

Western Cape, South Africa

Western Cape Health Facility Boards and Committees Act, 2016

Act 4 of 2016

Legislation as at 5 July 2016

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Western Cape South Africa

Western Cape Health Facility Boards and Committees Act, 2016 Act 4 of 2016

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(English text signed by the Premier)

ACT

To provide for the establishment, functions and procedures of boards established for hospitals and committees established for primary health care facilities; and to provide for matters incidental thereto.

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

1. Definitions

In this Act, unless the context indicates otherwise—

"**auditor**" means a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act 26 of 2005);

"**Board**" means a board established in terms of section 4(1);

"**central hospital**" means a hospital designated as such by the national Minister under the National Health Act;

"**Committee**" means a committee established in terms of section 4(4);

"**Department**" means the provincial department responsible for health matters in the Province;

"**district health council**" means a district health council as defined in section 1 of the Western Cape District Health Councils Act, 2010 (Act 5 of 2010);

"**district health manager**" means a district health manager as defined in section 1 of the Western Cape District Health Councils Act, 2010;

"**existing central-hospital board**" means a board appointed under the Western Cape Health Facility Boards Act for a central hospital and existing immediately before the commencement of this Act;

"**Head of Department**" means the head of the provincial department responsible for health matters in the Province;

"**health facility**" means a hospital or primary health care facility;

"**hospital**" means a building, institution or place designated as a hospital by the Provincial Minister in terms of section 3;

"**member**" means a member of a Board or Committee, as the case may be;

"**National Health Act**" means the National Health Act, 2003 ([Act 61 of 2003](#));

"**national Minister**" means the national Minister responsible for health matters;

"**prescribe**" means prescribe by regulation;

"**primary health care facility**" means a building, institution or place designated as a primary health care facility by the Provincial Minister in terms of [section 3](#);

"**Province**" means the Province of the Western Cape;

"**Provincial Minister**" means the Provincial Minister responsible for health matters in the Province;

"**regulation**" means a regulation made under this Act;

"**representative central-hospital board**" means a board appointed by the 35 national Minister under section 41(4) of the National Health Act;

"**this Act**" includes the regulations;

"**Western Cape Health Facility Boards Act**" means the Western Cape Health Facility Boards Act, 2001 ([Act 7 of 2001](#)).

2. Objects of Act

The objects of this Act are to provide for—

- (a) the establishment of representative and accountable Boards and Committees as statutory bodies;
- (b) responsiveness of the management of health facilities to the community and the needs of patients and their families;
- (c) community support for, and involvement in, health facilities and their programmes;
- (d) a basic set of clearly defined functions for Boards and Committees, which may be incrementally expanded in the public interest as the capacity of a Board or Committee increases; and
- (e) transitional provisions for existing central-hospital boards.

3. Designation of hospital or primary health care facility

- (1) For the purposes of the establishment of a Board or Committee in terms of this Act, the Provincial Minister may designate as a hospital or primary health care facility any building, institution or place where persons receive treatment, diagnostic or therapeutic interventions or other health services.
- (2) The Provincial Minister may so designate as a hospital or primary health care facility a building, institution or place that is administered by a municipality only with the concurrence of—
 - (a) the Provincial Minister responsible for local government; and
 - (b) the municipality concerned.

4. Establishment of Boards and Committees

- (1) The Provincial Minister must establish a Board for each hospital or group of hospitals other than a central hospital or a group of central hospitals.
- (2) Where a Board is established for a group of hospitals, the Provincial Minister must determine the group by having regard to—
 - (a) the geographic distance between the hospitals;
 - (b) the size and distribution of the population served by the hospitals; and

- (c) the service volumes of the hospitals.
- (3) A Board is a juristic person and is capable of suing and being sued and holding property in its own name.
- (4) The Provincial Minister must establish a Committee for—
 - (a) every primary health care facility; or
 - (b) a group of primary health care facilities, determined by the Provincial Minister.
- (5) The criteria and process for the clustering of primary health care facilities in the case of a Committee appointed for a group of primary health care facilities may be prescribed by the Provincial Minister.
- (6) A Committee is not a juristic person and is not capable of suing or being sued or holding property in its own name.

