

Western Cape, South Africa

## Western Cape Independent Health Complaints Committee Act, 2014

Act 2 of 2014

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# Western Cape Independent Health Complaints Committee Act, 2014

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# Western Cape South Africa

## Western Cape Independent Health Complaints Committee Act, 2014 Act 2 of 2014

Published in Western Cape Provincial Gazette 7249 on 7 April 2014

**Assented to on 31 March 2014**

**Commenced on 1 August 2014 by Western Cape Independent  
Health Complaints Committee Act, 2014: Commencement**

*[This is the version of this document from 7 April 2014 and includes any amendments published up to 12 April 2024.]*

(Afrikaans text signed by the Premier)

## ACT

**To provide for the establishment of the Independent Health Complaints Committee; to make provision for a system for the referral of complaints to the Committee for consideration; and to provide for matters incidental thereto.**

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

### 1. Definitions

In this Act, unless the context indicates otherwise—

“**Chairperson**” means the chairperson of the Committee designated in terms of section 3(5);

“**Committee**” means the Independent Health Complaints Committee established by section 2;

“**complainant**” means a person or body that lodges a complaint;

“**complaint**” means a complaint by any person or body regarding the rendering of health-care services at a health-care establishment;

“**Department**” means the provincial department responsible for health in the Province;

“**family member**” means a person’s spouse, child, parent, brother or sister, whether the relationship results from birth, marriage or adoption;

“**health-care establishment**” means the whole or part of a public institution or public facility that provides inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitation, palliative, convalescent, preventative or mental health-care services or other health services and that is operated or controlled, by the Department;

“**member**” means a member of the Committee appointed in terms of section 3(1);

“**Minister**” means the Provincial Minister responsible for health in the Province;

“**office bearer**” means an office bearer as defined in section 1 of the Remuneration of Public Office Bearers Act, 1998 (Act 20 of 1998);

“**personal information**” means personal information as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

“**prescribed**” means determined by the Minister by regulation;

“**Province**” means the province of the Western Cape;

“**spouse**” includes life partner;

“**this Act**” includes regulations made under [section 20](#).

## **2. Establishment of Independent Health Complaints Committee**

The Independent Health Complaints Committee is hereby established.

## **3. Appointment of members of Committee**

- (1) Subject to subsection (2), the Minister must appoint three persons as members of the Committee.
- (2) The Minister must appoint the members only after—
  - (a) a notice has been published in the *Provincial Gazette*, and in the media which the Minister regards appropriate, inviting all interested persons to nominate, within the period specified in the notice, candidates who in the opinion of the interested persons are fit to be appointed as members and to state the grounds upon which the opinion rests; and
  - (b) consulting the Head of Department on the suitability of the nominated candidates.
- (3) If the required number of suitable candidates referred to in subsection (1) is not nominated in terms of subsection (2), the Minister must, after consultation with the Head of Department, appoint an appropriate person or persons, as the case may be.
- (4) The appointments to the Committee must be made with racial and gender sensitivity.
- (5) The Minister must designate one of the members as Chairperson of the Committee.

## **4. Eligibility for appointment as member of Committee**

To be eligible for appointment as a member a person must—

- (a) be a citizen of the Republic and be permanently resident in the Province;
- (b) not be disqualified in terms of [section 7](#); and
- (c) possess appropriate knowledge of, or experience in, one or more of the following fields:
  - (i) healthcare;
  - (ii) human rights; or
  - (iii) the public service.

## **5. Term of office and reappointment of members**

- (1) A member—
  - (a) must be appointed for a period of up to three years on a part-time basis; and
  - (b) may be reappointed for a maximum of one term.
- (2) When the term of office of a member expires, that member may remain in office until a successor is appointed, but not for more than six months from the date that his or her term of office has expired.

## **6. Vacancies**

- (1) A vacancy occurs in the Committee if a member—
  - (a) dies;

- (b) resigns from office in terms of [section 8\(1\)](#);
  - (c) whether in the Republic or elsewhere, during his or her term of office, is convicted of—
    - (i) an offence for which the member is sentenced to imprisonment without the option of a fine; or
    - (ii) theft, fraud, forgery, the uttering of a forged document, perjury, any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 ([Act 12 of 2004](#)), or any offence of which dishonesty is an element; or
  - (d) becomes disqualified in terms of [section 7](#).
- (2) The Minister must appoint another person in accordance with [section 3](#) to fill a vacancy whenever it occurs.

## 7. Disqualification from appointment as member

A person is disqualified from being appointed as, or remaining, a member if he or she—

- (a) is in the employ of an organ of state as defined in section 239 of the [Constitution of the Republic of South Africa, 1996](#);
- (b) at any time has been convicted, whether in the Republic or elsewhere, of—
  - (i) an offence for which he or she was sentenced to imprisonment without the option of a fine; or
  - (ii) theft, fraud, forgery, the uttering of a forged document, perjury, any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence of which dishonesty is an element;
- (c) is an unrehabilitated insolvent person;
- (d) is incapacitated by mental illness or mental disability;
- (e) is a political office bearer; or
- (f) whether personally or through his or her family member, partner or associate has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member.

## 8. Resignation and removal from office

- (1) A member may resign from the Committee—
  - (a) by giving one month's written notice to the Minister; or
  - (b) by giving less than one month's written notice with the approval of the Minister.
- (2) The Minister may remove a member from office—
  - (a) if the member becomes disqualified in terms of [section 7](#);
  - (b) if the member has contravened [section 9](#);
  - (c) if the member has been absent from three consecutive meetings of the Committee without the permission of the Chairperson; or
  - (d) on any other reasonable grounds, including misconduct, incapacity or incompetence.

