



Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

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INHOUD

IZIQLATHO

(\*Copies are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)

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(\*Iikopi zifumaneka kwiGumbi M21, iSakhiwo seNdlu yoWiso-mthetho yePhondo, 7 Wale Street, eKapa 8001.)

PROVINCIAL NOTICE

PROVINSIALE KENNISGEWING

ISAZISO SEPHONDO

The following Bill is hereby published for comment:

Die volgende Wetsontwerp word hiermee vir kommentaar gepubliseer:

Lo Mthetho uSayilwayo ulandelayo ngoku upapashelwa ukuba kuphawulwe:

Western Cape Monitoring and Support of Municipalities Amendment Bill [B 8–2023]

Wes-Kaapse Wysigingswetsontwerp op Monitering en Ondersteuning van Munisipaliteite [W 8–2023]

UMthetho oSayilwayo woLungiso woBekoliso neNkxaso kooMasipala weNtshona Koloni [B 8–2023]

P.N. 118/2024 22 November 2024

P.K. 118/2024 22 November 2024

I.S. 118/2024 22 Novemba 2024

Any person or organisation wishing to submit comment on the said Bill may submit to the standing committee to which the Bill has been referred—

Enige persoon of organisasie wat kommentaar oor hierdie Wetsontwerp wil indien, mag by die staande komitee na wie die Wetsontwerp verwys is, indien—

Nawuphi na umntu okanye umbutho onqwenela ukungenisa uphawulo kulo Mthetho uSayilwayo angalungenisa kwikomiti esisigxina apho lo Mthetho uSayilwayo uthunyelwe khona—

- (a) comments on the Bill in writing, for the attention of that committee; or  
(b) an application for that committee's leave to address it on the Bill.

- (a) skriftelike kommentaar oor die Wetsontwerp vir die aandag van daardie komitee; of  
(b) 'n aansoek om verlof van daardie komitee om dit oor die Wetsontwerp toe te spreek.

- (a) iintetha ngoMthetho oSayilwayo ngembalelwano, ziye ngqo kula komiti; okanye  
(b) isicelo sekhefu lalo komiti ukuba ihoyane naso kuMthetho oSayilwayo.

Any communication regarding (a) or (b) above must be submitted before or on 17 January 2025—

Enige kommunikasie oor (a) of (b) hier bo moet voor of op 17 Januarie 2025 ingedien word—

Naluphi na unxibelwano malunga no (a) okanye u (b) ngentla apha malungeniswe phambi okanye ngowe-17 Januwari 2025—

- (i) by post to—  
Standing Committee on Local Government,  
Environmental Affairs and Development  
Planning  
Western Cape Provincial Parliament  
(Attention: Mr J Coetzee)  
PO Box 648  
Cape Town 8000

- (i) per pos aan—  
Staaende Komitee oor Plaaslike Regering,  
Omgewingsake en Ontwikkelingsbeplanning  
Wes-Kaapse Provinsiale Parlement  
(Aandag: Mnr J Coetzee)  
Posbus 648  
Kaapstad 8000

- (i) ngeposi luye—  
IKomiti eSisigxina kuRhulumente woMmandla,  
iMicimbi yezokusiNgqongileyo noCwangciso  
loPhuhliso  
IPalamente yePhondo leNtshona Koloni  
(Luye ngqo ku: Mr J Coetzee)  
PO Box 648  
eKapa 8000

- (ii) by email to—  
jcoetzee@wcpp.gov.za

- (ii) per e-pos aan—  
jcoetzee@wcpp.gov.za

- (ii) nge-imeyile ku—  
jcoetzee@wcpp.gov.za

R Adams  
Secretary to the Provincial Parliament

R Adams  
Sekretaris van die Provinsiale Parlement

R Adams  
UNobhala wePalamente yePhondo

**GENERAL EXPLANATORY NOTE:**

- [                    ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

To amend the Western Cape Monitoring and Support of Municipalities Act, 2014 (Act 4 of 2014), so as to insert certain definitions; to provide for the Provincial Minister to require any municipality or category of municipality by notice in the *Provincial Gazette* to submit information to a specified provincial organ of state; to provide for access to records of a municipality during an assessment or an investigation by certain provincial functionaries; to provide for the designation of support officers to municipalities; to provide for the designation of a provincial support officer; to amend the provisions that provide for cooperation between a municipality and the Department; to provide for procedures for the proactive monitoring of municipalities; to provide for procedures for the inspection, securing and copying of records in specified circumstances; to provide for the Provincial Minister to direct a municipal council to conduct a preliminary assessment on receipt of certain allegations; to authorise the Provincial Minister to await the outcome of investigations by other organs of state prior to taking action under section 106 of the Municipal Systems Act or this Act; to amend the requirements relating to the assessment to be made by the Provincial Minister before invoking section 106(1) of the Municipal Systems Act; to amend the procedures when invoking that section; to delete certain reporting requirements; to provide for matters on which the Provincial Minister may make regulations; to introduce further offences; and to provide for incidental matters.

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

**Amendment of section 1 of Act 4 of 2014**

1. Section 1 of the Western Cape Monitoring and Support of Municipalities Act, 2014 (Act 4 of 2014) (the principal Act), is amended—

- (a) by the insertion before the definition of “Constitution” of the following definition:

“ **‘commissioner of oaths’** means a commissioner of oaths appointed under section 5 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963), or the holder of an office designated by the minister responsible for justice under section 6 of that Act;”

- (b) by the insertion after the definition of “investigator” of the following definitions:

“ **‘local government support officer’** means a person designated under section 2B;

**‘ministerial support officer’** means an independent person or an official of the Provincial Government, a provincial public entity or a municipal-

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- ity in the Province, designated in terms of section 4A to perform the functions contemplated in that section;”;
- (c) by the insertion after the definition of “municipality” of the following definitions:
    - “**‘personal information’** means personal information as defined in section 1 of the Protection of Personal Information Act, 2013 (Act 4 of 2013); **‘political office-bearer’** means a political office-bearer as defined in section 1 of the Municipal Systems Act;”;
  - (d) by the insertion after the definition of “Provincial Minister” of the following definitions:
    - “**‘provincial support officer’** means an independent person or an official of the Provincial Government, a provincial public entity or a municipality in the Province, designated to perform the functions contemplated in section 3A;
    - ‘record’** means recorded information, regardless of form or medium, including a file, document, book or other written or electronic record;”;
    - and
  - (e) by the insertion after the definition of “regulation” of the following definitions:
    - “**‘Special Investigating Unit’** means the Special Investigating Unit established under section 2(a) of the Special Investigation Units and Special Tribunals Act, 1996 (Act 74 of 1996), or any successor in law;
    - ‘staff member’**, in relation to a municipality, means an employee of the municipality, and includes the municipal manager;”.

**Amendment of section 2 of Act 4 of 2014**

2. Section 2 of the principal Act is amended by the addition of the following subsections, the existing section becoming subsection (1):

- “(2) The Provincial Minister may by notice in the *Provincial Gazette* require any municipality, or any category or type of municipality specified in the notice, to submit to a specified provincial organ of state such information as may be required in the notice, either at regular intervals or within a specified period.
- (3) When exercising his or her powers in terms of subsection (2), the Provincial Minister—
  - (a) must rely as far as possible on the relevant established statutory reports that are submitted by municipalities in terms of any law; and
  - (b) may make reasonable requests to municipalities for additional information after taking into account—
    - (i) the administrative burden on municipalities to furnish the information;
    - (ii) the cost involved; and
    - (iii) existing mechanisms, systems and processes for performance monitoring in the municipality.”.

**Insertion of sections 2A and 2B in Act 4 of 2014**

3. The following sections are inserted in the principal Act after section 2:

**“Access to records of municipalities**

**2A.** For the purposes of monitoring, assessing or investigating a municipality in terms of this Act, a municipality or any municipal entity under the sole or shared control of the municipality must provide the provincial executive, Provincial Minister, ministerial support officer, provincial support officer or officials of the Department, upon request by any of these persons, with access to such records as may be necessary for such monitoring, assessment or investigation.

### Designation of local government support officers

**2B.** The Provincial Minister may designate one or more—

- (a) officials of the Provincial Government;
- (b) representatives of a provincial public entity;
- (c) staff members of a municipality in the Province, subject to the concurrence of the municipal manager;
- (d) independent persons,

as a local government support officer to provide support to a municipality as contemplated in section 154(1) and section 155(6) of the Constitution.”.

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### Amendment of section 3 of Act 4 of 2014

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4. Section 3 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) **[A]** The municipal council, speaker, mayor or municipal manager of a municipality may request the Provincial Minister or the head of any provincial department to assist **[the municipality]** in performing **[its]** their respective functions generally or to deal with a specific matter related to their respective functions.”; and

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(b) by the substitution for subsection (2) of the following subsection:

“(2) When such a request is made[—],

**[(a) the Department or the other relevant provincial department must cooperate with the municipality and, as far as is reasonably possible, provide the assistance requested; and**

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**[(b)]** the Department, or the other relevant provincial department, and the municipality must cooperate with each other and coordinate their actions as far as is reasonably possible.”.

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### Insertion of section 3A in Act 4 of 2014

5. The following section is inserted after section 3 of the principal Act:

#### “Proactive monitoring

**3A.** (1) In order to monitor and support municipalities proactively, the Provincial Minister may, in respect of a municipality, designate a provincial support officer to—

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(a) determine compliance by a municipality with applicable statutory obligations;

(b) assess implementation by the municipality of applicable policies, standard operating procedures and practice notes;

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(c) identify risks and suggest improvements to procedures and processes in order to prevent fraud, corruption, maladministration and malpractice; and

(d) assist proactively with the detection of fraud, corruption, maladministration or malpractice in a municipality.

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(2) If the Provincial Minister designates a provincial support officer in terms of subsection (1), the Provincial Minister must in writing determine the scope of the monitoring and support to be provided and the other terms of reference for the designation.

(3) The provincial support officer must provide the Provincial Minister with—

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(a) a report on the findings of the monitoring and support and an analysis contemplated in subsection (1), including the reasons for those findings; and

(b) his or her recommendations relating to the findings.

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(4) The Provincial Minister must provide a copy of the report and recommendations of the provincial support officer to the municipality concerned.”.

**Amendment of section 4 of Act 4 of 2014**

6. Section 4 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) Practice notes issued in terms of subsection (1) have the status of non-binding guidelines.”.

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**Insertion of sections 4A, 4B and 4C in Act 4 of 2014**

7. The following sections are inserted after section 4 of the principal Act:

**“Inspection, securing and copying of records**

**4A.** (1) If the Provincial Minister, on receipt of information of a suspected failure by a municipality to fulfil a statutory obligation, or of maladministration, fraud, corruption or other serious malpractice has reason to believe that a record relating to the information received will be concealed or destroyed if not secured as a matter of priority, he or she may, without prior notice to the municipality, designate a ministerial support officer to travel to the municipality and inspect, secure and copy a record relating to the received information in the manner contemplated in subsection (5), read with section 7A.

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(2) In determining for the purposes of subsection (1) whether the inspection, securing and copying of a record are required, the Provincial Minister must take into account all relevant factors, including, if relevant—

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- (a) the identity of the whistle-blower;
- (b) the seriousness of the alleged infringement;
- (c) whether the infringement is allegedly continuing or likely to occur in the future;
- (d) the persons against whom the allegations are made; and
- (e) the public interest.

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(3) If the Provincial Minister designates a ministerial support officer in terms of subsection (1), the Provincial Minister must in writing determine the scope and the other terms of reference of the designation.

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(4) Subject to subsection (5) and section 7A, the ministerial support officer concerned has, at any reasonable time—

- (a) full and unrestricted access to any record of the municipality; and
- (b) the right to question any staff member or political office-bearer of the municipality,

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if he or she reasonably suspects that the record, staff member or political office-bearer concerned can provide or has access to information that has a bearing on the matter contemplated in subsection (1).

(5) Subject to section 7A, the ministerial support officer may—

- (a) enter any property or premises of or under the control of the municipality where he or she reasonably suspects a record is kept that may have a bearing on a matter contemplated in subsection (1);
- (b) in the manner set out in section 7(4)(d), direct any person he or she reasonably suspects may have a record in his or her possession or under his or her control and that has a bearing on a matter contemplated in subsection (1) to produce, or to deliver at a specified place and time and in a specified form, any such record;
- (c) inspect any such record and question any person who may have knowledge of a matter contemplated in subsection (1) about any such record; or
- (d) copy, or make duplicates from, any such record at the expense of the municipality or remove such record, including any electronic device, to make copies or duplicates, provided that the record or electronic device is returned to the municipality without unreasonable delay thereafter.

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### Preliminary assessment

**4B.** (1) The Provincial Minister may, on receipt of allegations that a municipality in the Province cannot or does not fulfil a statutory obligation binding on that municipality, or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the Province, which he or she is of the opinion are not frivolous, vexatious, speculative or obviously unfounded, direct the municipal council of the municipality to conduct a preliminary assessment of the allegations.

(2) If the Provincial Minister directs the municipal council to conduct a preliminary assessment under subsection (1), the Provincial Minister may require that a preliminary assessment report on behalf of the municipality be provided to him or her before or on a specified date stipulating the findings and, if applicable, the steps that have been taken or will be taken by the municipality concerned to address the matter contemplated in subsection (1).

### Duplication of assessments and investigations

**4C.** If the Provincial Minister is of the opinion that it is more appropriate for an allegation to be investigated by the South African Police Service, an institution contemplated in Chapter 9 of the Constitution, the Special Investigating Unit or another organ of state, he or she may—

- (a) refer the allegation to the body concerned; or
- (b) await the outcome of such investigation before taking action in terms of section 106 of the Municipal Systems Act or this Act.”

### Amendment of section 5 of Act 4 of 2014

8. Section 5 of the principal Act is substituted by the following section:

#### “Assessment before invoking section 106(1) of Municipal Systems Act

**5.** The Provincial Minister must, before taking action under section 106(1) of the Municipal Systems Act[—],

- [(a) inform the municipality concerned in writing of relevant information received by the Provincial Minister and invite the municipality to furnish the Provincial Minister with written comment by a date determined by the Provincial Minister; and**
- [(b)] objectively assess all relevant information at the Provincial Minister’s disposal, [taking into account, among other matters] which may include—**
  - (i) the manner in which the information was received;
  - (ii) **[the] if applicable, any comments[, if any,] received from the municipality;**
  - (iii) whether the information indicates that the municipality cannot or does not fulfil a statutory obligation binding on the municipality and, if so, whether or not it is due to incapacity;
  - (iv) whether the information indicates that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality;
  - (v) the areas of performance of the municipality that may be affected if action is not taken in accordance with section 106(1) of the Municipal Systems Act;
  - (vi) whether the municipality previously requested assistance from the Provincial Minister, or the head of any provincial department, to deal with the matter concerned or a related matter;

- (vii) whether the Provincial Minister, the Department or another provincial department has previously provided assistance to the municipality; **[and]**
- (viii) if applicable, the extent to which the municipality implements relevant practice notes and complies with the essential national standards and minimum standards established in terms of section 108(1) of the Municipal Systems Act[.]; and 5
- (ix) any directives with which the municipal council has failed to comply.”.

#### **Amendment of section 6 of Act 4 of 2014** 10

##### **9. Section 6 of the principal Act is amended—**

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
  - “(1) If the Provincial Minister has reason to believe, based on the assessment contemplated in section 5(b), that a municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister must **[in writing inform the municipality of his or her view and the reasons for that view and]**, in accordance with section 106(1) of the Municipal Systems Act-”; 15 20
- (b) by the substitution for subsection (2) of the following subsection:
  - “(2)(a) If the Provincial Minister, after considering **[any]** the information, if any, received in response to a notice referred to in subsection (1)(a), is satisfied that the municipality cannot fulfil a statutory obligation as a result of incapacity, the Provincial Minister **[must]** may determine appropriate steps, in cooperation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards. 25
  - (b) The Provincial Minister is not precluded by acting under subsection (1)(a) or paragraph (a) of this subsection from designating, if considered necessary, a person or persons to investigate the matter as contemplated in section 7.”; 30
- (c) by the deletion of subsection (3); and
- (d) by the addition after subsection (3) of the following subsection:
  - “(4) If the Provincial Minister has reason to believe, based on the assessment contemplated in section 5, that a municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, but does not consider it necessary to designate a person or persons to investigate the matter, he or she may direct the municipality to prepare a report stipulating the steps that have been taken or will be taken by the municipality to address the matter.”. 35 40

#### **Amendment of section 7 of Act 4 of 2014**

##### **10. Section 7 of the principal Act is amended—**

- (a) by the substitution for subsection (2) of the following subsection: 45
  - “The Provincial Minister must consider the nature and seriousness of the matter and the availability of the requisite expertise in order to determine which of the investigation options referred to in subsection (1) is to be exercised.”;
- (b) by the deletion of subsection (3); 50
- (c) by the substitution for subsection (4) of the following subsection:
  - “(4)(a) If the Provincial Minister designates an investigator in terms of subsection (1)(a), the Provincial Minister must in writing determine the scope of the matter to be investigated and the other terms of reference of the investigator. 55

- (b) The investigator may—
- (i) determine the format and procedure to be followed in conducting the investigation with due regard to the circumstances of the matter;
  - (ii) determine who may be present and who may not be present at any proceedings pertaining to the investigation, having regard to the nature of the investigation; 5
  - (iii) direct any person whom the investigator reasonably suspects may have information that has a bearing on the investigation to produce, or to deliver at a specified place and time and in a specified form, any record in the possession of that person or under his or her control that has a bearing on the matter being investigated; 10
  - (iv) inspect any such record and question any person who may have knowledge of a matter that has a bearing on the investigation about any such record; 15
  - (v) copy or make duplicates from any such record, at the expense of the municipality, or remove such record, including any electronic device, to make copies or duplicates, provided that the record or electronic device is returned to the municipality without unreasonable delay thereafter; 20
  - (vi) direct any person whom the investigator reasonably suspects may have information that has a bearing on the investigation to disclose, either orally or in writing, any information that may be relevant to the investigation, and question any person about such information. 25
- (c) Subject to section 7A(4), the investigator may, for the purposes of paragraphs (b) and (g), enter any property or premises of or under the control of a municipality where he or she reasonably suspects a record is kept that may have a bearing on the investigation. 30
- (d) A direction by an investigator contemplated in subparagraphs (iii) and (vi) of paragraph (b) must be by way of a subpoena—
- (i) signed by the investigator; and
  - (ii) served on the person concerned by—
    - (aa) delivery to the person concerned by the investigator or person authorised to effect delivery by the investigator; 35
    - (bb) sending it by registered mail to that person’s business, work or residential address; or
    - (cc) means of a data message contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address. 40
- (e) An investigator who is a commissioner of oaths may, for the purposes of subparagraph (iv) of paragraph (b), require a person to make an oral or written declaration under oath or affirmation. 45
- (f) The municipality and any person referred to in subparagraphs (iii), (iv) and (vi) of paragraph (b) must cooperate with the investigator and provide all reasonable assistance requested by the investigator for the purposes of the investigation.
- (g) For the purposes of this subsection and subject to section 7A, the investigator has full and unrestricted access, at all reasonable times, to— 50
- (i) any record of the municipality; and
  - (ii) any staff member or political office-bearer of the municipality, if he or she reasonably suspects that the record, staff member or political office-bearer concerned can provide or has access to information that has a bearing on the investigation. 55
- (h) If it appears to the investigator during the course of the investigation that any person is being implicated in the matter being investigated and that such implication may be detrimental to that person or that an adverse recommendation pertaining to that person may result, the investigator must afford that person an opportunity to be heard in any manner that may be expedient under the circumstances. 60



(i) No person may without the permission of the investigator disclose to an unauthorised person the contents of any document pertaining to an investigation submitted to, or in the possession of, the investigator or the record of any proceedings of the investigation.