5. Appointment of members of Board

- (1) The Provincial Minister must appoint to a Board not more than 14 members, including—
 - (a) persons representing the community or communities served by the hospital for which the Board is established, nominated in terms of subsection (4);
 - (b) at least one person with technical expertise in business, law, finance or accounting or some other area relevant to the functions of the Board;
 - (c) the head of the hospital concerned or, in the case of a Board established for more than one hospital, at least one of the heads of those hospitals;
 - (d) at least one person representing the clinical staff of the hospital concerned, nominated by the clinical staff of the hospital, but in the case of a Board established for more than one hospital it is not necessary for a person representing the clinical staff of every hospital concerned to be appointed;
 - (e) at least one person representing the non-clinical staff of the hospital concerned, nominated by the non-clinical staff of the hospital, but in the case of a Board established for more than one hospital it is not necessary for a person representing the non-clinical staff of every hospital concerned to be appointed; and
 - (f) in the case of a Board established for one or more hospitals where health professionals are trained, at least one person representing the academic interests of each hospital concerned, nominated by the Vice-Chancellor or Vice-Chancellors of the university or universities concerned.
- (2) In addition to the members appointed in terms of subsection (1) the Provincial Minister may appoint to a Board—
 - (a) a member of the Provincial Parliament, nominated by the parliamentary committee concerned with health matters; and
 - (b) one or more councillors of the municipal council for the municipal area in which the hospital is situated, nominated by the municipal council or a health-related committee of the municipal council.
- (3) The members appointed in terms of subsection (1)(a) must constitute at least fifty per cent of the total number of members of the Board.
- (4) The members referred to in subsection (1)(a) must be nominated by a body that, in the opinion of the Provincial Minister, is sufficiently representative of the interests of the community or communities concerned.

- (5) A body referred to in subsection (4)—
 - (a) may not be a political party;
 - (b) may be, but need not be, a—
 - (i) community health committee or forum;
 - (ii) community development forum;
 - (iii) civic organisation;
 - (iv) welfare organisation;
 - (v) representative organisation of patients who use health services or health facilities;
 - (vi) community-based organisation;
 - (vii) non-governmental organisation; or
 - (viii) representative organisation of children, women, the elderly, persons with disabilities or persons granted asylum.
- (6) The Provincial Minister must prescribe procedures for the invitation of nominations contemplated in subsections (1)(a) and (4).
- (7) Where nominations are required in terms of this section, all nominations received within the prescribed period must be considered by the Provincial Minister before the relevant appointments are made.
- (8) If the Provincial Minister receives no or insufficient nominations required in terms of this section, any suitably qualified person may be appointed a member from the relevant category stipulated in subsection (1) or (2).
- (9) The appointments to the Board must be made with racial and gender sensitivity and sensitivity to the elderly, the youth and persons with disabilities.

6. Appointment of members of Committee

- (1) The Provincial Minister must appoint to a Committee not more than 12 members, including—
 - (a) one or more councillors of the municipal council for the municipal area in which the primary health care facility is situated, nominated by the municipal council or a health-related committee of the municipal council;
 - (b) members of the community or communities served by the primary health care facility for which the Committee is established, nominated in terms of subsection (3); and
 - (c) the head of the primary health care facility concerned or, in the case of a Committee appointed for more than one primary health care facility, a manager designated by the district health manager.
- (2) The members appointed in terms of subsection (1)(b) must constitute at least fifty per cent of the total number of members of the Committee.
- (3) The members referred to in subsection (1)(b) must be nominated by a body that—
 - (a) in the opinion of the Provincial Minister, is sufficiently representative of the interests of the community or communities concerned;
 - (b) is not a political party, but may be, yet need not be, a body referred to in 60 [section 5\(5\)\(b\)](#).
- (4) The Provincial Minister may prescribe procedures for the invitation of nominations contemplated in subsections (1)(b) and (3).

- (5) Where nominations are required in terms of subsection (1)(b) and (3), all nominations received within the prescribed period must be considered by the Provincial Minister before the relevant appointments are made.
- (6) If the Provincial Minister receives no or insufficient nominations required in terms of paragraph (b) of subsection (1), any suitably qualified persons may be appointed as members from the category stipulated in that paragraph.
- (7) The appointments to the Committee must be made with racial and gender sensitivity and sensitivity to the elderly, the youth and persons with disabilities.

7. Eligibility for appointment as a member

- (1) To be eligible for appointment as a member a person must—
 - (a) be a South African citizen;
 - (b) be older than 18 years;
 - (c) not be an unrehabilitated insolvent;
 - (d) not, at any time, have been convicted 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 ([Act 12 of 2004](#)), or any offence of which dishonesty is an element, whether in the Republic or elsewhere if the conduct constituting the offence would be an offence in the Republic;
 - (e) demonstrate commitment to community service;
 - (f) demonstrate support for the mission and values of the health facility concerned; and
 - (g) demonstrate a high level of personal integrity and honesty.

