of a provincial department may delegate in writing any function assigned to him or her by or in terms of this Act, to a senior manager in the department.

## **7. Application of other legislation**

This Act does not affect the application of any other legislation that regulates procurement by the Provincial Government or provides for the disclosure of the interests of employees.

## **8. Regulations**

The Provincial Minister responsible for finance may make regulations regarding —

- (a) any matter that may or must be prescribed in terms of this Act;
- (b) the exemption of any entity or category of entities conducting business with the Provincial Government or any employee or category of employees from the application of any provision of [section 2](#); and
- (c) generally, any matter which is necessary or expedient to prescribe in order to achieve the objects of this Act.

## **9. Short title and commencement**

This Act is called the Western Cape Procurement (Business Interests of Employees) Act, 2010, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.