## 9. Declaration of interest

- (1) A member may not attend, vote on or in any other manner participate in proceedings of the Committee when the Committee is considering a complaint if the member—
  - (a) is a family member, partner or business associate of any of the parties involved in the complaint;
  - (b) or his or her family member, partner or business associate has a financial or other interest in the complaint; or
  - (c) has any other interest which precludes him or her from performing his or her functions as a member in a fair, unbiased and proper manner in respect of that complaint.
- (2) If at any stage during the consideration by the Committee of a complaint it appears that a member has or may have any interest as contemplated in subsection (1), the member must immediately fully disclose the nature of that interest and leave the proceedings of the Committee.
- (3) The disclosure in terms of subsection (2) must be recorded in the minutes of the proceedings in question.

## 10. Functions and powers of Committee

The Committee—

- (a) must consider all complaints referred to it by the Minister or Head of Department;
- (b) must make recommendations to the Minister or the Head of Department, as the case may be, regarding such complaints;
- (c) may not consider any complaints referred to it directly by the public;
- (d) may request any of the parties involved in a complaint to meet with the Committee in order to obtain any additional information that may assist in its consideration of the complaint;
- (e) may visit a health establishment in order to verify information provided to the Committee or to obtain any additional information that may assist in its consideration of the complaint; and
- (f) may, subject to [section 18](#) and all relevant laws relating to the protection of personal information, request from the Department and the complainant additional documents and information that may assist the Committee in its consideration of the complaint.

## 11. Scheduling of meetings of Committee

- (1) The Head of Department must determine the time and place for the first meeting of the Committee.
- (2) The Committee must thereafter determine the time and place of meetings.

## 12. Procedure at meetings of Committee

- (1) The procedure at a meeting of the Committee must be determined by the Committee, subject to the directives of the Minister.
- (2) A quorum of at least two members must be present at a meeting when the Committee conducts its business.
- (3) If the Chairperson is absent from a meeting at which a quorum is present, the Head of Department must designate one of the members present to act as the Chairperson at that meeting.
- (4) A decision of the Committee must be by consensus, but in the absence of consensus, a decision of a majority of the members present at the meeting is a decision of the Committee.

- (5) In the event of an equality of votes on any matter, the Chairperson must cast a deciding vote.
- (6) The Committee may, with the approval of the Minister, request or permit any person to participate in a meeting in an advisory capacity.
- (7) The Chairperson must ensure that—
  - (a) a proper record is kept of the attendance and minutes of every meeting; and
  - (b) a copy of the record referred to in paragraph (a) is signed by the Chairperson and sent to the Head of Department if requested by the Head of Department.

### **13. Reports and recommendations on complaints**

- (1) The Committee must, within the prescribed period after the referral of a complaint to it in terms of [section 10\(a\)](#), render a report containing its recommendations to the Minister or the Head of Department, as the case may be.
- (2) The Committee may, on reasonable grounds, request an extension of the period contemplated in subsection (1) from the Minister or the Head of Department, as the case may be.
- (3) The report of the Committee must—
  - (a) contain a factual background of the complaint;
  - (b) contain an evaluation by the Committee of the complaint;
  - (c) contain as annexures copies of all documents relied on by the Committee in its evaluation;
  - (d) recommend to the Minister or Head of Department a resolution of the complaint; and
  - (e) be signed by the Chairperson.

### **14. Notice to complainant**

The Minister or the Head of Department, as the case may be, must within 60 days of receipt of the report referred to in [section 13\(1\)](#), furnish the complainant with a written response.

### **15. Administrative support**

- (1) The Head of Department must provide the Committee with general support and the necessary resources to perform its functions, including—
  - (a) administrative support; and
  - (b) infrastructure support.
- (2) The Head of Department must designate officials in the employ of the Department to assist the Committee.

### **16. Remuneration and allowances**

The members may be paid the remuneration and allowances determined by the Minister in consultation with the Provincial Minister responsible for finance in the Province.

### **17. Reporting**

The Chairperson must report to the Minister on the activities of the Committee—

- (a) at least once every six months; and
- (b) when requested by the Minister.

## 18. Confidentiality and safe keeping of documents and information

- (1) The Committee may, for the purposes of considering a complaint referred to it, obtain copies of any records relating to the complaint that are in the possession of a health-care establishment.
- (2) The Committee—
  - (a) must take all reasonable steps to ensure that all information and records it receives are kept confidential and are secured against unauthorised access; and
  - (b) may not record or deal with any such information or records other than for the purposes of this Act and must record or deal with such information or records in accordance with any law relating to the protection of personal information.

## 19. Limitation of liability of members

A member is not liable for anything done in good faith in the performance of a function in terms of this Act.

## 20. Regulations

- (1) The Minister may make regulations regarding—
  - (a) the procedure to be followed by the Committee when visiting a health establishment;
  - (b) the procedure to be followed by the Committee when requesting additional information from the Department or any person involved in a complaint;
  - (c) the procedure to be followed by the Committee when requesting a person involved in a complaint to meet with it in order to obtain additional information;
  - (d) the timeframes within which the Committee must consider a complaint referred to it; and
  - (e) any other matter which is necessary or expedient to prescribe in order to implement or administer this Act.
- (2) The Minister must make regulations regarding any matter in respect of which this Act requires regulations.

## 21. Short title and commencement

This Act is called the Western Cape Independent Health Complaints Committee Act, 2014, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.