8. Term of office of members

- (1) Members are appointed for a period of three years.
- (2) On the expiry of the term of office of a member, that member may remain in office until a successor has been appointed, but not for longer than six months.
- (3) Subject to subsection (4), a member is eligible for reappointment to a Board or Committee at the expiry of his or her term of office.
- (4) A member, other than a member appointed in terms of section [5](#)(1)(c) or [6](#)(1)(c), may not serve on a Board or Committee for more than two consecutive terms.
- (5) Despite subsection (4), a member who has served for two consecutive terms may be reappointed if, in the opinion of the Provincial Minister, exceptional circumstances exist for reappointment or, in the absence of exceptional circumstances, after an interval of not less than one year.

9. Vacancies

- (1) The chairperson of a Board or Committee must immediately in writing declare an office on the Board or Committee vacant if a member—
 - (a) dies;
 - (b) submits his or her resignation from office in writing to the chairperson;

- (c) is declared insolvent by a court of the Republic;
 - (d) is during his or her term of office convicted of—
 - (i) an offence and 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, whether in the Republic or elsewhere if the conduct constituting the offence would be an offence in the Republic;
 - (e) is absent without leave of the chairperson of the Board or Committee from three consecutive ordinary meetings of the Board or Committee;
 - (f) is suspended or removed from office under [section 24\(12\)\(b\)](#);
 - (g) ceases to hold any office by virtue of which that member was appointed to the Board or Committee; or
 - (h) fails to disclose to the Board or Committee any direct or indirect personal financial interest in a matter before the Board or Committee, and that member is present during, or participates in, the discussion of, or voting on, that matter.
- (2) If a member of a Board or Committee continuously disrupts meetings of the Board or Committee or fails to perform his or her duties in good faith or honestly, the Provincial Minister may initiate an investigation into the matter and, if sufficient grounds are found to exist, remove that member and declare his or her office vacant.
- (3) Within seven days of declaring an office vacant in terms of subsection (1), the chairperson must in writing inform the Provincial Minister of the vacancy.
- (4) On receipt of notice of a vacancy in terms of subsection (3), or on the removal of a member under subsection (2), the Provincial Minister must appoint another person to fill the vacancy for the unexpired period of office of the previous incumbent and, for the purposes of [section 8\(4\)](#), the unexpired period constitutes a term of office.
- (5) For the purposes of an appointment contemplated in subsection (4) the Provincial Minister must apply the same criteria used for the appointment of the vacating member.
- (6) In the event that a Board or a Committee fails to hold four meetings in a calendar year, the Provincial Minister may declare the Board or Committee concerned dysfunctional and appoint a new Board in terms of [section 5](#) or a new Committee in terms of [section 6](#).

10. Duties of Boards

- (1) A Board must, in respect of each hospital for which it is established—
- (a) participate in strategic planning with a view to advising the hospital management;
 - (b) monitor the performance, effectiveness and efficiency of the hospital and measures taken by the hospital management to improve the performance and quality of service of the hospital;
 - (c) take measures to ensure that the needs, concerns and complaints of patients and the community are properly addressed by the hospital management;
 - (d) foster community support for the hospital;
 - (e) encourage volunteers to offer their services in performing general duties for the hospital in accordance with the applicable policy on volunteers;
 - (f) request and review at least once a year the financial statements and annual financial statements of the hospital;
 - (g) raise funds for the functioning of the Board; and

- (h) at reasonable times and in cooperation with the hospital management conduct scheduled visits to the hospital, without impeding its functioning, and provide constructive written feedback on such visits to the management.
- (2) A Board must take receipt of, administer and account for the funds raised by a Committee for which it is designated in terms of [section 18\(6\)](#) for the benefit of the primary health care facility concerned or the functioning of the Committee, in the manner prescribed by the Provincial Minister.

11. Powers of Boards

A Board may, in respect of a hospital for which it is established—

- (a) advise and make recommendations to the Provincial Minister, the hospital management, the Head of Department or the municipality concerned, as the case may be, on any matter relating to the performance of the Board's functions;
- (b) advise and make recommendations to the Provincial Minister or the municipality concerned, as the case may be, on the naming or renaming of the hospital or a part thereof, including a ward or theatre;
- (c) obtain information it requires from the hospital management if the information does not violate the rights of a patient or staff member to privacy and confidentiality;
- (d) request from the hospital management copies of routine progress reports that have been generated;
- (e) conduct surveys, meetings and consultative workshops in the community or communities concerned;
- (f) disseminate information to the community or communities concerned on the mission, vision, values, services, performance, standards, policies, strategies, needs and financial status of the hospital;
- (g) appoint staff on a contractual basis to serve the purposes of the Board;
- (h) donate funds or movable property for the provision, improvement or expansion of services and amenities, or donate funds for the acquisition of movable or immovable assets for the benefit of the hospital, in the manner prescribed by the Provincial Minister; and
- (i) raise and administer trust funds or Board funds for the purposes referred to in paragraph (g) or (h), or to give effect to any other provision of this Act.