(j) The investigator must, in writing and within the period determined by the Provincial Minister, provide the Provincial Minister with—

- (i) a report on the findings of the investigation, including the reasons for those findings; and
- (ii) the investigator’s recommendations relating to the matter.

(k) The Provincial Minister must provide a copy of the report and recommendations of the investigator to the municipality concerned.

(l) The Provincial Minister may, on his or her own initiative, provide a copy of the report and recommendations of the investigator to the South African Police Service, an institution contemplated in Chapter 9 of the Constitution, the Special Investigating Unit, another organ of state or to the councillors of the municipality concerned.

(m) If the investigator’s report indicates that the municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister must—

- (i) direct the speaker of the municipal council or the accounting officer of the municipality or both the speaker and the accounting officer, as the case may be, to prepare a report, by a date determined by the Provincial Minister, stipulating the steps that have been taken or will be taken by the municipality to give effect to the findings and recommendations of the investigator’s report;
- (ii) assess the seriousness of the situation and the municipality’s response to the situation;
- (iii) determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution;
- (iv) determine whether the situation requires steps to be taken to monitor and support the municipality or to promote the development of the municipality’s capacity to enable it to perform its functions, as the case may be; and
- (v) if satisfied that the municipality cannot fulfil a statutory obligation as a result of incapacity, determine appropriate steps, after consultation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards.”.

**Insertion of section 7A**

11. The following section is inserted after section 7 of the principal Act:

**“Exercise of functions under sections 4A and 7**

**7A.** (1) The ministerial support officer or investigator may require a staff member, councillor or political office-bearer of a municipality to comply with a direction of or answer questions put to him or her by such ministerial support officer or such investigator as contemplated in section 4A or section 7(4), notwithstanding—

- (a) a duty of confidentiality imposed on that person by legislation that regulates or an agreement that relates to the conduct of a staff member, councillor or political office-bearer of the municipality; or
- (b) any provision in legislation or other instrument regulating the management or control of archives or records of a municipality.

(2) If, in the course of the exercise of the ministerial support officer’s functions as contemplated in section 4A, or the investigator’s functions as contemplated in section 7, a person claims that a record he or she has been directed to disclose is legally privileged and for that reason refuses to disclose the record concerned and the ministerial support officer or investigator, as the case may be, is of the opinion that the record has a bearing on the information contemplated in section 4A(1) or on an

investigation contemplated in section 7, the chief registrar of the high court or the clerk of the relevant magistrate’s court with jurisdiction or his or her delegate must keep a copy or duplicate of the relevant record in safe custody until a court of law has made a ruling on the question of whether the information concerned is legally privileged or not or until the investigation is concluded or terminated. 5

(3) For the purposes of subsection (2), the sheriff of the superior court or lower court with jurisdiction over the area in which the record is located or a legal practitioner appearing on the Roll of Legal Practitioners in terms of section 30(3) of the Legal Practice Act, 2014 (Act 28 of 2014), may collect and deliver a copy or duplicate of the record in respect of which the privilege is claimed and deliver them to the chief registrar or the clerk of the relevant magistrate’s court for safe keeping as contemplated in subsection (2). 10

(4) A ministerial support officer or investigator must, in exercising his or her powers of entry to the property or premises of a municipality under section 4A(4) and (5) or 7(4)(b) and (c)— 15

- (a) limit the hours of entry to ordinary business hours, unless the ministerial support officer or investigator reasonably considers entry at another time necessary on the grounds of urgency; 20
- (b) strictly observe decency and order at all times;
- (c) identify himself or herself to the highest-ranked staff member or political office-bearer present at the property or premises;
- (d) on the request of the highest-ranked staff member or political office-bearer present at the property or premises— 25
  - (i) disclose evidence of his or her designation as the ministerial support officer or investigator;
  - (ii) explain the purpose, scope and reason for entry;
  - (iii) permit him or her to be present at all times;
  - (iv) in the circumstances contemplated in subsection (6), provide a copy of the warrant issued under subsection (7) to that person; 30
  - (v) provide an inventory of the items removed for making copies.

(5) When a ministerial support officer, a provincial support officer, a local government support officer or an investigator exercises his or her powers under this Act, he or she must have due regard to and, where applicable, limit the personal information contained in his or her report without limiting the effectiveness of the report. 35

(6) An investigator or ministerial support officer may only enter the property or premises under the control of a municipality for the purposes of exercising the powers contemplated in section 4A(5) or 7(4)(b) by virtue of a warrant issued in chambers by a judge of the high court with jurisdiction. 40

(7) A warrant contemplated in subsection (6) may only be issued if it appears to the judge from information under oath or affirmation stating the need to enter the property or premises concerned for the purposes of— 45

- (a) performing the functions set out in section 4A(1), that there is a need for a warrant to be issued and there are reasonable grounds for the belief that the records may be found on the property or premises concerned; 50
- (b) an investigation under section 7, that there are reasonable grounds for the belief that— 55
  - (i) records pertaining to the investigation or persons with information within the ambit of the scope of the investigation may be found on the property or premises concerned; and
  - (ii) such entry is necessary for the purposes of the investigation.

(8) Notwithstanding subsection (6), the powers to enter the property or premises contemplated in that subsection may be exercised without a warrant—

- (a) with the consent of the person contemplated in paragraph (d) of subsection (4); or 60
- (b) if there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by

applying for a warrant would defeat the object of obtaining the warrant.

- (9) A warrant issued in terms of subsection (6)—
- (a) may be issued on any day and remains in force until—
    - (i) it has been executed; 5
    - (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;
    - (iii) the expiry of three months from date of issue;
  - (b) must be signed by the judge issuing it;
  - (c) must identify the property or premises that may be entered; 10
  - (d) must authorise the ministerial support officer or the investigator, as the case may be, to do anything contemplated in section 4A(5) or 7(4)(b) or (c);
  - (e) may only be executed in the manner contemplated in subsection (4);
  - (f) may be executed with the assistance of a peace officer or peace officers; 15
  - (g) may be executed with the use of such force as may be reasonably necessary to overcome any resistance to entry of the property or premises or inspection, copying or duplicating of records if the person executing the warrant has first audibly demanded admission to the property or premises concerned or other necessary action to facilitate such inspection, copying or duplicating, unless the investigator or ministerial support officer is on reasonable grounds of the opinion that the record concerned may be destroyed or lost as a result of such demand. 20
- (10) The person contemplated in paragraph (d) of subsection (4) must render such assistance as the ministerial support officer, investigator or peace officer may request. 25
- (11) Nothing in this section may be interpreted to preclude the Provincial Minister from applying to a court with jurisdiction for appropriate relief to give effect to any provision of this Act.” 30

#### Amendment of section 9 of Act 4 of 2014

12. Section 9 of the principal Act is substituted by the following section:

##### “Reporting

9. [(1)] If action is taken in terms of section 6(1)(a) or (b), the Provincial Minister must within 14 days— 35
- (a) submit a written statement to the National Council of Provinces motivating the action; and
  - (b) forward a copy of that statement to the national minister responsible for local government[,] and the national minister responsible for finance [and the South African Local Government Association]. 40
- [(2) The Provincial Minister must as soon as practicable submit a copy of the investigator’s report referred to in section 7(4)(f) to the National Council of Provinces, the national minister responsible for local government, the national minister responsible for finance and the South African Local Government Association.]” 45

#### Amendment of section 10 of Act 4 of 2014

13. Section 10 of the principal Act is substituted by the following section:

##### “Regulations

10. The Provincial Minister may make regulations regarding— [any ancillary or incidental matter which the Provincial Minister thinks necessary or expedient to prescribe for the proper implementation or administration of this Act.] 50
- (a) adequate safeguards for the processing of personal information under this Act; 55

- (b) processes to facilitate the implementation of this Act;
- (c) any other ancillary or incidental matter which the Provincial Minister deems necessary or expedient to prescribe for the proper implementation or administration of this Act.”.

**Amendment of section 11 of Act 4 of 2014**

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14. The following section is substituted for section 11 of the principal Act:

**“Offences and penalties**

**11.** A person who—

- (a) fails or refuses to produce any **[document]** record in his or her possession or under his or her control **[when directed to do so by an investigator]** that he or she has been called to produce in terms of a direction under section 4A(5)(b) or section 7(4)(b)(iii), read with section 7(4)(d); 10
  - (b) prevents any person from producing any **[document]** record in that person’s possession or under that person’s control **[when]** which that person **[is directed to do so by an investigator]** has been called to produce in terms of a direction under section 4A(5)(b) or section 7(4)(b)(iii), read with section 7(4)(d); 15
  - (c) contravenes section **[7(4)(e)] 7(4)(i); [or]**
  - (d) with the intention of hindering or obstructing the investigation of a matter by the investigator, destroys or conceals any **[document] record [, or object,]** that to his or her knowledge may be of assistance to an investigator[,]; 20
  - (e) with the intention of hindering or obstructing the inspection, securing or copying of a record by a ministerial support officer in terms of section 4A, destroys or conceals any record that to the person’s knowledge may be of assistance to a ministerial support officer; 25
  - (f) fails to comply with a directive issued by the Provincial Minister in terms of section 7(4)(m)(i); 30
  - (g) unlawfully hinders or interferes with the investigator or any person exercising a power, or carrying out a duty in terms of this Act;
  - (h) furnishes false or misleading information when responding to a request of a ministerial support officer or an investigator;
  - (i) after having been sworn or having made an affirmation, gives false evidence before an investigator on any matter, knowing such evidence to be false or not believing it to be true; or 35
  - (j) procures, induces, intimidates, corrupts or bribes any witness to refrain from giving evidence or to give false evidence before an investigator, 40
- commits an offence and is liable on conviction to a fine or to imprisonment not exceeding **[12] 24** months.”.

**Short title and commencement**

15. This Act is called the Western Cape Monitoring and Support of Municipalities Amendment Act, 2024, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*. 45

## MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES AMENDMENT BILL

### 1. BACKGROUND

- 1.1 The Western Cape Monitoring and Support of Municipalities Act, 2014 (Act 4 of 2014) (the principal Act), was enacted in 2014 to give effect to sections 154(1) and 155(6) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and section 106(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (the Municipal Systems Act). The principal Act is currently used in conjunction with the Municipal Systems Act, the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (the MFMA), and the constitutional provisions that govern provincial intervention in municipalities. One of the crucial shortcomings of these frameworks is that adequate provision is not made for proactive measures for early detection and intervention in cases of municipal corruption and fraud, and instances where a municipality falls into distress.
- 1.2 The advantages of early intervention include the ability to prevent serious misconduct and corruption by identifying patterns of behaviour that precede the occurrence of misconduct. It has been found to have a positive impact on employee well-being and to reduce the costs associated with criminal investigations and performance sanctions.
- 1.3 Research shows that when interventions were initiated before the municipality reached a state of total collapse, the municipality was more likely to be able to return to a sound operational and financial footing after the intervention. In other words, the worse the state of the municipality (for example, financial collapse, complete breakdown in governance structures, collapse of infrastructure) prior to intervention, the less likely it is to be able to return to a stable financial and operational state.

### 2. OBJECTS OF BILL

The objects of the Western Cape Monitoring and Support of Municipalities Amendment Bill, 2024 (the Amendment Bill), are therefore to—

- (a) provide for the proactive monitoring of municipalities to detect fraud, corruption, maladministration and other serious malpractice early;
- (b) strengthen the ability of the provincial department responsible for local government (the Department) to support municipalities;
- (c) strengthen the ability of the Department to gain access to the information required to conduct investigations and assessments effectively;
- (d) strengthen the monitoring and support of municipalities by making provision for municipal councils to conduct preliminary assessments where there are allegations that are not frivolous, vexatious, speculative or obviously unfounded that a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or a statutory obligation binding on the municipality or that maladministration, fraud, corruption or other serious malpractice is occurring in the municipality; and
- (e) reduce red tape and refine technical provisions in the principal Act.

### 3. CONTENTS OF BILL

- 3.1 **Clause 1** provides for the insertion of definitions for “commissioner of oaths”, “local government support officer”, “ministerial support officer”, “personal information”, “political office-bearer”, “provincial support officer”, “record”, “Special Investigating Unit” and “staff member”.
- 3.2 **Clause 2** amends section 2 of the principal Act by adding a provision that empowers the Provincial Minister, by notice in the *Provincial Gazette*, to require any municipality, or any category or type of municipality specified in

the notice, to submit to a specified provincial organ of state the information required in the notice, either at regular intervals or within a specified period, and a provision setting out the manner in which this power must be exercised.

- 3.3 **Clause 3** inserts the proposed sections 2A and 2B, which provide for—
- 3.3.1 a municipality, on the request of the provincial executive, Provincial Minister responsible for local government (the Provincial Minister), ministerial support officer, provincial support officer or officials of the Department, to provide these persons with access to such records as may be necessary for the monitoring, assessment or investigation of a municipality;
  - 3.3.2 the designation of local government support officers to provide support to a municipality as contemplated in section 154(1) or 155(6) of the Constitution.
- 3.4 **Clause 4** amends section 3 of the principal Act by—
- 3.4.1 stipulating that a municipal council, speaker, mayor or municipal manager are the specific functionaries who may request the Provincial Minister or the head of any provincial department to assist the municipality in performing their respective functions or to deal with a specific matter related to their respective functions;
  - 3.4.2 making technical refinements to the provision that provides for cooperation between a municipality requesting assistance and the Department.
- 3.5 **Clause 5** inserts the proposed section 3A that provides for—
- 3.5.1 the Provincial Minister to designate a provincial support officer to determine compliance by a municipality with applicable statutory obligations, to assess implementation by a municipality of applicable policies, standard operating procedures and practice notes, to identify risks and suggest improvements to procedures and processes and to assist proactively with the detection of fraud, corruption, maladministration or malpractice in a municipality;
  - 3.5.2 the Provincial Minister to determine the scope and other terms of reference of the monitoring and support to be provided if a provincial support officer is designated;
  - 3.5.3 the provincial support officer to provide the Provincial Minister with a report on the findings of the monitoring and support, with reasons, and his or her recommendations;
  - 3.5.4 the Provincial Minister to provide a copy of the report to the municipality concerned.
- 3.6 **Clause 6** amends section 4 of the principal Act by clarifying that the practice notes issued in terms of that section have the status of non-binding guidelines.
- 3.7 **Clause 7** inserts the proposed sections 4A, 4B and 4C in the principal Act that provide—
- 3.7.1 for the Provincial Minister, on receipt of information of a suspected failure by a municipality to fulfil a statutory obligation, or of maladministration, fraud, corruption or other serious malpractice, if he or she has reason to believe that a record relating to the information received will be concealed or destroyed if not secured as a matter of priority, to designate a ministerial support officer to travel to the municipality without prior notice to the municipality and inspect,

- secure and copy a record relating to the received information in the manner provided for in the proposed section 4A, read with the proposed section 7A, as inserted by clause 11;
- 3.7.2 for the Provincial Minister, on receipt of well-founded allegations that a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or a statutory obligation binding on the municipality or of maladministration, fraud, corruption or other serious malpractice, to direct the municipal council of the municipality to conduct a preliminary assessment of the allegations, and further that the Provincial Minister may require the municipal council to provide him or her with a preliminary assessment report stipulating the findings and the steps that have been taken or will be taken to address the matter;
- 3.7.3 for the avoidance of the duplication of assessments and investigations by expressly providing for the Provincial Minister to refer an allegation to the South African Police Service, an institution contemplated in Chapter 9 of the Constitution, the Special Investigating Unit or another organ of state if he or she deems it more appropriate for such a body to investigate the matter and to await the outcome of such an investigation before taking action in terms of section 106 of the Municipal Systems Act or the principal Act.
- 3.8 **Clause 8** substitutes section 5 of the principal Act by making technical amendments to the required procedures before invoking section 106(1) of the Municipal Systems Act.
- 3.9 **Clause 9** amends section 6 of the principal Act by—
- 3.9.1 making technical amendments to the required procedures when invoking section 106(1) of the Municipal Systems Act;
- 3.9.2 providing that, if the Provincial Minister is satisfied that a municipality cannot fulfil a statutory obligation due to incapacity, the Provincial Minister may determine appropriate steps, in cooperation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards;
- 3.9.3 clarifying that, if the Provincial Minister acts under subsection (1)(a) of section 6 or paragraph (a) of subsection (2), he or she is not precluded from designating a person or persons to investigate the matter as contemplated in section 7;
- 3.9.4 adding a provision providing that, if the Provincial Minister has reason to believe, based on the assessment contemplated in section 5, that a municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, but does not consider it necessary to designate a person or persons to investigate the matter, he or she may direct the municipality to prepare a report stipulating the steps that have been taken, or will be taken, by the municipality to address the matter.
- 3.10 **Clause 10** amends section 7 of the principal Act by—
- 3.10.1 providing for additional powers an investigator may exercise for the purposes of an investigation contemplated in section 6(1)(b) of the Act, including the right to enter the premises or property of a municipality where he or she reasonably suspects a record is kept that may have a bearing on the investigation, to copy or duplicate any such record or remove any such record (including an electronic device),

- provided that the record (or electronic device) is returned to the municipality without unreasonable delay, for the purpose of ascertaining any matter relating to the subject matter of the investigation, to require a person to make an oral or written declaration under oath or affirmation or to subpoena any person to produce any record or object relevant to the investigation at the time and place specified in the subpoena;
- 3.10.2 providing that the investigator has full and unrestricted access to any record of the municipality or staff member or office-bearer of the municipality in the manner set out in that provision and the provision proposed to be inserted by clause 11 of the Amendment Bill, if the investigator reasonably suspects that the record, staff member or political office-bearer concerned may give access to or provide information that has a bearing on the investigation;
- 3.10.3 providing for the Provincial Minister to share the report and recommendations of the investigator with the South African Police Service, an institution contemplated in Chapter 9 of the Constitution, the Special Investigating Unit, another organ of state or the councillors of the municipality concerned;
- 3.10.4 adding a provision that provides that, in the event that the investigator's report indicates that the municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister may direct the municipality to prepare a report, by a stipulated date, indicating the steps that have been taken, or will be taken, by the municipality to give effect to the findings and recommendations of the investigator's report.
- 3.11 **Clause 11** inserts the proposed section 7A that provides for the manner in which the ministerial support officer and investigator must exercise their functions—
- 3.11.1 by providing that the ministerial support officer or investigator may require a staff member, councillor or political office-bearer of a municipality to comply with a direction or answer questions put to him or her notwithstanding a duty of impartiality imposed on that person by legislation that regulates, or an agreement that relates to the conduct of a staff member, councillor or political office-bearer of the municipality, or any provision in legislation or other applicable instrument regulating the management of records in a municipality;
- 3.11.2 by indicating the manner in which the ministerial support officer and investigator must exercise the power to enter the property or premises of a municipality, including provision that such power may only be exercised by virtue of a warrant issued in chambers by a judge of the high court who has jurisdiction unless the highest-ranked staff member or political office-bearer present at the property consents to such entry or there are reasonable grounds to believe that a warrant would on application be issued, but the delay that may be caused by applying for a warrant would defeat the object of obtaining the warrant.
- 3.12 **Clause 12** amends section 9 of the principal Act by deleting a reporting requirement subsequent to action taken in terms of section 6(1)(a) or (b) of the Act.
- 3.13 **Clause 13** substitutes section 10 of the principal Act by making provision for the Provincial Minister to make regulations on—
- 3.13.1 adequate safeguards for the processing of personal information;



### 3.13.2 processes to facilitate the implementation of the Act.

These provisions are empowering provisions that authorise the Provincial Minister to make regulations on such matters to facilitate improvements in the implementation of the Act, once enacted, if the need arises. These matters are administrative in nature and considered appropriate to be included in regulations.

