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OFFICE OF THE PRESIDENT

No. 1386.

28 October 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 82 of 1998: Executive Members' Ethics Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1386.

28 Oktober 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 82 van 1998: Wet op die Etiek van Lede van die Uitvoerende Gesag, 1998.

*(English text signed by the President.)
(Assented to 20 October 1998.)*

ACT

To provide for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

- 1.** In this Act, unless the context indicates otherwise—
- (i) “Cabinet” means the Cabinet referred to in section 91(1) of the Constitution; 5
 - (ii)
 - (iii) “Cabinet member” includes the President; (iii)
 - (iv) “code of ethics” means the code of ethics contemplated in section 2; (i)
 - (v) “Executive Council” means a provincial Executive Council contemplated in section 132 of the Constitution; (vii)
 - (vi)
 - (vii) “government”, in relation to—
 - (a) a Cabinet member or Deputy Minister, means the national government; and
 - (b) an MEC, means the provincial government of which that MEC is a member; (vi)
 - (viii) “MEC” means a member of an Executive Council, and includes the Premier;
 - (ix)
 - (x) “Public Protector” means the Public Protector contemplated in section 181 of the Constitution. (v)

Code of ethics

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- 2.** (1) The President must, after consultation with Parliament, by proclamation in the *Gazette*, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities.

- (2) The code of ethics must—

- (a) include provisions requiring Cabinet members, Deputy Ministers and MECs—
 - (i) at all times to act in good faith and in the best interest of good governance; and
 - (ii) to meet all the obligations imposed on them by law; and
- (b) include provisions prohibiting Cabinet members, Deputy Ministers and MECs from—
 - (i) undertaking any other paid work;
 - (ii) acting in a way that is inconsistent with their office;
 - (iii) exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;
 - (iv) using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person; and
 - (v) acting in a way that may compromise the credibility or integrity of their office or of the government.

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*(Engelse teks deur die President geteken.)
(Goedgekeur op 20 Oktober 1998.)*

WET

Om voorsiening te maak vir 'n etiese kode wat die optrede van lede van die Kabinet, Adjunkministers en lede van provinsiale Uitvoerende Rade, reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid Afrika,
soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- 5 (i) "etiese kode" die etiese kode in artikel 2 beoog; (iii)
 - (ii) "Kabinet" die Kabinet in artikel 91(1) van die Grondwet bedoel; (i)
 - (iii) "lid van die Kabinet" ook die President; (ii)
 - (iv) "LUR" 'n lid van die Uitvoerende Raad, en ook die Premier; (vi)
 - (v) "Openbare Beskermer" die Openbare Beskermer in artikel 181 van die
 - 10 Grondwet beoog; (vii)
 - (vi) "regering", met betrekking tot—
 - (a) 'n lid van die Kabinet of Adjunkminister, die nasionale regering; en
 - (b) 'n LUR, die provinsiale regering waarvan daardie LUR 'n lid is; (v)
 - (vii) "Uitvoerende Raad" 'n provinsiale Uitvoerende Raad in artikel 132 van die
 - 15 Grondwet beoog. (iv)

Etiese kode

2. (1) Die President moet, na oorlegpleging met die Parlement, 'n etiese kode by proklamasie in die *Staatskoerant* publiseer wat standaarde en reëls voorskryf wat daarop gemik is om oop, demokratiese en verantwoordingspligtige regering te bevorder, en waaraan lede van die Kabinet, Adjunkministers en LUR'e moet voldoen by die nakoming van hulle amptelike verantwoordelikhede.
- (2) Die etiese kode moet—
- (a) bepalings insluit wat van lede van die Kabinet, Adjunkministers en LUR'e vereis om—
 - 25 (i) te alle tye ter goeder trou en in die beste belang van goeie landsbestuur te handel; en
 - (ii) al die verpligte wat by wet aan hulle opgelê word, na te kom; en
 - (b) bepalings insluit wat lede van die Kabinet, Adjunkministers en LUR'e verbied om—
 - 30 (i) enige ander betaalde werk te onderneem;
 - (ii) op enige wyse op te tree wat met hul amp onbestaanbaar is;
 - (iii) hulself bloot te stel aan enige omstandighede wat die risiko inhoud van 'n botsing tussen hul amptelike verantwoordelikhede en hul private belange;
 - 35 (iv) hul posisie of enige inligting aan hulle toevertrou, te gebruik om hulself te verryk of enige ander persoon onbehoorlik te bevoordeel; en
 - (v) op 'n wyse op te tree wat die geloofwaardigheid of integriteit van hul amp of van die regering kan benadeel.