12. Duties of Committees

A Committee must, in respect of each primary health care facility for which it is established—

- (a) request feedback on measures taken by the management of the primary health care facility to improve the quality of service at the facility;
- (b) assist the community to effectively communicate its needs, concerns and complaints to the management of the primary health care facility so that the needs, concerns and complaints can be appropriately addressed;
- (c) foster community support for the primary health care facility;
- (d) at reasonable times and in cooperation with the management of the primary health care facility conduct scheduled visits to the facility, without impeding its functioning, and provide constructive written feedback on such visits to the management;
- (e) encourage volunteers to offer their services in performing general duties in respect of the primary health care facility in accordance with the applicable policy on volunteers; and

- (f) provide constructive feedback to the management of the primary health care facility in order to enhance service delivery.

13. Powers of Committees

- (1) A Committee may, in respect of a primary health care facility for which it is established—
 - (a) conduct surveys, meetings and consultative workshops in the community or communities concerned;
 - (b) disseminate information to the community or communities concerned on the mission, vision, values, services, performance, standards, policies, strategies, needs and financial status of the primary health care facility;
 - (c) advise and make recommendations to the Provincial Minister, the management of the primary health care facility, the Head of Department or the municipality concerned, as the case may be, on any matter relating to the performance of the Committee's functions;
 - (d) obtain information it requires from the management of the primary health care facility if the information does not violate the rights of a patient or staff member to privacy and confidentiality;
 - (e) request from the management of the primary health care facility copies of routine progress reports that have been generated; and
 - (f) conduct fundraising activities for the benefit of the primary health care facility and the functioning of the Committee.
- (2) All funds raised by a Committee—
 - (a) must be paid to, administered by, and accounted for by, the Board designated by the Head of Department in terms of [section 18\(6\)](#), in the prescribed manner;
 - (b) may be used only for the benefit of the primary health care facility or facilities concerned or for the functioning of the Committee.
- (3) Moveable property donated to the Committee must be allocated on receipt to the primary health care facility concerned and must be accounted for by that facility in accordance with the asset and inventory management policies applicable to the facility.

14. Alteration of functions of Board or Committee

- (1) Subject to subsection (4) and any other law, the Provincial Minister may in consultation with a Board or Committee authorise that Board or Committee to perform additional duties or exercise additional powers if the Provincial Minister has reason to believe that—
 - (a) the Board or Committee has the capacity to perform those additional duties or exercise those additional powers; and
 - (b) it would be in the public interest for the Board or Committee to do so.
- (2) The Provincial Minister may after consultation with a Board or Committee revoke the authority given to that Board or Committee in terms of subsection (1) to perform an additional duty or exercise an additional power if the Provincial Minister has reason to believe that—
 - (a) the Board or Committee no longer has the capacity to perform that additional duty or exercise that additional power; or
 - (b) it would be in the public interest for the Provincial Minister to do so.
- (3) The Provincial Minister may after consultation with a Board or Committee—
 - (a) exempt that Board or Committee from performing a duty imposed by [section 10](#) or [12](#); or

- (b) revoke a power conferred on the Board or Committee by section 11 or 13.
- (4) When exercising a power contemplated in subsection (1), (2) or (3), the Provincial Minister must act after consultation with the head or heads of the health facility or facilities concerned.

15. Performance of duties and exercise of powers

- (1) In performing its duties or exercising its powers, a Board or Committee must act in accordance with the relevant and applicable laws and policy made by the national, provincial or local government.
- (2) The Head of Department may request a Board or Committee to provide a quarterly report on its activities.
- (3) The chairperson of a Board or Committee must, within two months of the end of each calendar year, submit a written report to the Provincial Minister on the activities of the Board or Committee during that year.

16. Measures for cooperation

- (1) The Provincial Minister may take measures to ensure collaborative working relationships between Boards, Committees and district health councils.
- (2) A Board or Committee must forge strong and cooperative relations with the management of the health facility it serves.
- (3) The head of a health facility must—
 - (a) take measures to assist the Board or Committee concerned to perform its duties and exercise its powers; and
 - (b) forge strong and cooperative relations with the Board or Committee.
- (4) If irreconcilable differences arise between the management of a health facility and the Board or Committee concerned, the Board or Committee or the head of the health facility may request mediation or arbitration by the Head of Department.