The proposed provision noted in paragraph 3.13.1 above, which authorises the Provincial Minister to make regulations on “adequate safeguards for the processing of personal information” must be read with the proposed section 7A(5) inserted by clause 11, which relates to the manner in which personal information must be handled by the ministerial support officer, provincial support officer, local government support officer or investigator. It is noted that the Protection of Personal Information Act, 2013 (Act 4 of 2013) (POPIA), is potentially applicable to information obtained by the Province in terms of the Amendment Bill, once enacted. The exemptions from specified provisions provided for in section 38 of POPIA are, however, likely to be applicable. In this regard, the Province is a public body (as defined in section 1 of POPIA) and the functions in the Amendment Bill are also functions that may be construed to protect members of the public against dishonesty, malpractice or other seriously improper conduct by or the unfitness or incompetence of persons authorised to carry on any profession or other activity. Accordingly, sections 11(3) and (4), 12 and 15 will not apply to the extent that the application of those provisions would be likely to prejudice the proper discharge of that function.\*

Section 6(1)(c)(ii) of POPIA provides that the processing of information is excluded from its application, including in respect of—

“ . . . the processing of personal information—

(c) **by or on behalf of a public body—**

(ii) the purpose of which is the prevention, **detection**, including assistance in the identification of the proceeds of unlawful activities and the combating of money laundering activities, **investigation or proof of offences**, the prosecution of offenders or the execution of sentences or security measures,

to the extent that adequate safeguards have been established in legislation for the protection of such personal information;”.

The functions under the Amendment Bill fall within section 6(c)(iii) and, in light thereof, provision is accordingly included in the Amendment Bill authorising the Provincial Minister to make regulations for “adequate safeguards for the processing of personal information” as an option in the future.

### 3.14 **Clause 14** substitutes section 11 of the principal Act by providing for additional offences.

\* Section 38 of POPIA provides the following:

“(1) Personal information processed for the purpose of discharging a relevant function is exempt from sections 11 (3) and (4), 12, 15 and 18 in any case to the extent to which the application of those provisions to the personal information would be likely to prejudice the proper discharge of that function.

(2) “Relevant function” for purposes of subsection (1), means any function—

(a) of a public body; or

(b) conferred on any person in terms of the law,

which is performed with the view to protecting members of the public against—

(i) financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate; or

(ii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity.”.

#### 4. CONSULTATION

4.1 The following role players were consulted:

Chief Registrar of the Western Cape High Court  
Department of the Premier: Legal Services  
Other provincial departments  
South African Local Government Association (Salga)  
The Information Regulator

4.2 Proposed amendments to the Act were presented and discussed at the Legislative and Constitutional Task Team meeting between the Department, Department of the Premier (Legal Services), other provincial departments, Salga and municipalities (legal advisers, directors: Corporate Services and municipal managers), held on 5 March 2021. The Amendment Bill was also presented and discussed at the Salga Western Cape Governance and Intergovernmental Relations Working Group meeting held on 10 May 2023.

4.3 The Amendment Bill was published for comment in *Provincial Gazette* 8723 dated 24 February 2023, with a closing date of 6 April 2023. The period for public comments was subsequently extended by way of a further notice in the *Provincial Gazette* with a new closing date for public comments of 28 April 2023 to give further opportunity for the public to comment.

4.4 The Amendment Bill was further circulated by means of Circular C11 of 2023 to all municipalities in the Province and to Salga, calling for comments on the Amendment Bill.

#### 5. FINANCIAL IMPLICATIONS

The proposed amendments do not envisage the (i) establishment of additional structures to the Department or (ii) further employment of members to the staffing establishment. If internal capacity does not permit officials from the Provincial Government or staff from a municipality in the Province to be designated by the Provincial Minister as a local government support officer, ministerial support officer or provincial support officer, then external persons will have to be appointed, with the associated cost implications.

The direct costs to government will include travel costs for departmental staff to attend on municipalities, inter alia to conduct proactive assessments. The costs are not determinable at this stage as it would depend on when such an assessment is required.

#### 6. LEGISLATIVE COMPETENCE

The Provincial Minister responsible for local government is satisfied that all the provisions in the Amendment Bill fall within the legislative competence of the Province.

**ALGEMENE VERDUIDELIKENDE NOTA:**

[ ] Woorde in vetdruk in vierkantige hake dui skrapings uit bestaande verordenings aan.

\_\_\_\_\_ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

**WETSONTWERP**

Tot wysiging van die Wes-Kaapse Wet op Monitering en Ondersteuning van Munisipaliteite, 2014 (Wet 4 van 2014), ten einde sekere woordskrywings in te voeg; om voorsiening te maak vir die Provinsiale Minister om enige munisipaliteit of kategorie munisipaliteit deur kennisgewing in die *Provinsiale Koerant* te versoek om inligting aan 'n vermelde provinsiale staatsorgaan voor te lê; om voorsiening te maak vir toegang tot rekords van 'n munisipaliteit gedurende 'n evaluering of ondersoek deur sekere provinsiale funksionaris; om voorsiening te maak vir die aanwysing van steunbeamptes aan munisipaliteite; om voorsiening te maak vir die aanwysing van 'n provinsiale steunbeampte; om die bepalings te wysig wat voorsiening maak vir samewerking tussen 'n munisipaliteit en die Departement; om voorsiening te maak vir prosedures vir die proaktiewe monitering van munisipaliteite; om voorsiening te maak vir prosedures vir die inspeksie, beveiliging en kopiëring van rekords in vermelde omstandighede; om voorsiening te maak vir die Provinsiale Minister om by ontvangs van sekere bewerings 'n munisipale raad te beveel om 'n voorlopige evaluering uit te voer; om die Provinsiale Minister te magtig om die uitkoms van ondersoeke deur ander staatsorgane af te wag voor hy of sy kragtens artikel 106 van die Wet op Munisipale Stelsels of hierdie Wet optree; om die vereistes te wysig met betrekking tot die evaluering wat deur die Provinsiale Minister uitgevoer moet word voor 'n beroep op artikel 106(1) van die Wet op Munisipale Stelsels; om die prosedures te wysig by die beroep op daardie artikel; om sekere verslagdoeningsvereistes te skrap; om voorsiening te maak vir aangeleenthede waarvoor die Provinsiale Minister regulasies kan maak; om verdere misdrywe bekend te maak; en om vir bykomstige aangeleenthede voorsiening te maak.

**D**AAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

**Wysiging van artikel 1 van Wet 4 van 2014**

1. Artikel 1 van die Wes-Kaapse Wet op Monitering en Ondersteuning van Munisipaliteite, 2014 (Wet 4 van 2014) (die Hoofwet), word gewysig—

(a) deur ná die omskrywing van “hierdie Wet” die volgende omskrywing in te voeg:

“ ‘**kommissaris van ede**’ ’n kommissaris van ede aangestel kragtens artikel 5 van die Wet op Vrederegters en Kommissaris van Ede, 1963

- (Wet 16 van 1963), of die bekleër van 'n amp aangewys deur die minister | verantwoordelik vir justisie kragtens artikel 6 van daardie Wet;”;
- (b) deur voor die omskrywing van “munisipale bestuurder” die volgende omskrywing in te voeg: 5  
 “**‘ministeriële steunbeampte’** ’n onafhanklike persoon of ’n beampte van die Provinsiale Regering, ’n provinsiale openbare entiteit of ’n munisipaliteit in die Provinsie, aangewys ingevolge artikel 4A om die funksies beoog in daardie artikel te verrig;”;
- (c) deur ná die omskrywing van “ondersoeker” die volgende omskrywings in te voeg: 10  
 “**‘personeellid’**, met betrekking tot ’n munisipaliteit, ’n werknemer van die munisipaliteit, insluitende die munisipale bestuurder;  
**‘persoonlike inligting’** persoonlike inligting soos omskryf in artikel 1 van die Wet op Beskerming van Persoonlike Inligting, 2013 (Wet 4 van 2013); 15  
**‘plaaslikeregering-steunbeampte’** ’n persoon aangewys kragtens artikel 2B;  
**‘politieke ampsbekteler’** ’n politieke ampsbekteler soos omskryf in artikel 1 van die Wet op Munisipale Stelsels;”;
- (d) deur ná die omskrywing van “Provinsiale Regering” die volgende omskrywing in te voeg: 20  
 “**‘provinsiale steunbeampte’** ’n onafhanklike persoon of ’n beampte van die Provinsiale Regering, ’n provinsiale openbare entiteit of ’n munisipaliteit in die Provinsie, aangewys om die funksies beoog in artikel 3A te verrig;” en 25
- (e) deur ná die omskrywing van “regulasie” die volgende omskrywings in te voeg: 30  
 “**‘rekord’** geboekstaafde inligting, ongeag die vorm of medium, met inbegrip van ’n lêer, dokument, boek of ander skriftelike of elektroniese rekord;  
**‘Spesiale Ondersoekkeenheid’** die Spesiale Ondersoekkeenheid ingestel kragtens artikel 2(a) van die Wet op Spesiale Ondersoekkeenhede en Spesiale Tribunale, 1996 (Wet 74 van 1996), of enige regsopvolger;”.

### Wysiging van artikel 2 van Wet 4 van 2014

2. Artikel 2 van die Hoofwet word gewysig deur die volgende subartikels by te voeg, 35 met die bestaande artikel wat subartikel (1) word:

- “(2) Die Provinsiale Minister kan deur kennisgewing in die *Provinsiale Koerant* enige munisipaliteit, of enige kategorie of soort munisipaliteit vermeld in die kennisgewing, versoek om, hetsy met gereelde tussenposes of binne ’n vermeldde tydperk, aan ’n vermeldde provinsiale staatsorgaan die inligting voor te lê soos dit in die kennisgewing vereis mag word. 40
- (3) Wanneer die Provinsiale Minister sy of haar bevoegdhede ingevolge subartikel (2) uitoeven—
- (a) moet die Provinsiale Minister so ver as moontlik op die tersaaklike ingestelde statutêre verslae staatmaak wat ingevolge enige wet deur munisipaliteite voorgelê word; en 45
- (b) kan die Provinsiale Minister redelike versoeke aan munisipaliteite rig vir bykomende inligting ná inagneming van—
- (i) die administratiewe las op munisipaliteite om die inligting te verskaf; 50
- (ii) die koste daaraan verbonde; en
- (iii) bestaande meganismes, stelsels en prosesse vir prestasie-monitering in die munisipaliteit.”.

### Invoeging van artikels 2A en 2B in Wet 4 van 2014

3. Die volgende artikels word ná artikel 2 van die Hoofwet ingevoeg:

#### “Toegang tot rekords van munisipaliteite

2A. Vir die doeleindes van monitering, evaluering of ondersoek van ’n munisipaliteit ingevolge hierdie Wet moet ’n munisipaliteit of enige munisipale entiteit onder die alleen- of gedeelde beheer van die munisipaliteit aan die provinsiale uitvoerende gesag, Provinsiale Minister, ministeriële steunbeampte, provinsiale steunbeampte of beamptes van die Departement, op versoek van enige van hierdie persone, toegang gee tot sodanige rekords soos dit nodig mag wees vir sodanige monitering, evaluering of ondersoek. 5  
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#### Aanwysing van plaaslikeregering-steunbeamptes

2B. Die Provinsiale Minister kan een of meer—  
(a) beamptes van die Provinsiale Regering;  
(b) verteenwoordigers van ’n provinsiale openbare entiteit;  
(c) personeellede van ’n munisipaliteit in die Provinsie, onderhewig aan die instemming van die munisipale bestuurder;  
(d) onafhanklike persone,  
as ’n plaaslikeregering-steunbeampte aanwys om ondersteuning aan ’n munisipaliteit te verleen soos beoog in artikel 154(1) en artikel 155(6) van die Grondwet.”. 15  
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### Wysiging van artikel 3 van Wet 4 van 2014

4. Artikel 3 van die Hoofwet word gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:  
“(1) [**’n Munisipaliteit**] Die munisipale raad, speaker, burgemeester of munisipale bestuurder van ’n munisipaliteit kan die Provinsiale Minister of die hoof van enige provinsiale departement versoek om [**die munisipaliteit**] in die verrigting van [**sy**] hul onderskeie funksies in die algemeen by te staan of om aandag te skenk aan ’n spesifieke aangeleentheid wat verband hou met hul onderskeie funksies [te handel].”; en 25  
30
- (b) deur subartikel (2) deur die volgende subartikel te vervang:  
“(2) Wanneer so ’n versoek gemaak word[—],  
[(a) **moet die Departement of die ander tersaaklike provinsiale departement met die munisipaliteit saamwerk en, so ver as wat redelik moontlik is, die bystand wat versoek is, verleen; en** 35  
(b)] moet die Departement, of die ander tersaaklike provinsiale departement, en die munisipaliteit met mekaar saamwerk en hul handeling so ver as wat redelikerwys moontlik is, koördineer.”. 40

### Invoeging van artikel 3A in Wet 4 van 2014

5. Die volgende artikel word ná artikel 3 van die Hoofwet ingevoeg:

#### “Proaktiewe monitering

3A. (1) Ten einde munisipaliteite proaktief te monitor en te ondersteun, kan die Provinsiale Minister, ten opsigte van ’n munisipaliteit, ’n provinsiale steunbeampte aanwys om—  
(a) voldoening deur ’n munisipaliteit aan die toepaslike statutêre verpligtinge te bepaal;  
(b) implementering deur die munisipaliteit van toepaslike beleide, standaardwerksprosedures en praktyknotas te evalueer; 45  
50

- (c) risiko's te identifiseer en verbeteringe aan prosedures en prosesse voor te stel ten einde bedrog, korrupsie, wanadministrasie en wanpraktyk te voorkom; en
- (d) proaktief bystand te verleen met die bespeuring van bedrog, korrupsie, wanadministrasie of wanpraktyk in 'n munisipaliteit. 5
- (2) Indien die Provinsiale Minister 'n provinsiale steunbeampte aanwys ingevolge subartikel (1), moet die Provinsiale Minister die bestek van die monitering en ondersteuning wat verleen moet word, en die ander opdragte vir die aanwysing skriftelik bepaal.
- (3) Die provinsiale steunbeampte moet die Provinsiale Minister voorsien van— 10
- (a) 'n verslag oor die bevindinge van die monitering en ondersteuning en 'n ontleding beoog in subartikel (1), met inbegrip van die redes vir daardie bevindinge; en
- (b) sy of haar aanbevelings met betrekking tot die bevindinge. 15
- (4) Die Provinsiale Minister moet 'n afskrif van die verslag en aanbevelings van die provinsiale steunbeampte aan die betrokke munisipaliteit verskaf.”.

#### Wysiging van artikel 4 van Wet 4 van 2014

6. Artikel 4 van die Hoofwet word gewysig deur subartikel (4) deur die volgende subartikel te vervang: 20

“(4) Praktyknotas uitgereik ingevolge subartikel (1) het die status van niebindende riglyne.”.

#### Invoeging van artikels 4A, 4B en 4C in Wet 4 van 2014

7. Die volgende artikels word ná artikel 4 van die Hoofwet ingevoeg: 25

##### “Inspeksie, beveiliging en kopiëring van rekords

- 4A.** (1) Indien die Provinsiale Minister, by ontvangs van inligting van 'n vermoedelike versuim deur 'n munisipaliteit om aan 'n statutêre verpligting te voldoen, of van wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyk, rede het om te glo dat 'n rekord in verband met die inligting wat ontvang is, versteek of vernietig sal word indien dit nie as 'n saak van prioriteit beveilig word nie, kan hy of sy, sonder voorafkennisgewing aan die munisipaliteit, 'n ministeriële steunbeampte aanwys om na die munisipaliteit te reis en 'n rekord in verband met die inligting wat ontvang is, te inspekteer, te beveilig en te kopieer op die wyse beoog in subartikel (5), saamgelees met artikel 7A. 30
- (2) By die bepaling vir die doeleindes van subartikel (1) of die inspeksie, beveiliging en kopiëring van 'n rekord nodig is, moet die Provinsiale Minister alle tersaaklike faktore in ag neem, met inbegrip van, indien van toepassing— 40
- (a) die identiteit van die fluitjieblaser;
- (b) die erns van die beweerde oortreding;
- (c) of die oortreding na bewering voortduur of waarskynlik in die toekoms sal plaasvind;
- (d) die persone teen wie die bewerings gemaak word; en 45
- (e) die openbare belang.
- (3) Indien die Provinsiale Minister 'n ministeriële steunbeampte ingevolge subartikel (1) aanwys, moet die Provinsiale Minister die bestek en die ander opdragte vir die aanwysing skriftelik bepaal.
- (4) Behoudens subartikel (5) en artikel 7A, het die betrokke ministeriële steunbeampte, op enige redelike tyd— 50
- (a) volle en onbeperkte toegang tot enige rekord van die munisipaliteit; en
- (b) die reg om enige personeellid of politieke ampsbekleër van die munisipaliteit te ondervra, 55

indien hy of sy redelikerwys vermoed dat die betrokke rekord, personeel- lid of politieke ampsbeker inligting kan verskaf of toegang daartoe het wat op die aangeleentheid beoog in subartikel (1) betrekking het.