- (c) require Cabinet members and Deputy Ministers to disclose to an official in the office of the President designated for this purpose, and MECs to disclose to an official in the office of the Premier concerned designated for this purpose—
 (i) all their financial interests when assuming office; and
 (ii) any financial interests acquired after their assumption of office, including any gifts, sponsored foreign travel, pensions, hospitality and other benefits of a material nature received by them or by such persons having a family or other relationship with them as may be determined in the code of ethics; and
 (d) prescribe that the financial interests to be disclosed in terms of paragraph (c) must at least include the information, and be under the same conditions of public access thereto, as is required by members of the National Assembly as determined by that House from time to time, but may prescribe the disclosure of additional information.
- (3) The code of ethics may prescribe any matter that may be necessary for the effective implementation of the code of ethics.

Public Protector to investigate breaches

3. (1) The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4.
- (2) The Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint—
 (a) to the President, if the complaint is against a Cabinet member, Premier or Deputy Minister; and
 (b) to the Premier of the province concerned, if the complaint is against an MEC.
- (3) If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed.
- (4) When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994 (Act No. 23 of 1994).
- (5) (a) The President must within a reasonable time, but not later than 14 days after receiving a report on a Cabinet member or Deputy Minister referred to in subsection 2(a), submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.
 (b) The President must within a reasonable time, but not later than 14 days after receiving a report on a Premier referred to in subsection (2)(a), submit a copy of the report and any comments thereon to the National Council of Provinces.
- (6) The Premier must within a reasonable time, but not later than 14 days after receiving a report referred to in subsection 2(b), submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the provincial legislature.

Complaints

4. (1) The Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by—
 (a) the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister; or
 (b) the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.
- (2) The complaint must be in writing and must contain—
 (a) the name and address of the complainant;
 (b) full particulars of the alleged conduct of the Cabinet member, Deputy Minister or MEC; and
 (c) such other information as may be required by the Public Protector or prescribed in the code of ethics.

- (c) van lede van die Kabinet en Adjunkministers vereis om aan 'n beampete in die Kantoor van die President wat vir dié doel aangewys is, en van LUR'e om aan 'n beampete in die kantoor van die betrokke Premier wat vir dié doel aangewys is—
- 5 (i) al hulle finansiële belangte by ampsaanvaarding te openbaar; en
(ii) enige finansiële belangte wat na hulle ampsaanvaarding verkry word, met inbegrip van enige geskenke, geborgde buitelandse reise, pensioene, gasvryheids- en ander voordele van 'n tasbare aard wat deur hulle, of deur persone wat 'n familie- of ander verhouding met hulle het en wat in die etiese kode bepaal word, te openbaar; en
- 10 (d) voorskryf dat die finansiële belangte wat ingevolge paragraaf (c) geopenbaar moet word ten minste die inligting moet insluit, en onder dieselfde voorwaardes rakende openbare insae daarvan moet wees, as wat deur lede van die Nasionale Vergadering soos van tyd tot tyd deur daardie Huis bepaal, vereis word, maar kan die openbaarmaking van bykomende inligting voorskryf.
- 15 (3) Die etiese kode kan enige aangeleenthed voorskryf wat nodig is vir die doeltreffende instelling van die etiese kode.