17. Chairperson and deputy chairperson

- (1) A Board or Committee must, from among the members referred to in section 5(1)(a), 5(1)(b) or 6(1)(b), as the case may be, elect a chairperson and a deputy chairperson—
 - (a) at its first meeting; and
 - (b) subsequently, whenever either of those offices becomes vacant.
- (2) An employee of the Department may not be the chairperson of a Board.
- (3) The chairperson and the deputy chairperson are elected for the term of office of the member concerned.
- (4) Within 14 days of the election of a chairperson or deputy chairperson in terms of subsection (1), the chairperson must notify the Head of Department in writing of the name and address of the office bearer concerned.
- (5) When the chairperson is absent from a meeting of the Board or Committee or is not available, the deputy chairperson acts as chairperson.
- (6) If both the chairperson and deputy chairperson are absent from a meeting of the Board or Committee, the members present must elect one of their number to act as chairperson for that meeting.

- (7) The chairperson of a Board is the accounting officer for that Board and has the powers and duties prescribed by the Provincial Minister.
- (8) The office of the chairperson or the deputy chairperson becomes vacant if the member concerned—
 - (a) resigns in writing; or
 - (b) is removed by a decision of the Board or Committee concerned.

18. General support

- (1) The hospital for which a Board is established must provide a venue for the Board as well as secretarial, administrative and financial accounting support required by the Board.
- (2) If a Board is established for more than one hospital, a venue and secretarial, administrative and financial accounting support required by the Board must be provided by one or more of the hospitals, as determined by—
 - (a) agreement between the heads of the hospitals concerned; or
 - (b) the Head of Department, in the absence of such agreement.
- (3) Despite subsections (1) and (2), a Board may make alternative arrangements for the provision of a venue as well as secretarial, administrative and financial accounting support from its funds in the manner prescribed by the Provincial Minister.
- (4) The primary health care facility or facilities for which a Committee is established must provide a venue for the Committee and, in so far as is possible, secretarial, administrative and financial accounting support required by the Committee.
- (5) If a Committee is established for more than one primary health care facility, a venue and, in so far as is possible, secretarial, administrative and financial accounting support required by the Committee must be provided by one or more of the primary health care facilities, as determined by—
 - (a) agreement between the heads of the primary health care facilities concerned; or
 - (b) the Head of Department, in the absence of such agreement.
- (6) The Head of Department must designate a Board for every Committee for the purposes of taking receipt of, administering and accounting for the funds raised by a Committee.
- (7) A Board designated in terms of subsection (6) must receive, administer and account for the funds raised by the Committee in the manner prescribed.
- (8) The Department must provide for the induction and training of members newly appointed to a first term of office and must provide additional training if considered necessary and appropriate.

19. Scheduling of meetings

- (1) The Head of Department must determine the time and place for the first meeting of a Board or Committee.
- (2) A Board or Committee must determine the time and place of subsequent ordinary meetings, which must take place at least once every three months and four times in a calendar year.
- (3) The chairperson may at any time call a special meeting, and must do so if requested in writing by at least two members of the Board or Committee, as the case may be, and the chairperson is satisfied that the request is reasonable.
- (4) The chairperson must notify members of the time, place and reason for a special meeting at least three working days in advance of the meeting, except where a shorter notice period is necessitated by the exceptional urgency of the circumstances.

- (5) Notice of all meetings of a Board or Committee must be made public by the Board or Committee concerned.

20. Procedure at meetings

- (1) The procedure at a meeting of a Board or Committee must, in so far as it has not been prescribed, be determined by the Board or Committee.
- (2) A quorum of not less than one half of the members appointed in terms of section 5(1)(a) or 6(1)(b) and one half of the other members appointed in terms of section 5(1) and (2) or 6(1), as the case may be, must be present at a meeting at any time.
- (3) A decision of a Board or Committee should be by consensus, but in the absence of consensus the decision of a majority of the members present at the meeting is the decision of the Board or Committee.
- (4) In the event of an equality of votes on any matter, the chairperson at the meeting has a casting vote and a deliberative vote.
- (5) A Board may request or permit any person to participate in a meeting of the Board in an advisory capacity.
- (6) The chairperson must ensure that—
 - (a) a proper record is kept of attendance at, minutes of, and resolutions adopted at, every meeting; and
 - (b) a copy of a record referred to in paragraph (a), signed by the chairperson, is sent to the Head of Department if the Head of Department requests it.

21. Public attendance at meetings

- (1) Subject to subsection (2), all meetings of a Board or Committee are open to members of the public.
- (2) If a Board or Committee decides on reasonable grounds that members of the public should not be present at a meeting while a particular issue is being discussed, the chairperson must exclude the public from the meeting for the duration of that discussion.
- (3) A Board or Committee may use any reasonable means to inform members of the public of Board or Committee meetings.