- (5) Behoudens artikel 7A, kan die ministeriële steunbeampte—
- (a) enige eiendom of perseel van of onder die beheer van die munisipaliteit betree waar hy of sy redelikerwys vermoed 'n rekord gehou word wat op 'n aangeleentheid beoog in subartikel (1) betrekking het; 5
  - (b) op die wyse uiteengesit in artikel 7(4)(d), enige persoon wat hy of sy redelikerwys vermoed 'n rekord in sy of haar besit of onder sy of haar beheer mag hê en wat op 'n aangeleentheid beoog in subartikel (1) betrekking het, beveel om enige sodanige rekord op 'n vermelde plek en tyd en in 'n vermelde vorm te verskaf of af te lewer; 10
  - (c) enige sodanige rekord inspekteer en enige persoon wat dalk kennis dra van 'n aangeleentheid beoog in subartikel (1) oor enige sodanige rekord, ondervra; of 15
  - (d) enige sodanige rekord op die onkoste van die munisipaliteit kopieer of duplikate daaruit maak of sodanige rekord verwyder, met inbegrip van enige elektroniese toestel, om afdrucke of duplikate te maak, met dien verstande dat die rekord of elektroniese toestel sonder onredelike vertraging daarna aan die munisipaliteit terugbesorg word. 20

#### Voorlopige evaluering

**4B.** (1) Die Provinsiale Minister kan, by ontvangs van bewerings dat 'n munisipaliteit in die Provinsie 'n statutêre verpligting wat op daardie munisipaliteit bindend is, nie kan uitvoer nie of nie uitvoer nie, of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk in 'n munisipaliteit in die Provinsie plaasgevind het of plaasvind, wat na sy of haar mening nie beuselagtig, kwelsugtig, spekulatief of ooglopend ongegrond is nie, die munisipale raad van die munisipaliteit beveel om 'n voorlopige evaluering van die bewerings uit te voer. 25

(2) Indien die Provinsiale Minister die munisipale raad beveel om 'n voorlopige evaluering kragtens subartikel (1) uit te voer, kan die Provinsiale Minister versoek dat 'n voorlopige evalueringsverslag namens die munisipaliteit voor of op 'n vermelde datum aan hom of haar verskaf word wat die bevindinge en, indien van toepassing, stappe uitsensit wat deur die betrokke munisipaliteit gedoen is of gedoen sal word om die aangeleentheid beoog in paragraaf (1) te behandel. 30

#### Duplisering van evaluerings en ondersoeke

**4C.** Indien die Provinsiale Minister van mening is dat dit meer gepas is dat 'n bewering deur die Suid-Afrikaanse Polisie diens, 'n instelling beoog in Hoofstuk 9 van die Grondwet, die Spesiale Ondersoekeenheid of 'n ander staatsorgaan ondersoek word, kan hy of sy—

- (a) die bewering na die betrokke liggaam verwys; of 45
- (b) die uitkoms van sodanige ondersoek afwag voor hy of sy ingevolge artikel 106 van die Wet op Munisipale Stelsels of hierdie Wet optree.”.

#### Wysiging van artikel 5 van Wet 4 van 2014

**8.** Artikel 5 van die Hoofwet word deur die volgende artikel vervang: 50

#### “Evaluering voor beroep op artikel 106(1) van Wet op Munisipale Stelsels

**5.** Die Provinsiale Minister moet, voordat hy of sy kragtens artikel 106(1) van die Wet op Munisipale Stelsels optree[—],

- [(a) die betrokke munisipaliteit skriftelik verwittig van tersaaklike inligting wat die Provinsiale Minister ontvang het en die munisipaliteit uitnoui om die Provinsiale Minister teen 'n datum bepaal deur die Provinsiale Minister van skriftelike kommentaar te voorsien; en** 5
- (b)]** alle tersaaklike inligting tot die Provinsiale Minister se beskikking objektief evalueer, **[met inagneming van onder meer]** wat kan insluit—
- (i) die wyse waarop die inligting ontvang is;
  - (ii) **[die]** indien van toepassing, enige kommentaar **[, indien enige,]** ontvang van die munisipaliteit; 10
  - (iii) of die inligting aandui dat die munisipaliteit 'n statutêre verpligting wat bindend is op die munisipaliteit, nie kan uitvoer nie of nie uitvoer nie en, indien dit so is, of dit weens onvermoë is al dan nie; 15
  - (iv) of die inligting aandui dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit;
  - (v) die gebiede van verrigting van die munisipaliteit wat geraak kan word indien daar nie ooreenkomstig artikel 106(1) van die Wet op Munisipale Stelsels opgetree word nie; 20
  - (vi) of die munisipaliteit voorheen bystand van die Provinsiale Minister of die hoof van enige provinsiale departement versoek het om met die betrokke aangeleentheid of 'n verwante aangeleentheid te handel; 25
  - (vii) of die Provinsiale Minister, die Departement of 'n ander provinsiale departement voorheen bystand aan die munisipaliteit verleen het; **[en]**
  - (viii) indien van toepassing, die mate waarin die munisipaliteit tersaaklike praktyknotas implementeer en aan die noodsaaklike nasionale standaarde en minimum standaarde ingestel ingevolge artikel 108(1) van die Wet op Munisipale Stelsels voldoen[.]; en 30
  - (ix) enige voorskrifte waaraan die munisipale raad versuim het om te voldoen.” 35

#### Wysiging van artikel 6 van Wet 4 van 2014

##### 9. Artikel 6 van die Hoofwet word gewysig—

- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan, deur die volgende woorde te vervang:
- “(1) Indien die Provinsiale Minister rede het om te glo, gegrond op die evaluering beoog in artikel 5(b), dat 'n munisipaliteit 'n statutêre verpligting nie kan uitvoer nie of nie uitvoer nie, of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit, moet die Provinsiale Minister **[die munisipaliteit skriftelik verwittig van sy of haar mening en die redes vir daardie mening en]**, ooreenkomstig artikel 106(1) van die Wet op Munisipale Stelsels—”;
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2)(a) Indien die Provinsiale Minister, ná oorweging van **[enige]** die inligting, indien enige, ontvang as antwoord op 'n kennisgewing bedoel in subartikel (1)(a), tevrede is dat die munisipaliteit as gevolg van onvermoë nie 'n statutêre verpligting kan uitvoer nie, **[moet]** kan die Provinsiale Minister geskikte stappe bepaal, in samewerking met die munisipaliteit, om die vermoë van die munisipaliteit te ontwikkel en toe te sien dat die munisipaliteit toepaslike praktyknotas en ander bestepaktyk-standaarde implementeer. 50 55
- (b) Die Provinsiale Minister word nie **[by]** deur te handel kragtens subartikel (1)(a) of paragraaf (a) van hierdie subartikel verhoed om, indien dit nodig geag word, 'n persoon of persone aan te wys om die aangeleentheid te ondersoek soos beoog in artikel 7 nie.”; 60
- (c) deur subartikel (3) te skrap; en



(d) deur ná subartikel (3) die volgende subartikel by te voeg:

“(4) Indien die Provinsiale Minister rede het om te glo, gegrond op die evaluering beoog in artikel 5, dat ’n munisipaliteit ’n statutêre verpligting nie kan uitvoer nie of nie uitvoer nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit, maar dit nie nodig ag om ’n persoon of persone aan te wys om die aangeleentheid te ondersoek nie, kan hy of sy die munisipaliteit beveel om ’n verslag op te stel wat die stappe uiteensit wat deur die munisipaliteit gedoen is of gedoen sal word om die aangeleentheid te behandel.”.

#### Wysiging van artikel 7 van Wet 4 van 2014

10. Artikel 7 van die Hoofwet word gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

“Die Provinsiale Minister moet die aard en erns van die aangeleentheid en die beskikbaarheid van die vereiste kundigheid oorweeg ten einde te bepaal welke van die ondersoek-opsies bedoel in subartikel (1) uitgeoefen moet word.”;

(b) deur subartikel (3) te skrap;

(c) deur subartikel (4) deur die volgende subartikel te vervang:

“(4)(a) Indien die Provinsiale Minister ’n ondersoeker ingevolge subartikel (1)(a) aanwys, moet die Provinsiale Minister die bestek van die aangeleentheid wat ondersoek moet word, en die ander opdragte van die ondersoeker skriftelik bepaal.

(b) Die ondersoeker kan—

- (i) die formaat en prosedure wat gevolg moet word by die uitvoering van die ondersoek, bepaal met behoorlike inagneming van die omstandighede van die aangeleentheid;
- (ii) bepaal wie teenwoordig kan wees en wie nie teenwoordig kan wees nie by enige verrigtinge wat betrekking het op die ondersoek, met inagneming van die aard van die ondersoek;
- (iii) enige persoon wat die ondersoeker redelikerwys vermoed inligting kan hê wat betrekking het op die ondersoek, beveel om enige rekord in die besit van daardie persoon of onder sy of haar beheer wat betrekking het op die aangeleentheid wat ondersoek word, op ’n vermelde plek en tyd en in ’n vermelde vorm te verskaf of af te lewer;
- (iv) enige sodanige rekord inspekteer en enige persoon wat kennis mag dra van ’n aangeleentheid wat betrekking het op die ondersoek, oor enige sodanige rekord ondervra;
- (v) enige sodanige rekord kopieer of dupliseer, op die onkoste van die munisipaliteit, of sodanige rekord verwyder, met inbegrip van enige elektroniese toestel, om afdrucke of duplikate te maak, met dien verstande dat die rekord of elektroniese toestel sonder onredelike vertraging daarna aan die munisipaliteit terugbesorg word;
- (vi) enige persoon wat die ondersoeker redelikerwys vermoed inligting mag hê wat betrekking het op die ondersoek, beveel om, hetsy mondelings of skriftelik, enige inligting wat tersaaklik tot die ondersoek mag wees, te openbaar en enige persoon oor sodanige inligting ondervra.

(c) Behoudens artikel 7A(4), kan die ondersoeker, vir die doeleindes van paragrafe (b) en (g), enige eiendom of perseel van of onder die beheer van die munisipaliteit waar hy of sy redelikerwys vermoed ’n rekord gehou word wat betrekking op die ondersoek mag hê, betree.

(d) ’n Bevel deur ’n ondersoeker beoog in subparagrafe (iii) en (vi) van paragraaf (b) moet by wyse van ’n dagvaarding—

(i) deur die ondersoeker onderteken word; en

(ii) op die betrokke persoon beteken word deur—

(aa) aflewering aan die betrokke persoon deur die ondersoeker of persoon wat gemagtig is om die aflewering namens die ondersoeker te doen;

- (bb) dit per geregistreerde pos na daardie persoon se sake-, werks- of woonadres te stuur; of
- (cc) middel van 'n databoodskap beoog in die Wet op Elektroniese Kommunikasie en Transaksies, 2002 (Wet 25 van 2002), deur 'n afskrif van die kennisgewing aan die persoon te stuur, indien die persoon 'n e-posadres of ander elektroniese adres het. 5
- (e) 'n Ondersoeker wat 'n kommissaris van ede is, kan vir die doeleindes van subparagraaf (iv) van paragraaf (b) 'n persoon versoek om 'n mondelinge of skriftelike verklaring onder eed of bevestiging af te lê. 10
- (f) Die munisipaliteit en enige persoon bedoel in subparagraaf (iii), (iv) en (vi) van paragraaf (b) moet met die ondersoeker saamwerk en alle redelike bystand verleen wat die ondersoeker vir die doeleindes van die ondersoek versoek. 15
- (g) Vir die doeleindes van hierdie subartikel en behoudens artikel 7A, het die ondersoeker, te alle redelike tye, volle en onbepaalde toegang tot—
- (i) enige rekord van die munisipaliteit; en
- (ii) enige personeel of politieke ampsbekleër van die munisipaliteit, 20
- indien hy of sy redelikerwys vermoed dat die betrokke rekord, personeel of politieke ampsbekleër toegang tot inligting kan verskaf of toegang tot inligting het wat op die ondersoek betrekking het.
- (h) Indien dit gedurende die verloop van die ondersoek vir die ondersoeker blyk dat enige persoon by die aangeleentheid wat ondersoek word, betrokke is en dat so 'n betrokkenheid vir daardie persoon nadelig kan wees of dat 'n ongunstige aanbeveling met betrekking tot daardie persoon tot gevolg kan wees, moet die ondersoeker daardie persoon 'n geleentheid gee om sy of haar saak te stel op enige wyse wat onder die omstandighede dienstig mag wees. 25
- (i) Geen persoon mag sonder die toestemming van die ondersoeker die inhoud van enige dokument wat betrekking het op 'n ondersoek, en wat aan die ondersoeker voorgelê is of in die ondersoeker se besit is, of die rekord van enige verrigtinge van die ondersoek aan 'n ongemagtigde persoon openbaar nie. 30
- (j) Die ondersoeker moet, skriftelik en binne die tydperk bepaal deur die Provinsiale Minister, die Provinsiale Minister voorsien van—
- (i) 'n verslag oor die bevindinge van die ondersoek, met inbegrip van die redes vir daardie bevindinge; en 40
- (ii) die ondersoeker se aanbevelings in verband met die aangeleentheid.
- (k) Die Provinsiale Minister moet 'n afskrif van die verslag en aanbevelings van die ondersoeker aan die betrokke munisipaliteit verskaf. 45
- (l) Die Provinsiale Minister kan, uit sy of haar eie beweging, 'n afskrif van die verslag en aanbevelings van die ondersoeker aan die Suid-Afrikaanse Polisie, 'n instelling beoog in Hoofstuk 9 van die Grondwet, die Spesiale Ondersoekendeheid, 'n ander staatsorgaan of aan die raadslede van die betrokke munisipaliteit verskaf. 50
- (m) Indien die ondersoeker se verslag aandui dat die munisipaliteit 'n statutêre verpligting nie kan uitvoer nie of nie uitvoer nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk in die munisipaliteit plaasgevind het of plaasvind, moet die Provinsiale Minister—
- (i) die speaker van die munisipale raad of die rekenpligtige beampte van die munisipaliteit of beide die speaker en die rekenpligtige beampte, na gelang van die geval, beveel om 'n verslag op te stel, teen 'n datum deur die Provinsiale Minister bepaal, wat die stappe uiteensit wat deur die munisipaliteit gedoen is of gedoen sal word ten einde gevolg te gee aan die bevindinge en aanbevelings van die ondersoeker se verslag; 55
- (ii) die erns van die situasie en die munisipaliteit se antwoord op die situasie evalueer; 60

- (iii) bepaal of die situasie 'n ingryping ingevolge artikel 139 van die Grondwet regverdig of vereis;
- (iv) bepaal of die situasie vereis dat stappe gedoen word om die munisipaliteit te monitor en te ondersteun of om die ontwikkeling van die munisipaliteit se vermoë te bevorder om hom in staat te stel om sy funksies te verrig, na gelang van die geval; en 5
- (v) indien tevrede dat die munisipaliteit as gevolg van onvermoë nie 'n statutêre verpligting kan uitvoer nie, geskikte stappe bepaal, ná oorlegpleging met die munisipaliteit, ten einde die vermoë van die munisipaliteit te ontwikkel en toe te sien dat die munisipaliteit toepaslike praktyknotas en ander bestepaktyk-standaarde implementeer.”. 10

### Invoeging van artikel 7A

11. Die volgende artikel word ná artikel 7 van die Hoofwet ingevoeg:

#### “Uitoefening van funksies kragtens artikels 4A en 7 15

- 7A.** (1) Die ministeriële steunbeampte of ondersoeker kan 'n personeellid, raadslid of politieke ampsbekleër van 'n munisipaliteit versoek om te voldoen aan 'n bevel van of vrae te beantwoord wat aan hom of haar gestel word deur sodanige ministeriële steunbeampte of sodanige ondersoeker soos beoog in artikel 4A of artikel 7(4), niestandaard— 20
- (a) 'n vertroulikheidsplig opgelê aan daardie persoon deur wetgewing wat die gedrag van 'n personeellid, raadslid of politieke ampsbekleër van die munisipaliteit reguleer of 'n ooreenkoms wat daarmee verband hou; of
  - (b) enige bepaling in wetgewing of ander instrument wat die bestuur of beheer van argiewe of rekords van 'n munisipaliteit reguleer. 25
- (2) Indien, gedurende die uitoefening van die ministeriële steunbeampte se funksies beoog in artikel 4A, of die ondersoeker se funksies soos beoog in artikel 7, 'n persoon beweert dat 'n rekord wat hy of sy beveel is om te openbaar, regsvertroulik is en om daardie rede weier om die betrokke rekord te openbaar, en die ministeriële steunbeampte of ondersoeker, na gelang van die geval, van mening is dat die rekord betrekking het op inligting beoog in artikel 4A(1) of op 'n ondersoek beoog in artikel 7, moet die hoofregistrator van die hooggeregshof of die klerk van die betrokke landdroshof met jurisdiksie of sy of haar afgevaardigde 'n afskrif of duplikaat van die tersaaklike rekord in veilige bewaring hou totdat 'n geregshof 'n uitspraak gelewer het oor die vraag of die betrokke inligting regsvertroulik is al dan nie, of totdat die ondersoek afgehandel of beëindig is. 30
- (3) Vir die doeleindes van subartikel (2) kan die balju van die hoër hof of laer hof met jurisdiksie oor die gebied waarin die rekord gehou word of 'n regspraktisyn wat ingevolge artikel 30(3) van die Wet op Regspraktijk, 2014 (Wet 28 van 2014), op die Rol van Regspraktisyns verskyn, 'n afskrif of duplikaat afhaal van die rekord ten opsigte waarvan privilegie geëis word, en vir veilige bewaring by die hoofregistrator of die klerk van die tersaaklike landdroshof soos beoog in subartikel (2) aflewer. 35
- (4) 'n Ministeriële steunbeampte of ondersoeker moet, by die uitoefening van sy of haar bevoegdhede om die eiendom of perseel van 'n munisipaliteit te betree kragtens artikel 4A(4) en (5) of 7(4)(b) en (c)— 50
- (a) die ure van betreding tot gewone sake-ure beperk, tensy die ministeriële steunbeampte of ondersoeker redelikerwys betreding op enige ander tyd nodig ag op grond van dringendheid;
  - (b) te alle tye ordentlikheid en orde handhaaf;
  - (c) homself of haarself aan die personeellid of politieke ampsbekleër met die hoogste rang teenwoordig op die eiendom of perseel identifiseer; 55
  - (d) op versoek van die personeellid of politieke ampsbekleër met die hoogste rang teenwoordig op die eiendom of perseel—