Openbare Beskermer moet verbrekings ondersoek

3. (1) Die Openbare Beskermer moet by ontvangs van 'n klagte in artikel 4 beoog enige beweerde verbreking van die etiese kode ondersoek.
- (2) Die Openbare Beskermer moet 'n verslag oor die beweerde verbreking van die etiese kode binne 30 dae na ontvangs van die klagte—
- 20 (a) aan die President voorlê, indien die klagte teen 'n lid van die Kabinet, Premier of Adjunkminister is; en
(b) aan die Premier van die betrokke provinsie voorlê, indien die klagte teen 'n LUR is.
- (3) Indien die Openbare Beskermer aan die einde van die tydperk in subartikel (2) bedoel, verslag doen dat die ondersoek nog nie voltooi is nie, moet die Openbare Beskermer 'n ander verslag voorlê wanneer die ondersoek voltooi word.
- 30 (4) Wanneer 'n ondersoek ingevolge hierdie artikel gedoen word, het die Openbare Beskermer al die bevoeghede wat in die Openbare Beskermer ingevolge die Wet op die Openbare Beskermer, 1994 (Wet No. 23 van 1994), vestig.
- (5) (a) Die President moet binne 'n redelike tyd, maar nie later nie as 14 dae nadat die verslag oor 'n lid van die Kabinet of Adjunkminister bedoel in subartikel (2)(a) ontvang is, 'n afskrif daarvan en enige kommentaar daarop, tesame met 'n verslag oor enige stappe wat met betrekking daartoe gedoen is of gedoen staan te word, aan die Nasionale Vergadering voorlê.
- (b) Die President moet binne 'n redelike tyd, maar nie later nie as 14 dae nadat die verslag oor 'n Premier bedoel in subartikel (2)(a) ontvang is, 'n afskrif daarvan en enige kommentaar daarop aan die Nasionale Raad van Provincies voorlê.
- 40 (6) Die Premier moet binne 'n redelike tyd, maar nie later nie as 14 dae nadat die verslag bedoel in subartikel (2)(b) ontvang is, 'n afskrif daarvan en enige kommentaar daarop, tesame met 'n verslag oor enige stappe wat met betrekking daartoe gedoen is of gedoen staan te word, aan die provinsiale wetgewer voorlê.

45 Klagtes

4. (1) Die Openbare Beskermer moet, ooreenkomsdig artikel 3, 'n beweerde verbreking van die etiese kode ondersoek by ontvangs van 'n klagte vanaf—
- (a) die President, 'n lid van die Nasionale Vergadering of 'n vaste afgevaardigde van die Nasionale Raad van Provincies, indien die klagte teen 'n lid van die Kabinet of Adjunkminister is; of
(b) die Premier of 'n lid van die provinsiale wetgewer van 'n provinsie, indien die klagte teen 'n LUR van die provinsie is.
- (2) Die klagte moet skriftelik wees en moet—
- 50 (a) die naam en adres van die klaer bevat;
(b) volle besonderhede van die beweerde optrede van die lid van die Kabinet, Adjunkminister of LUR bevat; en
(c) die ander inligting wat die Openbare Beskermer vereis of wat in die etiese kode voorgeskryf word, bevat.

(3) Nothing in this section may prevent the Public Protector from investigating any complaint by a member of the public in accordance with the Public Protector Act, 1994 (Act No. 23 of 1994).

Appointment and dismissal of Cabinet members, Deputy Ministers and MECs not affected

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5. Nothing in this Act may prevent or delay the appointment or the termination of the appointment of any Cabinet member, Deputy Minister or MEC or the amendment of any determination or allocation of a portfolio in terms of the Constitution.

Criminal prosecutions not affected

6. Nothing in this Act may prevent or delay the prosecution of a Cabinet member, Deputy Minister or MEC in a court.

Short title

7. This Act is called the Executive Members' Ethics Act, 1998.

(3) Niks in hierdie artikel verhoed die Openbare Beskermer om 'n klagte deur 'n lid van die publiek ooreenkomstig die Wet op die Openbare Beskermer, 1994 (Wet No. 23 van 1994), te ondersoek nie.

Aanstel en ontslaan van lede van Kabinet, Adjunkministers en LUR'e nie geraak

5 5. Niks in hierdie Wet verhoed of vertraag die aanstelling of beëindiging van die aanstelling van 'n lid van die Kabinet, Adjunkminister of LUR of die wysiging van 'n bepaling of toekenning van 'n portefeuilje ingevolge die Grondwet nie.

Strafregtelike vervolgings nie geraak

6. Niks in hierdie Wet verhoed of vertraag die vervolging van 'n lid van die Kabinet, 10 Adjunkminister of LUR in 'n hof nie.

Kort titel

7. Hierdie Wet heet die Wet op die Etiek van Lede van die Uitvoerende Gesag, 1998.