22. Executive committee

- (1) A Board or Committee may appoint an executive committee composed of members of the Board or Committee, at least half of whom must be members appointed in terms of [section 5\(1\)\(a\)](#) in the case of a Board and [section 6\(1\)\(b\)](#) in the case of a Committee.
- (2) Subject to the directions of a Board or Committee and subsections (3) and (4), an executive committee may perform all the duties and exercise all the powers of the Board or Committee between meetings of the Board or Committee.
- (3) An executive committee does not have the power to review or alter a decision of the Board or Committee, except in so far as the Board or Committee directs otherwise.
- (4) Any action taken or decision made by an executive committee may at the first meeting of the Board or Committee following that action or decision be reviewed and altered by the Board or Committee, without prejudice to any person.

23. Specialist committees

- (1) A Board or Committee may appoint specialist committees consisting of members of the Board or Committee to perform certain duties or exercise certain powers on behalf of the Board or Committee.
- (2) Where executive power is delegated to a specialist committee, the mandate, terms of reference, procedure and quorums of the specialist committee must be agreed to and recorded by the Board or Committee.
- (3) A specialist committee of a Board may co-opt a person or persons not serving on the Board to serve on the specialist committee in an advisory capacity.
- (4) Any action taken or decision made by a specialist committee may, at the first meeting of the Board or Committee following that action or decision, be reviewed and altered by the Board or Committee, without prejudice to any person.

24. Raising and utilisation of Board funds

- (1) A Board may receive services, funds or property for the purpose of performing its functions.
- (2) A Board may use funds, property or equipment belonging to it for the purpose of performing its functions.
- (3) A Board may establish a trust for the benefit of a hospital served by it and may accept and administer a trust already established for the benefit of a hospital served by it.
- (4) A Board must keep records of all funds received and spent by it and of its assets, liabilities and transactions.
- (5) A Board must annually, within two months of the end of its financial year, submit to the Head of Department its financial statements for that year, compiled according to the reporting framework determined by the Provincial Minister in consultation with the Provincial Minister responsible for finance.
- (6) An auditor appointed by the Board must, subject to subsection (7), audit the records and annual financial statements of the Board and must submit an audit report to the Head of Department and the Board within two months of receipt of the statements referred to in subsection (5).
- (7) The Provincial Minister may, after consultation with the Head of Department, determine that a Board is exempted from being audited.
- (8) The Provincial Minister must consider the following when making a determination in terms of subsection (7):
 - (a) whether the total asset value, including investments of the Board, exceeded R5 000 000 in the previous financial year, with such amount to be adjusted annually on 1 March in accordance with the consumer price index;
 - (b) the financial statements of the Board in the previous financial year; and
 - (c) whether the Board complied with its duties in terms of this Act in the previous financial year.
- (9) Where the Provincial Minister has exempted a Board in terms of subsection (7), the Board must nevertheless submit to the Head of Department financial statements compiled according to the reporting framework determined by the Provincial Minister in consultation with the Provincial Minister responsible for finance.
- (10) The Provincial Minister may require a Board that has been exempted in terms of subsection (7) to be audited as set out in subsection (6).
- (11) The financial year of a Board is a year ending on 31 March.

- (12) If a Board fails to comply with subsection (5) or (9), or in the event of any financial mismanagement by a Board, the Provincial Minister may take reasonable remedial steps that he or she considers necessary, including—
- (a) the appointment of an administrator to administer the financial affairs or operational functions of the Board;
 - (b) the suspension or removal of Board members from office; and
 - (c) the alteration of the duties and powers of the Board, despite [section 14](#).
- (13) Before the Provincial Minister takes any remedial steps contemplated in subsection (12), the Head of Department must issue to the Board a compliance notice and copies thereof to its members setting out—
- (a) a description of the transgression constituting the non-compliance;
 - (b) the steps that the Board is required to take and the period within which those steps must be taken to remedy the transgression; and
 - (c) a notification to the Board that if it fails to take any steps referred to in paragraph (b), the Head of Department must refer the non-compliance to the Provincial Minister to take remedial steps in terms of subsection (12).
- (14) If the Board complies with all the steps referred to in subsection (13)(b) within the period specified in the compliance notice, the Head of Department must notify the Board in writing of its compliance with the terms of the compliance notice.
- (15) If the Board fails to comply with any or all of the steps referred to in subsection (13)(b) within the period specified in the compliance notice—
- (a) the Head of Department must, on expiry of the period specified in the compliance notice, notify the Provincial Minister in writing of the non-compliance or partial compliance by the Board; and
 - (b) the Provincial Minister must within 30 days of receipt of a notification of non-compliance or partial compliance notify the Board in writing of its non-compliance or partial compliance with the terms of the compliance notice.
- (16) The notice contemplated in subsection (15)(b) must state—
- (a) the proposed remedial steps to be taken in terms of subsection (12); and
 - (b) that the Board is entitled to make written representations to the Provincial Minister within 14 days of receipt of the notice regarding the proposed remedial steps.
- (17) On expiry of the 14 days contemplated in subsection (16)(b), whether the Provincial Minister has or has not received any written representations from the Board, the Provincial Minister may, after due consideration of all relevant facts, including the partial compliance of the Board with the terms of the compliance notice and any written representations by the Board, take the proposed remedial steps.
- (18) If an administrator is appointed in terms of subsection (12)(a), he or she must—
- (a) within six months of his or her appointment, furnish the Head of Department with a report on the financial affairs of the Board and any suspected breach of a statutory provision or unlawful act committed by the Board;
 - (b) thereafter, in consultation with the Head of Department, prepare a recovery plan for the Board; and