- (i) bewyse van sy of haar aanwysing as die ministeriële steunbeampte of ondersoeker bekend maak;
  - (ii) die doel, bestek en die rede vir betreding verduidelik;
  - (iii) hom of haar toelaat om te alle tye teenwoordig te wees;
  - (iv) onder die omstandighede beoog in subartikel (6), 'n afskrif verskaf van die lasbrief wat kragtens subartikel (7) aan daardie persoon uitgereik is;
  - (v) 'n inventaris verskaf van die items wat verwyder is om afdrucke van te maak.
- (5) Wanneer 'n ministeriële steunbeampte, 'n provinsiale steunbeampte, 'n plaaslikeregering-steunbeampte of 'n ondersoeker sy of haar bevoegdhede kragtens hierdie Wet uitoefen, moet hy of sy behoorlik kennis neem van die persoonlike inligting vervat in sy of haar verslag en, waar van toepassing, dit reduceer sonder om die doeltreffendheid van die verslag aan te tas.
- (6) 'n Ondersoeker of ministeriële steunbeampte mag slegs die eiendom of perseel onder beheer van 'n munisipaliteit betree vir die doeleindes van die uitoefening van die bevoegdhede beoog in artikel 4A(5) of 7(4)(b) uit hoofde van 'n lasbrief wat in kamers uitgereik is deur 'n regter van die hooggeregshof met jurisdiksie.
- (7) 'n Lasbrief beoog in subartikel (6) kan slegs uitgereik word indien dit aan die regter blyk vanuit inligting onder eed of bevestiging wat die behoefte verklaar om die betrokke eiendom of perseel te betree vir die doeleindes van—
- (a) die verrigting van die funksies soos uiteengesit in artikel 4A(1), dat daar 'n behoefte is vir 'n lasbrief om uitgereik te word en dat daar redelike gronde is vir die oortuiging dat die rekords op die betrokke eiendom of perseel gevind kan word;
  - (b) 'n ondersoek kragtens artikel 7, dat daar redelike gronde is vir die oortuiging dat—
    - (i) rekords met betrekking tot die ondersoek of persone met inligting binne die bestek van die ondersoek op die betrokke eiendom of perseel gevind kan word; en
    - (ii) sodanige betreding nodig is vir die doeleindes van die ondersoek.
- (8) Nieteenstaande subartikel (6) kan die bevoegdhede uitgeoefen word om eiendom of perseel beoog in daardie subartikel sonder 'n lasbrief te betree—
- (a) met die toestemming van die persoon beoog in paragraaf (d) van subartikel (4); of
  - (b) indien daar redelike gronde is om te glo dat indien daar om 'n lasbrief aansoek gedoen sou word, dit uitgereik sou word, maar die vertraging wat deur 'n aansoek om 'n lasbrief veroorsaak kan word, die doel van die verkryging van die lasbrief sou verslaan.
- (9) 'n Lasbrief uitgereik kragtens subartikel (6)—
- (a) kan op enige dag uitgereik word en bly van krag—
    - (i) totdat dit uitgevoer is;
    - (ii) totdat dit gekanselleer word deur die persoon wat dit uitgereik het of, indien sodanige persoon nie beskikbaar is nie, deur enige persoon met soortgelyke gesag;
    - (iii) tot die verstryking van drie maande vanaf die datum van uitreiking;
  - (b) moet onderteken word deur die regter wat dit uitreik;
  - (c) moet die eiendom of perseel wat betree mag word, identifiseer;
  - (d) moet die ministeriële steunbeampte of die ondersoeker, na gelang van die geval, magtig om enigiets beoog in artikel 4A(5) of 7(4)(b) of (c) te doen;
  - (e) mag slegs uitgevoer word op die wyse beoog in subartikel (4);
  - (f) mag met die hulp van 'n vredesbeampte of vredesbeamptes uitgevoer word;
  - (g) mag uitgevoer word met die gebruik van sodanige geweld as wat redelikerwys nodig mag wees om enige weerstand teen betreding van eiendom of perseel of inspeksie, kopiëring of duplisering van

rekords te oorkom indien die persoon wat die lasbrief uitvoer eers hoorbaar aangedring het op toegang tot die betrokke eiendom of perseel of ander nodige stappe om sodanige inspeksie, kopiëring of duplisering te fasiliteer, tensy die ondersoeker of ministeriële steunbeampte op redelike gronde van mening is dat die betrokke rekord vernietig kan word of verlore kan gaan as gevolg van sodanige eis.

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(10) Die persoon beoog in paragraaf (d) van subartikel (4) moet sodanige bystand verleen as wat die ministeriële steunbeampte, ondersoeker of vredesbeampte mag versoek.

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(11) Niks in hierdie artikel mag geïnterpreteer word om die Provinsiale Minister te verhoed om by 'n hof met jurisdiksie aansoek om gepaste regshulp te doen ten einde gevolg te gee aan enige bepaling van hierdie Wet nie.”

#### Wysiging van artikel 9 van Wet 4 van 2014

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12. Artikel 9 van die Hoofwet word deur die volgende artikel vervang:

##### “Verslagdoening

9. [(1)] Indien daar ingevolge artikel 6(1)(a) of (b) opgetree word, moet die Provinsiale Minister binne 14 dae—

(a) 'n skriftelike verklaring wat die optrede motiveer, aan die Nasionale Raad van Provinsies voorlê; en

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(b) 'n afskrif van daardie verklaring aan die nasionale minister verantwoordelik vir plaaslike regering [,] en die nasionale minister verantwoordelik vir finansies [en die Suid-Afrikaanse Vereniging vir Plaaslike Regering] aanstuur.

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[(2) Die Provinsiale Minister moet so gou doenlik 'n afskrif van die ondersoeker se verslag bedoel in artikel 7(4)(f) aan die Nasionale Raad van Provinsies, die nasionale minister verantwoordelik vir plaaslike regering, die nasionale minister verantwoordelik vir finansies en die Suid-Afrikaanse Vereniging vir Plaaslike Regering voorlê.]”

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#### Wysiging van artikel 10 van Wet 4 van 2014

13. Artikel 10 van die Hoofwet word deur die volgende artikel vervang:

##### “Regulasies

10. Die Provinsiale Minister kan regulasies maak ten opsigte van— [enige aanvullende of bykomstige aangeleentheid wat die Provinsiale Minister nodig of dienstig ag om voor te skryf vir die behoorlike implementering of administrasie van hierdie Wet maak]

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(a) voldoende voorsorgmaatreëls vir die verwerking van persoonlike inligting kragtens hierdie Wet;

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(b) prosesse om die implementering van hierdie Wet te fasiliteer;

(c) enige ander aanvullende of bykomstige aangeleentheid wat die Provinsiale Minister nodig of dienstig ag om voor te skryf vir die behoorlike implementering of administrasie van hierdie Wet.”

#### Wysiging van artikel 11 van Wet 4 van 2014

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14. Artikel 11 van die Hoofwet word deur die volgende artikel vervang:

##### “Misdrywe en strawwe

11. 'n Persoon wat—

(a) versuim of weier om enige [dokument] rekord in sy of haar besit of onder sy of haar beheer te verskaf [wanneer die persoon] wat hy of sy ingevolge 'n bevel kragtens artikel 4A(5)(b) of artikel 7(4)(b)(iii),

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- saamgelees met artikel 7(4)(d) [deur die ondersoeker bevel word om dit te doen] versoek word om te verskaf;
- (b) enige persoon verhinder om enige [dokument] rekord in daardie persoon se besit of onder daardie persoon se beheer te verskaf [wanneer] wat daardie persoon ingevolge 'n bevel kragtens artikel 4A(5)(b) of artikel 7(4)(b)(iii), saamgelees met artikel 7(4)(d), [deur die ondersoeker bevel word om te doen] versoek word om te verskaf; 5
- (c) artikel [7(4)(e)] 7(4)(i) oortree; [of]
- (d) enige [dokument] rekord [, of voorwerp,] wat na sy of haar wete van hulp kan wees vir die ondersoeker, vernietig of versteek met die doel om die ondersoek van 'n aangeleentheid deur die ondersoeker te dwarsboom of verhinder[,]; 10
- (e) enige rekord wat na die persoon se wete van hulp kan wees vir 'n ministeriële steunbeampte, vernietig of versteek met die doel om die inspeksie, beveiliging of kopiëring van 'n rekord deur 'n ministeriële steunbeampte ingevolge artikel 4A te dwarsboom of verhinder; 15
- (f) versuim om te voldoen aan 'n voorskrif wat deur die Provinsiale Minister ingevolge artikel 7(4)(m)(i) uitgereik is; 20
- (g) op onregmatige wyse die ondersoeker of enige persoon wat 'n bevoegdheid uitoefen of 'n plig uitvoer ingevolge hierdie Wet, verhinder of by hom of haar inmeng;
- (h) vals of misleidende inligting verskaf wanneer daar op 'n versoek van 'n ministeriële steunbeampte of 'n ondersoeker gereageer word 25
- (i) nadat hy of sy beëdig is of 'n bevestiging gemaak het, vals getuienis voor 'n ondersoeker oor enige aangeleentheid lewer, wetende dat sodanige getuienis vals is of nie glo dat dit waar is nie; of
- (j) enige getuie verkry, oorreed, intimideer, korrupteer of omkoop om getuienis te weerhou of om vals getuienis voor 'n ondersoeker te lewer, 30
- pleeg 'n misdryf en is by skuldigbevinding onderhewig aan 'n boete of gevangenisstraf van nie meer as [12] 24 maande nie.”.

### Kort titel en inwerkingtreding

15. Hierdie Wet heet die Wes-Kaapse Wysigingswet op Monitering en Ondersteuning van Munisipaliteite, 2024, en tree in werking op 'n datum bepaal deur die Premier by proklamasie in die *Provinsiale Koerant*. 35

## MEMORANDUM OOR DIE OOGMERKE VAN DIE WES-KAAPSE WYSIGINGSWETSONTWERP OP MONITERING EN ONDERSTEUNING VAN MUNISIPALITEITE

### 1. AGTERGROND

- 1.1 Die Wes-Kaapse Wet op Monitoring en Ondersteuning van Munisipaliteite, 2014 (Wet 4 van 2014) (die Hoofwet), is in 2014 bekragtig ten einde gevolg te gee aan artikels 154(1) en 155(6) van die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet), en artikel 106(1) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) (die Wet op Munisipale Stelsels). Die Hoofwet word tans gebruik saam met die Wet op Munisipale Stelsels, die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet 56 van 2003) (die WMFB), en die grondwetlike bepalings wat provinsiale ingryping in munisipaliteite bestuur. Een van die deurslaggewende tekortkominge van hierdie raamwerke is dat daar nie voldoende voorsiening gemaak word nie vir proaktiewe maatreëls vir vroeë bespeuring en ingryping in gevalle van munisipale korrupsie en bedrog, en gevalle waar 'n munisipaliteit in nood verval.
- 1.2 Die voordele van vroeë ingryping sluit in die vermoë om ernstige wangedrag en korrupsie te voorkom deur gedragpatrone te identifiseer wat die voorkoms van wangedrag voorafgaan. Daar is bevind dat dit 'n positiewe uitwerking op werknemers se welstand het en dit verminder die koste wat met kriminele ondersoeke en prestasiesanksies verband hou.
- 1.3 Navorsing toon dat wanneer ingrypingsmaatreëls ingestel word voor die munisipaliteit 'n toestand van totale ineenstorting bereik, die munisipaliteit meer geneig is om na 'n gesonde operasionele en finansiële grondslag ná die ingryping terug te keer. Met ander woorde, hoe slegter die toestand van die munisipaliteit (byvoorbeeld finansiële ineenstorting, volledige ineenstorting van bestuurstrukture, ineenstorting van infrastruktuur) voor ingryping, hoe minder waarskynlik is dit dat die munisipaliteit na 'n stabiele finansiële en operasionele toestand sal terugkeer.

### 2. OOGMERKE VAN WETSONTWERP

Die oogmerke van die Wes-Kaapse Wysigingswetsontwerp op Monitoring en Ondersteuning van Munisipaliteite, 2024 (die Wysigingswetsontwerp), is dus om—

- (a) voorsiening te maak vir die proaktiewe monitoring van munisipaliteite om bedrog, korrupsie, wanadministrasie en ander ernstige wanpraktyke vroegtydig te bespeur;
- (b) die vermoë van die provinsiale departement verantwoordelik vir plaaslike regering (die Departement) te versterk om munisipaliteite te ondersteun;
- (c) die vermoë van die Departement te versterk om toegang te verkry tot die inligting wat nodig is om ondersoeke en evaluerings doeltreffend uit te voer;
- (d) die monitoring en ondersteuning van munisipaliteite te versterk deur voorsiening te maak vir munisipale rade om voorlopige evaluerings te doen waar daar bewerings is wat nie beuselagtig, kwelsugtig, spekulatief of ooglopend ongegrond is nie, dat 'n munisipaliteit 'n uitvoerende verpligting ingevolge die Grondwet of 'n statutêre verpligting wat op die munisipaliteit bindend is, nie kan uitvoer nie of nie uitvoer nie of dat wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyke in die munisipaliteit plaasvind; en
- (e) rompslomp te verminder en tegniese bepalings in die Hoofwet te verfyn.

### 3. INHOUD VAN WETSONTWERP

- 3.1 **Klousule 1** maak voorsiening vir die invoeging van omskrywings vir “kommissaris van ede”, “ministeriële steunbeampte”, “personeellid”, “persoonlike inligting”, “plaaslikeregering-steunbeampte”, “politieke ampsbe-

kleër”, “provinsiale steunbeampte”, “rekord” en “Spesiale Ondersoekendeheid”.

- 3.2 **Klousule 2** wysig artikel 2 van die Hoofwet deur ’n bepaling by te voeg wat die Provinsiale Minister deur kennisgewing in die *Provinsiale Koerant* bemagtig om enige munisipaliteit, of enige kategorie of soort munisipaliteit vermeld in die kennisgewing, te versoek om aan ’n vermelde provinsiale staatsorgaan die inligting voor te lê wat in die kennisgewing vereis word, hetsy met gereelde tussenposes of binne ’n vermelde tydperk, en ’n bepaling wat die wyse uiteensit waarop hierdie bevoegdheid uitgeoefen moet word.
- 3.3 **Klousule 3** voeg die voorgestelde artikels 2A en 2B in, wat voorsiening maak vir—
- 3.3.1 ’n munisipaliteit, op versoek van die provinsiale uitvoerende gesag, Provinsiale Minister verantwoordelik vir plaaslike regering (die Provinsiale Minister), ministeriële steunbeampte, provinsiale steunbeampte of amptenare van die Departement, om hierdie persone toegang te gee tot sodanige rekords soos dit nodig mag wees vir die monitering, evaluering of ondersoek van ’n munisipaliteit;
- 3.3.2 die aanwysing van plaaslikeregering-steunbeamptes om ondersteuning aan ’n munisipaliteit te verleen soos beoog in artikel 154(1) of 155(6) van die Grondwet.
- 3.4 **Klousule 4** wysig artikel 3 van die Hoofwet deur—
- 3.4.1 te bepaal dat ’n munisipale raad, speaker, burgemeester of munisipale bestuurder die spesifieke funksionaris is wat die Provinsiale Minister of die hoof van enige provinsiale departement kan versoek om die munisipaliteit met die verrigting van hul onderskeie funksies by te staan of om aandag te skenk aan ’n spesifieke aangeleentheid wat verband hou met hul onderskeie funksies;
- 3.4.2 tegniese verfynings van die bepaling aan te bring wat voorsiening maak vir samewerking tussen ’n munisipaliteit wat bystand versoek, en die Departement.
- 3.5 **Klousule 5** voeg die voorgestelde artikel 3A in wat voorsiening maak vir—
- 3.5.1 die Provinsiale Minister om ’n provinsiale steunbeampte aan te wys om voldoening deur ’n munisipaliteit aan toepaslike statutêre verpligtinge te bepaal, om implementering deur ’n munisipaliteit van toepaslike beleide, standaardwerksprosedures en praktyknotas te evalueer, om risiko’s te identifiseer en verbeterings aan prosedures en prosesse voor te stel en om proaktief bystand te verleen met die bespeuring van bedrog, korrupsie, wanadministrasie of wanpraktyke in ’n munisipaliteit;
- 3.5.2 die Provinsiale Minister om die bestek en ander opdragte van die monitering en ondersteuning te bepaal wat verleen moet word indien ’n provinsiale steunbeampte aangewys word;
- 3.5.3 die provinsiale steunbeampte om die Provinsiale Minister te voorsien van ’n verslag oor die bevindinge van die monitering en ondersteuning, met redes, en sy of haar aanbevelings;
- 3.5.4 die Provinsiale Minister om ’n afskrif van die verslag aan die betrokke munisipaliteit te verskaf.
- 3.6 **Klousule 6** wysig artikel 4 van die Hoofwet deur te verduidelik dat die praktyknotas wat ingevolge daardie artikel uitgereik is, die status van niebindende riglyne het.



- 3.7 **Klousule 7** voeg die voorgestelde artikels 4A, 4B en 4C in die Hoofwet in wat voorsiening maak—
- 3.7.1 vir die Provinsiale Minister om, by ontvangs van inligting van 'n vermoedelike versuim deur 'n munisipaliteit om 'n statutêre verpligting uit te voer, of van wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyke, indien hy of sy rede het om te glo dat 'n rekord in verband met die inligting wat ontvang is, versteek of vernietig sal word indien dit nie as 'n saak van prioriteit beveilig word nie, 'n ministeriële steunbeampte aan te wys om sonder voorafkennisgewing aan die munisipaliteit na die munisipaliteit te reis en 'n rekord in verband met die inligting wat ontvang is, te inspekteer, te beveilig en te kopieer op die wyse soos bepaal in die voorgestelde artikel 4A, saamgelees met die voorgestelde artikel 7A, soos by klousule 11 ingevoeg;
- 3.7.2 vir die Provinsiale Minister om, by ontvangs van gegronde bewerings dat 'n munisipaliteit 'n uitvoerende verpligting ingevolge die Grondwet of 'n statutêre verpligting bindend op die munisipaliteit nie kan uitvoer nie of nie uitvoer nie of van wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyke, die munisipale raad van die munisipaliteit te beveel om 'n voorlopige evaluering van die bewerings te doen, en verder dat die Provinsiale Minister ook die munisipale raad kan versoek om aan hom of haar 'n voorlopige evalueringsverslag te verskaf wat die bevindinge en die stappe uiteensit wat gedoen is of gedoen sal word om die aangeleentheid te behandel;
- 3.7.3 vir die voorkoming van die duplisering van evaluerings en ondersoeke deur uitdruklik voorsiening te maak vir die Provinsiale Minister om 'n bewering te verwys na die Suid-Afrikaanse Polisie, 'n instelling beoog in Hoofstuk 9 van die Grondwet, die Spesiale Ondersoek-eenheid of 'n ander staatsorgaan indien hy of sy dit meer gepas ag vir sodanige liggaam om die aangeleentheid te ondersoek en om die uitslag van sodanige ondersoek af te wag voordat hy of sy ingevolge artikel 106 van die Wet op Munisipale Stelsels of die Hoofwet optree.
- 3.8 **Klousule 8** vervang artikel 5 van die Hoofwet deur tegniese wysigings van die vereiste prosedures aan te bring voor die beroep op artikel 106(1) van die Wet op Munisipale Stelsels.
- 3.9 **Klousule 9** wysig artikel 6 van die Hoofwet deur—
- 3.9.1 tegniese wysigings aan te bring aan die vereiste prosedures by die beroep op artikel 106(1) van die Wet op Munisipale Stelsels;
- 3.9.2 voorsiening te maak dat, indien die Provinsiale Minister tevrede is dat 'n munisipaliteit as gevolg van onvermoë nie 'n statutêre verpligting kan uitvoer nie, die Provinsiale Minister geskikte stappe kan bepaal, in samewerking met die munisipaliteit, om die vermoë van die munisipaliteit te ontwikkel en om toe te sien dat die munisipaliteit toepaslike praktyknotas en ander besteparktyk-standaarde implementeer;
- 3.9.3 te verduidelik dat, indien die Provinsiale Minister kragtens subartikel (1)(a) van artikel 6 of paragraaf (a) van subartikel (2) optree, hy of sy nie verhinder word nie om 'n persoon of persone aan te wys om die aangeleentheid te ondersoek soos beoog in artikel 7;

3.9.4 die byvoeging van 'n bepaling dat, indien die Provinsiale Minister rede het om te glo, gegrond op die evaluering beoog in artikel 5, 'n munisipaliteit 'n statutêre verpligting nie kan uitvoer nie of nie uitvoer nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyke in die munisipaliteit plaasgevind het of plaasvind, maar dit nie nodig ag om 'n persoon of persone aan te wys om die aangeleentheid te ondersoek nie, hy of sy die munisipaliteit kan beveel om 'n verslag op te stel wat die stappe uiteensit wat deur die munisipaliteit gedoen is of gedoen sal word om die aangeleentheid te behandel.