- (c) upon completion of the implementation of the recovery plan, or failure to implement the recovery plan—
 - (i) if necessary, recommend to the Provincial Minister and Head of Department an extension of the recovery plan for a period not exceeding six months; or
 - (ii) furnish the Provincial Minister and Head of Department with a final report on the financial affairs of the Board and any suspected breach of a statutory provision or unlawful act committed by the Board.
- (19) The Provincial Minister may, after consultation with the Head of Department and on receipt of the final report contemplated in subsection (18)(c)(ii), determine that—
 - (a) the Board is capable of administering its own financial affairs; or
 - (b) the Board is capable of administering its own financial affairs with the assistance of an administrator appointed by the Provincial Minister on such further terms and conditions as determined by the Provincial Minister.
- (20) Before the Provincial Minister makes a determination in terms of subsection (19)(b), he or she must notify the Board in writing of his or her intention to make such a determination.
- (21) The notice contemplated in subsection (20) must state—
 - (a) the determination that the Provincial Minister intends to make; and
 - (b) that the Board is entitled to make written representations to the Provincial Minister within 14 days of receipt of the notice regarding the proposed determination.
- (22) On expiry of the 14 days contemplated in subsection (21)(b), whether the Provincial Minister has or has not received any written representations from the Board, the Provincial Minister may, after due consideration of all relevant facts, including any representations by the Board, make the proposed determination.

25. Travelling and other allowances

- (1) Subject to tariffs set by the Provincial Minister in consultation with the Provincial Minister responsible for finance, a Board may from its funds reimburse a member of the Board appointed in terms of [section 5\(1\)\(a\)](#) and (b), an advisor in terms of [section 20\(5\)](#) or any person co-opted to serve on a specialist committee in terms of [section 23\(3\)](#) for—
 - (a) transport expenses between that member's, advisor's or person's normal place of residence or business and the venue of a meeting of the Board or the specialist committee concerned; and
 - (b) travelling and subsistence expenses incurred as a result of attendance at conferences, seminars or training courses or other business of the Board, but in the case of conferences, seminars and training courses outside the Province, the Provincial Minister's prior written approval must be obtained.
- (2)
 - (a) A Board may not compensate its members for time spent on Board business.
 - (b) Subject to tariffs set by the Provincial Minister in consultation with the Provincial Minister responsible for finance, a Board may from its funds compensate an advisor in terms of [section 20\(5\)](#) or a person co-opted to serve on a specialist committee of the Board in terms of [section 23\(3\)](#) for time spent on Board business.
- (3)
 - (a) A member of a Committee is not entitled to be compensated for time spent on Committee business.
 - (b) Subject to tariffs set by the Provincial Minister in consultation with the Provincial Minister responsible for finance, the Department may from its funds compensate a member of a

Committee appointed in terms of [section 6\(1\)\(b\)](#) for transport expenses incurred as a result of attendance at meetings of the Committee.

- (4) In the event that the Board has insufficient available funds, and subject to tariffs set by the Provincial Minister in consultation with the Provincial Minister responsible for finance, the Department may from its funds reimburse a member of a Board appointed in terms of [sections 5\(1\)\(a\)](#) or (b) for the transport expenses contemplated in subsection (1)(a).

26. Closure of health facility

- (1) In the event of the closure of a health facility for which a Board or Committee has been established, the Head of Department must, at least three months prior to the closure and after consultation with that Board or Committee, instruct the Board or Committee in writing regarding—
- (a) in the case of a Board or Committee established only for that health facility, the intended closure of that facility and the dissolution of the Board or Committee and, in the case of a Board, any trust that may have been established by the Board;
 - (b) in the case of a Board or Committee established for more than one health facility, any intended alteration of its composition necessitated by the closure of that facility; and
 - (c) in the case of a Board established only for that health facility, the disposal of the assets and liabilities of the Board and any trust which may have been established by the Board.
- (2) On the closure of a health facility referred to in subsection (1)(a), the Board or Committee serving that health facility and, in the case of a Board, any trust that may have been established by the Board are dissolved, and the Head of Department must, if necessary, take steps to give effect to the instructions contemplated in subsection (1)(c).