3.10 **Klousule 10** wysig artikel 7 van die Hoofwet deur—

3.10.1 voorsiening te maak vir bykomende bevoegdhede wat 'n ondersoeker kan uitoefen vir die doeleindes van 'n ondersoek beoog in artikel 6(1)(b) van die Wet, met inbegrip van die reg om 'n perseel of eiendom van 'n munisipaliteit te betree waar hy of sy redelikerwys vermoed 'n rekord gehou word wat betrekking op die ondersoek mag hê, om enige sodanige rekord te kopieer of duplikate te maak of enige sodanige rekord (met inbegrip van 'n elektroniese toestel) te verwyder, met dien verstande dat die rekord (of elektroniese toestel) sonder onredelike vertraging aan die munisipaliteit terugbesorg word, vir die doel om enige aangeleentheid te bepaal wat verband hou met die onderwerp van die ondersoek, om 'n persoon te versoek om 'n mondelinge of skriftelike verklaring onder eed of bevestiging af te lê of om enige persoon te dagvaar om enige rekord of voorwerp wat tersaaklik is tot die ondersoek, voor te lê op die tyd en plek in die dagvaarding vermeld;

3.10.2 voorsiening te maak dat die ondersoeker volle en onbeperkte toegang het tot enige rekord van die munisipaliteit of personeellid of ampsbektel van die munisipaliteit op die wyse soos uiteengesit in daardie bepaling en die bepaling wat voorgestel word om deur klousule 11 van die Wysigingswetsontwerp ingevoeg te word, indien die ondersoeker redelikerwys vermoed dat die betrokke rekord, personeellid of politieke ampsbektel toegang kan gee tot inligting of inligting kan verskaf wat op die ondersoek betrekking het;

3.10.3 voorsiening te maak vir die Provinsiale Minister om die verslag en aanbevelings van die ondersoeker te deel met die Suid-Afrikaanse Polisiediens, 'n instelling beoog in Hoofstuk 9 van die Grondwet, die Spesiale Ondersoekeenheid, 'n ander staatsorgaan of met die raadslede van die betrokke munisipaliteit;

3.10.4 die byvoeging van 'n bepaling wat voorsiening maak dat, in die geval dat die ondersoeker se verslag aandui dat die munisipaliteit 'n statutêre verpligting nie kan uitvoer nie of nie uitvoer nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyke in die munisipaliteit plaasgevind het of plaasvind, die Provinsiale Minister die munisipaliteit kan beveel om 'n verslag op 'n vasgestelde datum op te stel wat die stappe uiteensit wat deur die munisipaliteit gedoen is of gedoen sal word, ten einde gevolg te gee aan die bevindinge en aanbevelings van die ondersoeker se verslag.

3.11 **Klousule 11** voeg die voorgestelde artikel 7A in wat voorsiening maak vir die wyse waarop die ministeriële steunbeampte en die ondersoeker hul funksies moet uitoefen—

3.11.1 deur voorsiening te maak dat die ministeriële steunbeampte of ondersoeker 'n personeellid, raadslid of politieke ampsbektel van 'n munisipaliteit kan versoek om te voldoen aan 'n bevel of vrae te beantwoord wat aan hom of haar gestel word, nieteenstaande 'n vertroulikheidsplig wat deur wetgewing aan daardie persoon opgelê word wat die gedrag van 'n personeellid, raadslid of politieke ampsbe-

kleër van die munisipaliteit reguleer, of 'n ooreenkoms wat verband hou met die gedrag van 'n personeellid, raadslid of politieke ampsbeker van die munisipaliteit, of enige bepaling in wetgewing of ander toepaslike instrument wat die bestuur van rekords in 'n munisipaliteit reguleer;

3.11.2 deur die wyse aan te dui waarop die ministeriële steunbeampte en die ondersoeker die bevoegdheid moet uitoefen om die eiendom of perseel van 'n munisipaliteit te betree, met inbegrip van voorsiening dat sodanige bevoegdheid slegs uitgeoefen mag word uit hoofde van 'n lasbrief wat in kamers uitgereik is deur 'n regter van die hooggeregshof met jurisdiksie, tensy die personeellid of politieke ampsbeker met die hoogste rang op die eiendom teenwoordig tot sodanige betreding toestem of daar redelike gronde is om te glo dat 'n lasbrief, indien 'n aansoek ingedien word, uitgereik sal word, maar die vertraging wat deur 'n aansoek om 'n lasbrief veroorsaak kan word, die doel van die verkryging van die lasbrief sal verslaan.

3.12 **Klousule 12** wysig artikel 9 van die Hoofwet deur die skraping van 'n verslagdoeningsvereiste ná stappe gedoen kragtens artikel 6(1)(a) of (b) van die Wet.

3.13 **Klousule 13** vervang artikel 10 van die Hoofwet deur voorsiening te maak vir die Provinsiale Minister om regulasies te maak oor—

3.13.1 voldoende voorsorgmaatreëls vir die verwerking van persoonlike inligting;

3.13.2 prosesse om die implementering van die Wet te fasiliteer.

Hierdie bepalings is bemagtigende bepalings wat die Provinsiale Minister magtig om regulasies oor sodanige aangeleenthede te maak om, indien die behoefte ontstaan, verbeterings in die implementering van die Wet te fasiliteer sodra dit bekragtig is. Hierdie aangeleenthede is administratief van aard en word as gepas beskou om in regulasies ingesluit te word.

Die voorgestelde bepaling wat in paragraaf 3.13.1 hier bo vermeld is, wat die Provinsiale Minister magtig om regulasies te maak oor “voldoende voorsorgmaatreëls vir die verwerking van persoonlike inligting” moet saamgelees word met die voorgestelde artikel 7A(5) deur klousule 11 ingevoeg, wat betrekking het op die wyse waarop persoonlike inligting deur die ministeriële steunbeampte, provinsiale steunbeampte, plaaslikeregering-steunbeampte of ondersoeker hanteer moet word. Daar word kennis geneem dat die Wet op Beskerming van Persoonlike Inligting, 2013 (Wet 4 van 2013) (POPIA), moontlik van toepassing is op inligting wat deur die Provinsie verkry is ingevolge die Wysigingswetsontwerp, sodra dit bekragtig is. Die vrystellings van spesifieke bepalings in artikel 38 van POPIA is egter waarskynlik van toepassing. In hierdie verband is die Provinsie 'n openbare liggaam (soos omskryf in artikel 1 van POPIA) en die funksies in die Wysigingswetsontwerp is ook funksies wat vertolk kan word om lede van die publiek te beskerm teen oneerlikheid, wanpraktyke of ander ernstig onbetaamlike gedrag deur of die ongeschiktheid of onbevoegdheid van persone wat gemagtig is om enige beroep of ander aktiwiteit te beoefen. Gevolglik sal artikels 11(3) en (4), 12 en 15 nie van toepassing wees in die mate dat die toepassing van daardie bepalings waarskynlik die behoorlike vervulling van daardie funksie sal benadeel nie.\*

\* Artikel 38 van POPIA maak voorsiening vir die volgende:

“(1) Persoonlike inligting wat vir die oogmerk van die uitvoering van 'n tersaaklike werksaamheid geprosesseer word, is vrygestel van artikels 11 (3) en (4), 12, 15 en 18 in enige geval vir sover die toepassing van daardie bepalings op persoonlike inligting, die behoorlike uitvoering van daardie werksaamheid waarskynlik sal benadeel.

(2) “Tersaaklike werksaamheid”, by die toepassing van subartikel (1), beteken enige werksaamheid—

Artikel 6(1)(c)(ii) van POPIA bepaal dat die verwerking van inligting van die toepassing daarvan uitgesluit word, insluitende ten opsigte van—

“... die prosessering van persoonlike inligting . . .—

(c) **deur of namens ’n openbare liggaam—**

(ii) waarvan die oogmerk die voorkoming, **opsporing**, met inbegrip van hulpverlening in die identifisering van die opbrengste uit onwettige aktiwiteite en die bestryding van geldwassery-aktiwiteite, **die ondersoek of bewys van misdrywe**, die vervolging van oortreders of die uitvoering van vonisse of veiligheidsmaatreëls, is,

vir sodanige genoegsame voorsorgmaatreëls in wetgewing vir die beskerming van sodanige persoonlike inligting daargestel is;”.

Die funksies kragtens die Wysigingswetsontwerp val binne artikel 6(c)(iii) en in die lig daarvan is voorsiening gemaak in die Wysigingswetsontwerp wat die Provinsiale Minister magtig om regulasies te maak vir “voldoende voorsorgmaatreëls vir die verwerking van persoonlike inligting” as ’n opsie in die toekoms.

3.14 **Klousule 14** vervang artikel 11 van die Hoofwet deur voorsiening te maak vir bykomende misdrywe.

#### 4. OORLEGPLEGING

4.1 Die volgende rolspelers is geraadpleeg:

Hoofregistrateur van die Wes-Kaapse Hooggeregshof  
 Departement van die Premier: Regsdienste  
 Ander provinsiale departemente  
 Suid-Afrikaanse Vereniging vir Plaaslike Regering (Salga)  
 Die Inligtingsreguleerder

4.2 Voorgestelde wysigings aan die Wet is voorgelê en bespreek tydens die vergadering van die Wetgewende en Grondwetlike Taakspan tussen die Departement, die Departement van die Premier (Regsdienste), ander provinsiale departemente, Salga en munisipaliteite (regsadviseurs, direkteure: Korporatiewe Dienste en munisipale bestuurders), gehou op 5 Maart 2021. Die Wysigingswetsontwerp is ook voorgelê en bespreek by die Salga Wes-Kaapse Werkgroep vir Bestuur en Interregeringsbetrekkinge wat op 10 Mei 2023 gehou is.

4.3 Die Wysigingswetsontwerp is vir kommentaar gepubliseer in *Provinsiale Koerant* 8723 van 24 Februarie 2023 met ’n sluitingsdatum van 6 April 2023. Die tydperk vir openbare kommentaar is daarna verleng by wyse van ’n verdere kennisgewing in die *Provinsiale Koerant* met ’n nuwe sluitingsdatum vir openbare kommentaar van 28 April 2023 om verdere geleentheid aan die publiek te gee om kommentaar te lewer.

4.4 Die Wysigingswetsontwerp is verder deur middel van Omsendbrief C11 van 2023 aan alle munisipaliteite in die Provinsie en aan Salga gesirkuleer waarin gevra is om kommentaar op die Wysigingswetsontwerp te lewer.

(a) van ’n openbare liggaam; of

(b) regtens aan enige persoon opgedra,

wat verrig word met die oog op die beskerming van lede van die publiek teen—

(i) finansiële verlies as gevolg van oneerlikheid, wanpraktyk of ander ernstige onbehoorlike gedrag deur, of die onbekwaamheid of onbevoegdheid van, persone wat betrokke is by voorsiening van bank-, versekerings-, beleggings- of ander finansiële dienste of in die bestuur is van korporatiewe verenigings; of

(ii) oneerlikheid, wanpraktyk of ander ernstige onbehoorlike gedrag deur, of die onbekwaamheid of onbevoegdheid van, persone wat gemagtig is om enige profesie of ander aktiwiteit te beoefen.”.

## **5. FINANSIËLE IMPLIKASIES**

Die voorgestelde wysigings beoog nie die (i) instelling van bykomende strukture vir die Departement of (ii) verdere indiensneming van personelede nie. Indien interne kapasiteit nie toelaat dat amptenare van die Provinsiale Regering of personeel van 'n munisipaliteit in die Provinsie deur die Provinsiale Minister as 'n plaaslikeregering-steunbeampte, ministeriële steunbeampte of provinsiale steunbeampte aangewys word nie, sal eksterne persone aangestel moet word met die gepaardgaande koste-implikasies.

Die regstreekse koste vir die regering sal reiskoste insluit wat verbonde is aan die uitvoering van proaktiewe evaluerings deur personeel van munisipaliteite. Die koste kan nie in hierdie stadium bepaal word nie aangesien dit sal afhang van wanneer sodanige evaluering vereis word.

## **6. WETGEWENDE BEVOEGDHEID**

Die Provinsiale Minister verantwoordelik vir plaaslike regering is tevrede dat al die bepalinge in die Wysigingswetsontwerp binne die wetgewende bevoegdheid van die Provinsie val.

**INQAKU ELICACISAYO JIKELELE:**

- [ ] Amagama angqindilili kwizibiyeli zesikwere abonakalisa ush-  
iyo kuqaliso lowiso-mthetho olukhoyo.
- Amagama akrwelelwe ngomgca ongqindilli abonakalisa  
ufakelo kuwiso lomthetho olukhoyo.

**UMTHETHO OSAYILWAYO**

Ukulungiswa koMthetho woBekoliso neNkxaso yooMasipala weNtshona Koloni, 2014 (uMthetho 4 ka-2014), ukuze kufakwe iinkcazelo ezithile; ukubonelela ukuba uMphathiswa wePhondo afune nawuphi na umasipala okanye udidi lomasipala ngesaziso kwiGazethi yePhondo ukuba angenise ulwazi kwiqumrhu likarhulumente elikhethekileyo lephondo; ukubonelela ngokufikelela kwiirekhodi zomasipala ngexesha lokuvavanywa okanye lophando ngamagosa athile ephondo; ukunika imimiselo yokutyunjwa kwabasebenzi benkxaso kumasipala; ukunika imimiselo yokutyunjwa kwegosa lenkxaso lephondo; ukutshintsha imimiselo ebonelela ngentsebenziswano phakathi kukamasipala neSebe; ukunika iinkqubo zokubeka iliso kusengaphambili koomasipala; ukunika iinkqubo zokuhlola, ukukhusela nokukopa iirekhodi kwiimeko ezithile; ukunika uMphathiswa wePhondo igunya lokuyalela iBhunga likaMasipala ukuba lenze uvavanyo lokuqala emva kokufumana izityholo ezithile; ukunika uMphathiswa igunya lokulinda iziphumo zophando olwenziwa ngamanye amaqumrhu karhulumente phambi kokuthatha amanyathelo phantsi kwecandelo 106 lomthetho iMunicipal Systems Act okanye lo Mthetho; ukulungisa iimfuno ezinxulumene novavanyo ekufuneka lwenziwe nguMphathiswa wePhondo phambi kokubiza icandelo 106(1) lomthetho iMunicipal Systems Act; ukulungisa iinkqubo xa kusetyenziswa elo candelo; ukususa iimfuno ezithile zokunika ingxelo; ukubonelela ngemicimbi apho uMphathiswa wePhondo angenza imimiselo; ukuzisa ulwaphulomthetho olongezelelweyo; nokunika imicimbi enxulumene noko.

**N**GOKO KE KUMISWA UMTHETHO yiPalamente yePhondo leNtshona Koloni  
ngolu hlobo lulandelayo:—

**Ukulungiswa kwecandelo 1 loMthetho 4 ka-2014**

1. ICandelo 1 loMthetho woBekoliso neNkxaso yooMasipala weNtshona Koloni, 2014 (uMthetho 4 ka-2014) (uMthetho oyintloko), liyalungiswa— 5

- (a) ngokufaka phambi kwenkcazelo “Umagaqo-siseko” yale nkcazelo ilandelayo:

“**‘umkomishinala wezifungo’** uthetha umkomishinala wezifungo otyunjwe phantsi kwecandelo 5 le*Justices of the Peace and Commissioners of Oaths Act, 1963* (uMthetho 16 ka-1963) okanye umntu obekwe eofisini nguMphathiswa onoxanduva lobuLungisa phantsi kwecandelo 6 lalo Mthetho;”;

- (b) ngokufakela emva kwenkcazelo yo “umphandi” yezi nkcazelo zilandelayo:

“**‘igosa lenkxaso likarhulumente wengingqi’** lithetha umntu okhethiweyo phantsi kwecandelo 2B;

**‘igosa lenkxaso yobuphathiswa’** lithetha umntu ozimeleyo okanye igosa likaRhulumente wePhondo, iqumrhu loluntu lephondo okanye

- umasipala ePhondweni, okhethwe ngokwecandelo 4A ukwenza imisebenzi ekweli candelo;”;
- (c) ngokufakela emva kwenkcazelo ka “umasipala” yezi nkcazelo zilandelayo:  
 “**‘iinkcukacha zobuqu’** zithetha iinkcukacha zobuqu njengoko zichazwe kwicandelo 1 le*Protection of Personal Information Act, 2013* (uMthetho 4 ka-2013);  
**‘igosa lezopolitiko’** lithetha igosa lezopolitiko njengoko kuchaziwe kwicandelo 1 lomthetho we*Municipal Systems Act*;”;
- (d) ngokufakela emva kwenkcazelo yo “uMphathiswa wePhondo” yezi nkcazelo zilandelayo:  
 “**‘igosa lenkxaso yephondo’** lithetha umntu ozimeleyo okanye igosa loRhulumente wePhondo, iqumrhu loluntu lephondo okanye umasipala ePhondweni okhethelwe ukwenza imisebenzi ekuthethwa ngayo kwicandelo 3A;  
**‘irekhodi’** lithetha iinkcukacha ezirekhodiweyo, nokuba loluphi uhlobo okanye indlela, kuquka ifayile, uxwebhu, incwadi okanye ezinye iirekhodi ezibhaliweyo okanye ezekhompyutha;”;
- (e) nokufakela emva kwenkcazelo “ukumisela” yezi nkcazelo zilandelayo:  
 “**‘ICandelo loPhando eliLodwa’** lithetha iCandelo loPhando eliLodwa elisungulwe phantsi kwecandelo 2(a) le*Special Investigation Units and Special Tribunals Act, 1996* (uMthetho 74 ka-1996) okanye nawuphi na umlandeli ngokusemthethweni;  
**‘umsebenzi’**, ngokunxulumene nomasipala, uthetha umsebenzi kamasipala, kuquka nomphathi kamasipala;”.