27. 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.

28. Regulations

- (1) Subject to subsection (3), the Provincial Minister must make regulations regarding—
- (a) procedures for the nomination of members for appointment to Boards and Committees;
 - (b) the financial governance of Boards;
 - (c) the manner in which a Board may donate funds or other moveable property for the provision, improvement or expansion of services and amenities, or donate funds for the acquisition of movable or immovable assets for the benefit of the hospital;
 - (d) the powers and duties of the chairperson of a Board or Committee;
 - (e) the manner in which a Board may make arrangements for the provision of a venue, as well as secretarial, administrative and financial accounting support;
 - (f) the manner in which a Committee must pay funds raised for the benefit of the primary health care facility and the functioning of the Committee to the Board designated by the Head of Department in terms of [section 18\(6\)](#);
 - (g) the manner in which a Board designated in terms of [section 18\(6\)](#) must take receipt of, administer and account for the funds raised by a Committee;
 - (h) travelling and other allowances payable in terms of this Act;
 - (i) the establishment of trusts by Boards; and

- (j) the criteria and process for the clustering of primary health care facilities for the purposes of the establishment of a Committee for a group of primary health care facilities.
- (2) Subject to subsection (3), the Provincial Minister may make regulations regarding—
 - (a) procedures for meetings of a Board or Committee; and
 - (b) any other matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.
- (3) In the case of regulations that have financial implications for the state, the Provincial Minister must make the regulations with the concurrence of the Provincial Minister responsible for finance.

29. Delegation

- (1) The Provincial Minister may delegate or assign any of his or her powers or duties in terms of this Act, except the power to make regulations, to the Head of Department.
- (2) The Head of Department may delegate or assign any of his or her powers or duties in terms of this Act to—
 - (a) an employee in the Department; or
 - (b) the holder of a specific office or position in the Department.
- (3) Despite subsection (2), the Head of Department may not delegate a power or assign a duty to a member. 15
- (4) A delegation or assignment referred to in subsection (1) or (2)—
 - (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) may be withdrawn or amended in writing by the Provincial Minister or the Head of Department, as the case may be;
 - (d) may permit the further delegation of that power or further assignment of that duty;
 - (e) does not prevent the Provincial Minister or the Head of Department, as the case may be, from exercising that power or performing that duty; and
 - (f) does not divest the Provincial Minister or the Head of Department, as the case may be, of the responsibility regarding the exercise of the delegated power or the performance of the assigned duty.

30. Transitional provisions in respect of central hospitals

- (1) Despite the repeal of the Western Cape Health Facility Boards Act by this Act, an existing central-hospital board in the Province continues to function in accordance with the provisions of that Act until the national Minister has appointed a representative central-hospital board for the hospital concerned.
- (2) Notwithstanding section 7 of the Western Cape Health Facility Boards Act, when the term of office of a member of an existing central-hospital board lapses prior to the appointment by the national Minister of a representative central-hospital board for the hospital concerned, that member may remain in office until the appointment has been made by the national Minister.
- (3) On the appointment of a representative central-hospital board by the national Minister—
 - (a) the assets and liabilities of the existing central-hospital board vest in the representative central-hospital board, on condition that the assets must be utilised by the representative central-hospital board for the benefit of that board or the central hospital it serves; and

- (b) the Provincial Minister may, after consultation with the existing central-hospital board, make a determination in writing regarding any matter that may be necessary to ensure the effective functioning of the representative central-hospital board.

31. Repeals and savings

- (1) The Western Cape Health Facility Boards Act is repealed.
- (2) Subject to [section 30](#)—
 - (a) a Board established under section 5 of the Western Cape Health Facilities Board Act and in existence immediately before the commencement of this Act continues to function and is regarded as having been established under [section 4\(1\)](#) of this Act;
 - (b) the juristic identity and the rights and obligations of such a Board are not affected by the repeal of that Act; and
 - (c) any person holding an office in accordance with that Act immediately before the commencement of this Act continues in office for the term of that person's appointment and is regarded as duly appointed in terms of this Act for the unexpired portion of his or her term of office.
- (3) Any proclamation, regulation, notice, order, authority, permission or document issued, promulgated, given or granted and any other action taken under the Western Cape Health Facility Boards Act is, if not inconsistent with this Act, deemed to have been issued, promulgated, given, granted or taken under this Act.

32. Short title and commencement

This Act is called the Western Cape Health Facility Boards and Committees Act, 2016, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.