#### Ukulungiswa kwecandelo 2 loMthetho 4 ka-2014

2. Icandelo 2 loMthetho oyintloko ulungiswa ngokongeza la macandelwana alandelayo, icandelo elikhoyo liba licandelwano (1):

- “(2) UMphathiswa wePhondo ngesaziso kwi*Gazethi yePhondo* ufuna nawuphi na umasipala, okanye naluphi na udidi okanye uhlobo lukamasipala ochazwe kwisaziso, afake kwiqumrhu likarhulumente lephondo elingqalileyo iinkcukacha ezinjalo njengoko zingafunwa kwisaziso, nokuba ngamakhefu aqhelekileyo okanye kwixesha elichaziweyo.
- (3) Xa esebenzisa amagunya akhe ngokwecandelwana (2), uMphathiswa wePhondo—
- (a) kufanele athembele kangangoko kwiingxelo izisunguliweyo ezisemthethweni ezinxulumeneyo ezifakwe ngoomasipala ngokwawo nawuphi na umthetho; kwaye
- (b) angenza izicelo ezifanelekileyo koomasipala ukwenzela iinkcukacha ezongezelelweyo emva kokuthathela ingqalelo—
- (i) umthwalo wolawulo koomasipala wokubonelela ngeenkcukacha;
- (ii) iindleko ezibandakanyekayo; kunye
- (iii) neendlela ezikhoyo, iinkqubo zokubeka esweni ukusebenza komasipala.”.

#### Ukufakelwa kwamacandelo 2A no2B kuMthetho 4 ka-2014

3. La macandelo alandelayo afakwe kuMthetho oyintloko emva kwecandelo 2:

##### “Ukufikelela kwiirekhodi zoomasipala

**2A.** Ngeenjongo zokubeka esweni, zokuhlola okanye zokuphanda umasipala ngokwalo Mthetho, umasipala okanye nalo neliphi na iqumrhu likamasipala eliphantsi kolawulo olulodwa okanye olwabiwayo lukamasipala kufanele abonelele isigqeba sephondo, uMphathiswa wePhondo, igosa lenkxaso kamphathiswa, igosa lenkxaso lephondo okanye amagosa eSebe, xa kucelwa nguye nawuphi na kwaba bantu, ngokufikelela kwiirekhodi ezinjalo njengoko kuza bayimfuneko kusenzelwa ukubeka esweni okunjalo, uhlobo okanye uphando.

### Ukuchongwa kwamagosa enkxaso karhulumente wengingqi

**2B.** UMphathiswa wePhondo angachonga elinye okanye ngaphezulu—  
 (a) amagosa kaRhulumente wePhondo;  
 (b) abameli bequmrhu loluntu lephondo;  
 (c) abasebenzi bomasipala wePhondo, kuxhomekeke nokuvumelana nomlawuli kamasipala;  
 (d) abantu abazimeleyo,  
 njengegosa lenkxaso karhulumente wamakhaya njengoko kuchaziwe kwicandelo 154(1) nakwicandelo 155(6) loMgaqosiseko.”.

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### Ukulungiswa kwecandelo 3 loMthetho 4 ka-2014

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4. Icandelo 3 loMthetho oyintloko uyalungiswa—

(a) ngokufaka endaweni yecandelwana (1) eli candelwana lilandelayo:

“(1) [A] Ibhunga likamasipala, usomlomo, usodolophu okanye umlawuli kamasipala usenokuthi enze isicelo ngqo kuMphathiswa wePhondo okanye kwintloko yalo naliphi na isebe lephondo sokuba ancediswe [umasipala] ekwenzeni imisebenzi [yakhe] eyahlukileyo ngokubanzi okanye ngokuphathelele kumba othile onxibelelene nemisebenzi yabo eyahlukeneyo.”; kunye

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(b) ngokufaka endaweni yecandelwana (2) eli candelwana lilandelayo:

“(2) Xa isicelo esinjalo senziwe[—],

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**[(a) iSebe eli okanye elinye iSebe lePhondo elifanelekileyo kufuneka lisebenzisane nomasipala lowo, kwaye limnike uncedo olo lucelwayo; kwaye**

**(b)] iSebe, eli okanye elinye iSebe lePhondo elifanelekileyo, kunye nomasipala lowo kufuneka bazinxibelelanise izinto abazenzayo.”.**

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### Ukufakelwa kwecandelo 3A kuMthetho 4 ka-2014

5. Eli candela lilandelayo lifakwe emva kwecandelo 3 loMthetho oyintloko:

#### “Ukubeka iliso kwangaphambili

**3A.** (1) Ukuze kubekwe esweni kwaye kuxhaswe oomasipala kwangaphambili, uMphathiswa wePhondo ngokumayelana nomasipala, angachonga igosa lenkxaso lephondo ukuze—

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(a) ukufumanisa ukuba umasipala uyithobele imigaqo esemthethweni esebenzayo;

(b) ukuvavanya ukuphunyezwa kukamasipala ngemigaqonkqubo esebenzayo, iinkqubo zokusebenza eziqhelekileyo namanqaku okuziqhelanisa okusebenza;

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(c) achonge imingcipheko acebise ngeendlela zokuphucula kwimigaqo neenkqubo ukuze kuthintelwe ubuqhetseba, urhwaphilizo, ulawulo olugwenxa; kunye

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(d) nokunceda ngokukhawuleza ukubhaqa ubuqhetseba, urhwaphilizo, ulawulo olugwenxa kumasipala.

(2) Ukuba uMphathiswa wePhondo uchonga igosa lenkxaso lephondo ngokwecandelwana (1), uMphathiswa wePhondo kufanele afumanise ngokubhala umda wokubeka esweni nenkxaso emayibonelelwe kunye neminye imigaqonkqubo yokuchonga.

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(3) Igosa lenkxaso lephondo kufanele libonelele uMphathiswa wePhondo—

(a) ngengxelo yeziphumo zokubeka esweni nenkxaso kunye nophicotho oluchazwe kwicandelwano (1), kuquka izizathu zezo ziphumo; kunye

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(b) neziphakamiso zakhe ezinxulumene neziphumo.

(4) UMphathiswa wePhondo kufanele abonelele ngekopi yengxelo neziphakamiso zegosa lenkxaso lephondo kumasipala ochaphazelekayo.”.

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### Ukulungiswa kwecandelo 4 loMthetho 4 ka-2014

6. Icandelo 4 loMthetho oyintloko lilungiswa ngokufaka endaweni yecandelwana (4) eli candelo lilandelayo:

“(4) Iingcaciswana zenkqubo ezikhutshwe ngokwecandelwana (1) zikwizinga lesikhokelo esingenazimbophelelo.”

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### Ukufakelwa kwamacandelo 4A, 4B no4C kuMthetho 4 ka-2014

7. La macandelo alandelayo afakwe kwicandelo 4 loMthetho oyintloko:

#### “Ukuhlolwa, ukukhuselwa kunye nokukotshwa kweerekhodi

4A. (1) Ukuba uMphathiswa wePhondo uthe ekufumaneni kwakhe iingcombolo zokurhaneleka kokusilela komasipala ekuzalisekeni izibophelelo ezisemthethweni, ulawulo olugwenxa, ubuqhetseba, urhwaphilizo okanye olunye ulawulo olugwenxa olunobuzaza unesizathu sokukholelwa ukuba irekhodi elinxulumene kwiingcombolo ezifunyenweyo ziya kufihlwa okanye zitshatyalaliswe ukuba azikhuselwanga ngomba ophambili, ngaphandle kokunika isaziso kumasipala, achonge igosa lenkxaso likamphathiswa liye kumasipala lize lihlole, likhusele likope irekhodi elinxulumene kwiingcombolo ezifunyenweyo ngendlela echazwe kwicandelwana (5), elifundwa kunye necandelo 7A.

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(2) Ekufumaniseni iinjongo zecandelwana (1) ukuba ukuhlolwa, ukukhuselwa kunye nokukotshwa kweerekhodi kuyafuneka na, uMphathiswa wePhondo kufanele athathele ingqalelo yonke imiba, kuquka ukuba kunxulumene—

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(a) ukuba ngubani na udizamahlebo;

(b) ubunzulu bokwaphulwa komthetho;

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(c) nokuba ulwaphulomthetho kutyholwa ukuba luyaqhubeka okanye lunokwenzeka kwixesha elizayo;

(d) abantu abajongene nezityholo; kunye

(e) nomdla woluntu.

(3) Ukuba uMphathiswa wePhondo uchonga igosa lenkxaso kamphathiswa ngokwecandelwana (1), uMphathiswa wePhondo kufanele afumanise ngokubhala umda kunye neminye imigaqonkqubo yokuchonga.

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(4) Ngokwecandelwana (5) kunye necandelo 7A, igosa lenkxaso likamphathiswa elichaphazelekayo, nangaliphi na ixesha elifanelekileyo—

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(a) linokufikelela okungaqingqwanga okupheleleyo kulo naliphi na irekhodi likamasipala; kunye

(b) linelungelo lokubuza nawuphi na umsebenzi okanye umsebenzi osebenza kwiofisi zezopolitiko zikamasipala,

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ukuba urhanela ngokufanelekileyo ukuba irekhodi okanye umsebenzi okanye umsebenzi osebenza kwiofisi yezopolitiko elichaphazelekayo lingabonelela okanye lifikelela kwiinkcukacha ezinxulumeneyo echazwe kwicandelwana (1).

(5) Ngokwecandelo 7A, igosa lenkxaso likamphathiswa—

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(a) lingangena nakwesiphi na isakhiwo okanye umhlaba ka okanye ophantsi kolawulo lukamasipala apho arhanela ngokufanelekileyo ukuba irekhodi elinxulumene nomba ochazwe kwicandelwana (1);

(b) ngendlela eboniswe kwicandelo 7(4)(d), liyalele nawuphi na umntu amrhanela ngokufanelekileyo anganerekhodi kuye okanye eliphantsi kolawulo lwakhe kwaye olunxulumene nomba ochazwe kwicandelwana (1) aveze okanye azise kwindawo nangexesha elichaziweyo nangendlela ethile, nayiphi na irekhodi enjalo;

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(c) lihlole nayiphi na irekhodi kwaye abuze nawuphi na umntu onokuba nolwazi ngomba ochazwe kwicandelwana (1) ngalo nayiphi na irekhodi enjalo; okanye

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(d) likhuphele, okanye lenze ikopi kulo naliphi na irekhodi elinjalo ngendleko zikamasipala okanye lisuse naliphi na irekhodi elinjalo, kuquka nasiphi na isixhobo se-elektroniki, ukwenza iikopi okanye

likhuphele, ngaphandle kokuba irekhodi okanye isixhobo se-elektronikhi sibuyiselwe kumasipala ngaphandle kokulibazisa okungafanelekanga emva koko.

#### Uvavanyo lokuqala

**4B.** (1) UMphathiswa wePhondo, ekufumaneni izityholo zokuba umasipala kwiPhondo akanakho okanye akazalisi imigaqo esemthethweni ebophelela loo masipala, okanye ulawulo olugwenxa, ubuqhetseba, urhwaphilizo okanye olunye ulawulo olugwenxa olunobuzaza olwenzekileyo okanye olwenzekayo kumasipala wePhondo, ngokoluvo lwakhe alubalulekanga, alucaphukisi, aluqiqi okanye ngokucacileyo alunasiseko, liyalele ibhunga likamasipala liqhube uvavanyo lokuqala lezityholo. 5

(2) Ukuba uMphathiswa wePhondo uyalela ibhunga likamasipala liqhube uvavanyo lokuqala phantsi kwecandelwana (1), uMphathiswa wePhondo angafuna ingxelo yovavanyo lokuqala egameni likamasipala inikwe yena ngaphambi okanye ngomhla ochaziweyo, echaza iziphumo kwaye, ukuba ayasebenza, amanyathelo athathiweyo okanye aza kuthathwa ngumasipala onxulumeneyo alungise umba ochazwe kumhlathi (1). 10

#### Ukuphindaphindwa kweemvavanyo kunye nophando

**4C.** Ukuba uMphathiswa wePhondo unoluvo lokuba kufaneleke ngakumbi ukuba isityholo siphandwe yiNkonzo yamaPolisa yoMzantsi Afrika, iziko elichazwe kwiSahlulo 9 soMgaqosiseko, iCandelo loPhando eliKhethekileyo okanye elinye iziko likarhulumente, anga— 20

(a) gqithisa isityholo kumbutho olunxulumeneyo; okanye 25

(b) alinde isiphumo sophando olunjalo phambi kokuba athathe inyathelo ngokwecandelo 106 weMunicipal Systems Act okanye lo Mthetho.”.

#### Ukulungiswa kwecandelo 5 loMthetho 4 ka-2014

**8.** Icandelo 5 loMthetho oyintloko utshintshwa ngeli candela lilandelayo: 30

#### “Amanyathelo phambi kokusebenzisa icandelo 106(1) lomthetho oyiMunicipal Systems Act

**5.** UMphathiswa wePhondo kufuneka, phambi kokuba athabathe naliphi na inyathelo phantsi kwecandelo 106(1) lomthetho oyiMunicipal Systems Act[—], 35

**[(a) ngesaziso esibhaliweyo amazise umasipala lowo uchaphazelekayo ngeenkukacha ezithe zafunyanwa nguMphathiswa wePhondo, amcele umasipala lowo ukuba angenisele uMphathiswa wePhondo impendulo yakhe ebhaliweyo ngosuku olubekwe nguMphathiswa wePhondo; kananjalo]** 40

**[(b)] avavanye ngokungakhethi cala zonke iinkukacha ezinxulumeneyo anazo uMphathiswa wePhondo, [athathele ingqalelo, phakathi kweminye imiba] ezingaquka—**

(i) indlela ezithe zafumaneka ngayo ezo nkukacha; 45

(ii) impendulo[, ukuba ikhona,] athe wayifuana kumasipala lowo;

(iii) ngaba iinkukacha ezo ziyabonakalisa na ukuba akakwazi ukuwenza okanye akawenzi umsebenzi wakhe oluxanduva alubekelwa ngumthetho umasipala lowo, nokuba ngaba oko kwenziwa kukunqongophala kwezakhono kusini na; 50

(iv) nokuba ngaba iinkukacha ezo ziyabonakalisa ukuba kukho ubugwenxa kulawulo, ubuqhetseba, urhwaphilizo okanye ukuba kukho naso nasiphi esinye isigqitho esimandla esithe senzeka okanye esenzekayo kumasipala lowo;

- (v) iinkalo zomsebenzi kamasipala ezinokuthi zichaphazeleke xa kungenakubakho manyathelo athathwayo ngokwecandelo 106(1) lomthetho oyi*Municipal Systems Act*;
- (vi) nokuba ngaba umasipala lowo wayekhe walucela na uncedo kuMphathiswa wePhondo okanye kwiNtloko yalo naliphi na iSebe lePhondo, ngokuphathelele kulo mba uchaphazelekayo okanye komnye nje onxulumene nawo; **[kananjalo]** 5
- (vii) nokuba ngaba uMphathiswa wePhondo, iSebe okanye isebe lephondo elingelinye lalike lanikela ngoncedo kumasipala lowo; **[kwaye]** 10
- (viii) ukuba kufanelekile, nokuba umasipala lowo uzisebenzisa kangakanani na iingcaciswana zenkqubo ezifanelekileyo nokuba uyayithobela na imigangatho yesizwe nobuncinane bemigangatho obubekiweyo phantsi kwecandelo 108(1) lomthetho oyi*Municipal Systems Act*[.]; **kwaye** 15
- (ix) nayiphi na imiyalelo ibhunga likamasipala elithe lasilela ukuyithobela.”

#### Ukulungiswa kwecandelo 6 loMthetho 4 ka-2014

##### 9. Icandelo 6 loMthetho oyintloko uyalungiswa—

- (a) ngokufakela la magama alandelayo endaweni yecandelwana (1) la magama andulela umhlathi (a): 20
  - “(1) Ukuba uMphathiswa wePhondo unayo imihlaba yokukholelwa ukuba, ngokovandlakanyo olukhankanywa kwecandelo 5(b), umasipala akakwazi ukulufezekisa okanye akalufezekisi uxanduva alubekelwa ngumthetho, okanye bukhona ubugwenxa, ubuqhetseba, urhwaphilizo okanye nasiphi na esinye isigqitho esimandla esenzekileyo okanye esenzekayo kumasipala, uMphathiswa wePhondo kufuneka **[ukuba athi ngento ebhaliweyo amazise umasipala lowo ngezimvo zakhe]** nangezizathu ezisekeleke kuzo ezo zimvo zakhe, ngokwecandelo 106(1) le*Municipal Systems Act* —”; 25 30
- (b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (2):
  - “(2)(a) Ukuba uMphathiswa wePhondo, emva kokuqwalasela **[naziphi na]** iinkcukacha, ukuba zikhona, ezifunyenwe njengependulo kwisaziso ekubhekiswa kuso kwecandelwana (1)(a), wanelisekile ukuba umasipala akanako ukuzalisekisa uxanduva olusemthethweni ngenxa yokungakwazi ukwenza umsebenzi, uMphathiswa wePhondo [kufuneka] angamisele amanyathelo afanelekileyo, ngentsebenziswano noma sipala, ukuphuhlisa izakhono zaloo masipala aqinisekise kananjalo ukuba umasipala uyazilandela iingcaciswan zenkqubo kunye neminye imigangatho yokusebenza akuhle. 35 40
  - (b) UMphathiswa wePhondo akathintelwanga ekwenzen’ okuthile phantsi kwecandelwana (1)(a) okanye umhlathi (a) wecandelwana ukebeni athi xa ebona kuyimfuneko, atymbe nawuphi na umntu okanye abantu ukuba baphande umcimbi lowo, njengoko kuchaziwe kwecandelwano 7.”; 45
- (c) ngokucinywa kwecandelwana (3); kuxeliwe
- (d) ngokongezwa emva kwecandelwana (3) kweli candelwana lilandelayo:
  - “(4) Ukuba uMphathiswa wePhondo unesizathu sokukholelwa, ngokusekwe kuvavanyo oluchazwe kwecandelo 5, ukuba umasipala akanako okanye akazalisekisi isibophelelo esisemthethweni okanye ukuba ulawulo olugwenxa, ubuqhetseba, urhwaphilizo okanye naluphi na olunye ulwaphulomthetho olumandla lwenzekile okanye lwenzeka kumasipala kodwa engakuboni kuyimfuneko ukutyumba umntu okanye abantu abaza kuphanda umbandela lowo, unokuyalela umasipala ukuba alungise ingxelo echaza amanyathelo athathiweyo okanye aza kuthatyathwa ngumasipala ukulungisa loo mbandela.”. 50 55

#### Ukulungiswa kwecandelo 7 loMthetho 4 ka-2014

##### 10. Icandelo 7 loMthetho oyintloko uyalungiswa—

- (a) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (2):

“UMphathiswa wePhondo kufuneka ukuba ayiqwalasele imeko nobunzulu bomcimbi lowo nobukho bobungcali obufunekayo khona ukuze akwazi ukugqiba ngokuba yeyiphi na indlela yophando enokusetyenziswa kweziya zidweliswe kwicandelwana (1).”;

- (b) ngokucima icandelwana (3); 5
- (c) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (4):
- “(4)(a) Ukuba uMphathiswa wePhondo utyumba umphandi ngokwecandelwana (1)(a), uMphathiswa wePhondo kufuneka amisele ngokubhala phantsi ubungakanani baloo mbandela ekuza kuphandwa ngawo kunye neminye imiqathango yokusetyenziswa komphandi. 10
- (b) Umphandi anga—
- (i) gqiba ngefomathi nenkqubo emayilandelwe xa kuqhutywa uphando ngokuthathela ingqalelo iimeko zaloo mbandela;
- (ii) gqiba ukuba ngubani onokubakho kwaye ngubani ongenakubakho nakweyiphi na inkqubo enxulumene nophando, ethathela ingqalelo uhlobo lophando; 15
- (iii) yalela nawuphi na umntu apho umphandi amkrokrela ngokufanelekileyo unokuba nolwazi olunempembelelo kuphando oluza kuvelisa, okanye anikezele kwindawo ethile kunye nexesha elithile nangohlobo oluthile, nayiphi na irekhodi ekulo mntu okanye phantsi kwakhe okanye ulawulo lwakhe olunento yokwenza nombamba ophandwayo; 20
- (iv) hlola nayiphi na irekhodi kwaye abuze nawuphi na umntu onolwazi ngomba onenxaxheba kuphando ngayo nayiphi na ingxelo elolo hlobo; 25
- (v) ukukhuphela, okanye ukwenza imibhalo ephindwe kabini, kuyo nayiphi na irekhodi enjalo, ngeendleko zikamasipala, okanye ukususa irekhodi elinjalo, kuquka nasiphi na isixhobo se-elektroniki, ukwenza iikopi okanye ukwenza imibhalo ephindwe kabini, ukuba irekhodi okanye isixhobo se-elektroniki sibuyiselwa kumasipala ngaphandle kokulibaziseka okungekho ngqiqweni emva koko; 30
- (vi) ayalele nawuphi na umntu apho umphandi amkrokrela ngokufanelekileyo unokuba nolwazi olunempembelelo kuphando ukuba aveze, ngomlomo okanye ngokubhaliweyo, naluphi na ulwazi olunokuthi lube yimfuneko kuphando, aze abuze nawuphi na umntu malunga nolo lwazi. 35
- (c) Ngokuxhomekeke kwicandelo 7A(4), umphandi unokungena, ngeenjongo zemihlathi (b) no(g), kuyo nayiphi na impahla okanye indawo okanye ephantsi kolawulo lukamasipala apho akrokrela khona ukuba kugcinwa irekhodi elinokuba nempembelelo kuphando. 40
- (d) Umyalelo wophando ochazwe kumhlathi (iii) no(vi) womhlathi (b) kufuneka kubekho indlela yesamani—
- (i) etyikitywe ngumphandi; kwaye
- (ii) inikwe umntu lowo uchaphazelekayo— 45
- (aa) ngokunikezelwa kumntu ochaphazelekayo ngumphandi okanye umntu ogunyaziswe ukuba enze unikezelo ngumphandi;
- (bb) ngokuthumela ngeposi ebhaliweyo kwidilesi yeshishini, yomsebenzi okanye yokuhlala yaloo mntu; okanye 50
- (cc) ngomyalezo wedatha oxelwe kuMthetho woNxibelelwano lwe-Electronic and Transactions Act, 2002 (uMthetho 25 ka-2002), ngokuthumela ikopi yesaziso emntwini, ukuba umntu unedilesi yeimeyile okanye enye idilesi ye-elektroniki. 55
- (e) Umphandi ongumfungisi, ngokwenjongo yenqaku (iv) lomhlathi (b), afune ukuba umntu enze isibhambathiso somlomo okanye esibhaliweyo phantsi kwesifungo okanye isiqinisekiso.
- (f) Umasipala naye nawuphi na umntu okhankanywe kumhlathi (b) (iii), (iv) no (vi) kufuneka asebenzisane nomphandi kwaye anike lonke uncedo olufanelekileyo olufunwa ngumphandi ngeenjongo zophando. 60

- (g) Ngenjongo yeli candelwana kwaye ngokuxhomekeke kwicandelo 7A, umphandi unofikelelo olupheleleyo nolungenamiqathango, ngawo onke amaxesha afanelekileyo kulo—
- (i) naliphi na irekhodi likamasipala; kwaye
- (ii) nawuphi na umsebenzi okanye igosa lezopolitiko likamasipala, ukuba ukrokrela ngokufanelekileyo ukuba ingxelo okanye umsebenzi okanye igosa lezopolitiko elichaphazelekayo lingabonelela okanye lifikelele kulwazi olunento yokwenza nophando. 5
- (h) Ukuba kubonakala kumphandi ngexesha lophando ukuba kukho nawuphi na umntu obandakanyekayo kumba ophandwayo kwaye loo nto inokuthi ibe yingozi kuloo mntu okanye mhlawumbi isiphakamiso esibi malunga naloo mntu sinokuthi sibe nesiphumo, umphandi kufuneka akwazi oko, umphandi kufuneka anike loo mntu ithuba lokumanyelwa nangaluphi na uhlobo olunokuthi lube luncedo phantsi kweemeko. 10
- (i) Akukho mntu ngaphandle kwemvume yomphandi onokudluliselela kumntu ongagunyaziswanga umxholo walo naliphi na uxwebhu olunxulumene nophando olungeniswe kumphandi okanye olusezandleni zakhe okanye irekhodi layo nayiphi na inkqubo yophando. 15
- (j) Umphandi kufuneka athi, ngembalelwano nangethuba elibekwe nguMphathiswa wePhondo, anike uMphathiswa wePhondo— 20
- (i) ingxelo ngeziphumo zophando, kuquka nezizathu zeziphumo; kwaye
- (ii) iingcebiso zomphandi ngokuphathelele lo mbandela.
- (k) UMphathiswa wePhondo kufuneka anike ikopi yengxelo kunye nezindululo zomphandi kumasipala lowo uchaphazelekayo. 25
- (l) UMphathiswa wePhondo usenokuthi, ngokuzibonela ngokwakhe, anike ikopi yengxelo kunye neengcebiso zomphandi kwiNkonzo yamaPolisa oMzantsi Afrika, iziko elixelwe kwiSahluko 9 soMgaqosiseko, iCandelo loPhando oluLodwa, elinye iziko likarhulumente okanye kooceba bakamasipala ochaphazelekayo. 30
- (m) Ukuba ingxelo yomphandi ibonisa ukuba umasipala akanako okanye akazalisekisi isibophelelo esisemthethweni okanye ulawulo olugwenxa, ubuqhetseba, urhwaphilizo okanye naziphi na ezinye izenzo ezigwenxa ezithe zenzeka kumasipala, uMphathiswa wePhondo kufuneka— 35
- (i) siyalele uSomlomo weBhunga likaMasipala okanye igosa elinika ingxelo likamasipala okanye bobabini uSomlomo negosa elinika ingxelo, njengoko kunokubakho, ukuba alungise ingxelo, ngomhla obekwe nguMphathiswa wePhondo, echaza amanyathelo zithatyathwe okanye ziya kuthathwa ngumasipala ukunika isiphumo kwiziphumo kunye nezindululo zengxelo yomphandi; 40
- (ii) ukuvavanya ubuzaza bemeko kunye nendlela umasipala asabela ngayo kwimeko;
- (iii) amisele ukuba imeko iyakucacisa okanye ifuna ungenelelo ngokwemiqathango yecandelo 139 loMgaqosiseko; 45
- (iv) kugqitywe ukuba imeko ifuna kuthatyathwe amanyathelo okujonga nokuxhasa umasipala okanye ukukhuthaza uphuhliso lwamandla omasipala ukuze akwazi ukwenza imisebenzi yakhe, njengoko imeko inokuba njalo; kwaye
- (v) ukuba wanelisekile ukuba umasipala akanako ukuzalisekisa isibophelelo esisemthethweni ngenxa yokungakwazi ukusebenza, umisela amanyathelo afanelekileyo, emva kokubonisana nomasipala, ukuphuhlisa isakhono sikamasipala nokuqinisekisa ukuba umasipala usebenzisa amanqaku okusebenza asebenzayo kunye neminye imigangatho yendlela yokusebenza eyiyo.”. 55

## Ukufakelwa kwecandelo 7A

### 11. Eli candela lilandelayo lifakwa emva kwecandelo 7 loMthetho oyintloko:

#### “Ukusetyenziswa kwemisebenzi phantsi kwecandelo 4A nelesi7

- 7A. (1) Igosa lenkxaso yomphathiswa okanye umphandi unokufuna umsebenzi, uceba okanye igosa lezopolitiko likamasipala ukuba lithobele isikhokelo, okanye liphendule imibuzo ayibuzwayo ligosa lenkxaso yomphathiswa okanye umphandi onjalo njengoko kuchaziwe kwicandelo 4A. okanye icandelo 7(4), nangona kunjalo—
- (a) uxanduva lokugcina imfihlo olumiselwe loo mntu ngumthetho olawulayo, okanye isivumelwano esinxulumene nokuziphatha komsebenzi, ilungu lebhunga okanye umntu ophethe isikhundla sezopolitiko, sikamasipala; okanye
- (b) nawuphi na ummiselo kumthetho okanye esinye isixhobo esilawula ulawulo okanye ulawulo loovimba okanye iirekhodi zikamasipala.
- (2) Ukuba, ngexesha lokuqhutywa kwemisebenzi yegosa lenkxaso yomphathiswa njengoko kuxelwe kwicandelo 4A, okanye imisebenzi yomphandi njengoko kuchaziwe kwicandelo 7, umntu ubanga ukuba ingxelo ekuyalelwe ukuba ayivezwe inelungelo ngokusemthethweni kwaye ngenxa yoko isizathu sokwala ukubhengeza ingxelo echaphazelekayo kunye negosa elixhasa uMphathiswa okanye umphandi, njengoko kunokuba njalo, unoluvo lokuba irekhodi leyo inegalelo kulwazi olukhankanywe kwicandelo 4A(1) okanye kuphando olukhankanywe kwicandelo 7, igqwetha eliyintloko lenkundla ephakamileyo okanye igqwetha lenkundla kamantyi echaphazelekayo enegunya okanye ummeli walo kufuneka agcine ikopi yesibini yerekhodi echaphazelekayo kwindawo ekhuselekileyo de inkundla yomthetho yenze isigqibo ngombuzo wokuba ingaba ulwazi oluxhomekeke kulo lunelungelo lomthetho okanye akunjalo okanye de uphando lugqitywe okanye lupheliswe.
- (3) Ngeenjongo zecandelwana (2), usheriff wenkundla ephakamileyo okanye inkundla esezantsi enegunya kummandla apho irekhodi likhona okanye igqwetha elivelayo kumqulu wamagqwetha ngokwemiqathango yecandelo 30(3) loMthetho wokuSebenza kwezoMthetho, 2014 (uMthetho 28 ka-2014) lingaqokelela lize linike ikopi okanye ikopi ephindwe kabini yerekhodi ekubhekiswa kuyo ilungelo elifunwayo lize liyinine iGqwetha eliyiNtloko okanye uNobhala weNkundla kaMantyi echaphazelekayo ukuze igcinwe ngokukhuselekileyo njengoko kucamngcwe kwicandelwana (2).
- (4) Igosa lenkxaso yomphathiswa okanye umphandi kufuneka, ekusebenziseni amagunya alo okungena kwipropati okanye kwizakhiwo zikamasipala phantsi kwecandelo 4A(4) kunye no(5) okanye u7(4)(b) kunye no(c)—
- (a) ukunciphisa iiyure zokungena kwiiyure eziqhelekileyo zokusebenza, ngaphandle kokuba igosa lenkxaso yomphathiswa okanye umphandi uqwalasela ngokufanelekileyo ukungena kwelinye ixesha eliyimfuneko ngenxa yezizathu zongxamiseko;
- (b) gcina ngokungqongqo isidima nocwangco ngamaxesha onke;
- (c) azazise koyena msebenzi ukwinqanaba eliphezulu okanye igosa lezopolitiko elikhoyo kwipropati okanye kwindawo;
- (d) ngesicelo somsebenzi okwinqanaba eliphezulu okanye igosa lezopolitiko elikhoyo kwipropati okanye kwindawo leyo—
- (i) aveze ubungqina bokuba utyunjiwe njengegosa lenkxaso yomphathiswa okanye umphandi;
- (ii) chaza injongo, umda kunye nesizathu sokungena;
- (iii) uvumele ukuba abekho ngalo lonke ixesha;
- (iv) kwiimeko ezichazwe kwicandelwana (6), nikezela ngekopi yewarenti ekhutshwe phantsi kwecandelo (7) kuloo mntu;
- (v) abonelele ngoluhlu lwezinto ezikhutshelwe ukwenza iikopi.

- (5) Xa igosa lenkxaso yomphathiswa, igosa lephondo, igosa lenkxaso karhulumente wamakhaya okanye umphandi esebenzisa amagunya akhe phantsi kwalo Mthetho.
- (6) Umphandi okanye igosa lenkxaso yomphathiswa lingangena kuphela kwipropati okanye kwizakhiwo eziphantsi kolawulo lukamasipala ngenjongo yokusebenzisa amagunya achazwe kwicandelo 4A(5) okanye 7(4)(b) ngokwemiqathango yewarenti ekhutshwe kumagumbi yijaji yenkundla ephezulu enegunya. 5
- (7) Isigunyaziso esichazwe kwicandelwana (6) sinokukhutshwa kuphela ukuba kubonakala kwijaji kwiinkcukacha eziphantsi kwesifungo okanye isiqinisekiso esichaza imfuneko yokungena kwipropati okanye kwindawo echaphazelekayo ngeenjongo zoku— 10
- (a) zokwenza imisebenzi echazwe kwicandelo 4A(1), ukuba kukho imfuneko yokukhutshwa kwesigunyaziso kwaye kukho imihlaba efanelekileyo yokukholelwa ukuba zingafunyanwa kwipropati okanye kwindawo echaphazelekayo; 15
- (b) uphando oluphantsi kwecandelo 7, ukuba kukho izizathu ezivakalayo zokukholelwa ukuba—
- (i) iirekhodi ezinxulumene nophando, okanye abantu abanolwazi oluphantsi kophando banokufunyanwa kwipropati okanye kwindawo echaphazelekayo; kwaye 20
- (ii) olo ngeniso luyimfuneko ngeenjongo zophando.
- (8) Noxa kunjalo icandelwana (6) amagunya okungena kwipropati okanye kwizakhiwo ekuthethwa ngawo kwelo candelwana anokusetyenziswa ngaphandle kwesigunyaziso— 25
- (a) ngemvume yomntu okhankanywe kumhlathi (d) wecandelwana (4); okanye
- (b) ukuba kukho izizathu ezivakalayo zokukholelwa ukuba isigunyaziso siya kukhutshwa ngesicelo, kodwa ukuba ukulibaziseka okunokuthi kubangelwe kukufaka isicelo somyalelo kuya koyisa injongo yokufumana isigunyaziso. 30
- (9) Iwaranti ekhutshwe ngokwecandelwana (6)—
- (a) ingakhutshwa ngalo naluphi na usuku kwaye ihlala isebenza—
- (i) de ibe iphunyeziwe; 35
- (ii) iyacinywa ngumntu oyikhuphileyo okanye, ukuba loo mntu akafumaneki, nguye nawuphi na umntu onegunya elifanayo;
- (iii) ukuphelelwa kweenyanga ezintathu ukusuka kumhla wokukhutshwa;
- (b) kufanele isayinwe yijaji eyikhuphayo;
- (c) kufuneka achaze ipropati okanye indawo enokungena kuyo; 40
- (d) kufuneka agunyazise igosa lenkxaso loMphathiswa okanye umcuphi, ngokwemeko, ukuba enze nantoni na ekujongwe kuyo kwicandelo 4A(5) okanye 7(4)(b) okanye (c);
- (e) inokwenziwa kuphela ngendlela echazwe kwicandelwana (4);
- (f) inokuphunyezwa ngoncedo lwegosa okanye amagosa oxolo; 45
- (g) inokuphunyezwa kusetyenziswa amandla anokufuneka ngokunengqiqo ukoyisa nayiphi na inkcaso yokungena kwipropathi okanye kwindawo okanye ukuhlola ukukhuphela okanye ukuphindaphinda iirekhodi ukuba umntu owenza isiqinisekiso kuqala ucele ukuvunyelwa kwipropati okanye kwindawo echaphazelekayo okanye elinye inyathelo elifunekayo lokwenza lula olo luhlolo, ukukhuphela okanye ukuphindaphinda ngaphandle kokuba umphandi okanye igosa lenkxaso lenkonzo linoluvo ngezizathu ezivakalayo ukuba irekhodi echaphazelekayo linokutshatyalaliswa okanye lilahleke ngenxa yesicelo esinjalo. 50
- (10) Umntu ochazwe kumhlathi (d) wecandelwana (4) kufuneka anike uncedo olunjengoko igosa lenkxaso yomphathiswa, umphandi okanye igosa loxolo linolucela. 55
- (11) Akukho nto enokuthi eli candelo litolikwe ukuze lithintele uMphathiswa wePhondo ekubeni enze isicelo kwinkundla enegunya lokufumana isiqabu esifanelekileyo ukuze kuphunyezwe nawuphi na ummiselo walo Mthetho.”. 60

### Ukulungiswa kwecandelo 9 loMthetho 4 ka-2014

12. ICandelo le 9 loMthetho oyintloko lifakwa endaweni yeli candelo lilandelayo:

#### “Uniko-ngxelo

9. [(1)] Ukuba amanyathelo athatyathwe ngokwecandelo 6(a) okanye (b), uMphathiswa wePhondo kufuneka kwiintsuku ezili-14— 5
- (a) afake inkcazo ebhaliweyo kwiBhunga laMaphondo leSizwe echaza ngamanyathelo lawo;
- (b) athumele ikopi yenkcazo kumphathiswa wesizwe onoxanduva loorhulumente bommandla, kumphathiswa wesizwe onoxanduva lezemali [nakumbutho woorhulumente bommandla iSouth African Local Government Association]. 10
- [(2)] UMphathiswa wePhondo kufuneka athi ngokukhawuleza afake ikopi yengxelo yomphandi echazwe kwicandelo 7(4)(f) kwiBhunga lamaPhondo leSizwe, kumphathiswa wesizwe onoxanduva loorhulumente bommandla, umphathiswa wesizwe onoxanduva lezemali nakumbutho woorhulumente bommandla iSouth African Local Government Association.].” 15

### Ukulungiswa kwecandelo 10 loMthetho 4 ka-2014

13. ICandelo 10 loMthetho oyintloko lifakwa endaweni yeli candelo lilandelayo:

#### “Imigaqo

10. UMphathiswa wePhondo usenokuthi enze imigaqo—[ephathelele kuwo nawuphi na umba onxulumeneyo okanye ochaphazelekayo abona kuyimfuneko okanye kufanelekile yena Mphathiswa wePhondo, ukuba ayimisele ukuze lo Mthetho usetyenziswe okanye ulawulwe ngokufanelekileyo.] 25
- (a) ukhuseleko olufanelekileyo lokusingathwa kolwazi lomntu siqu phantsi kwalo Mthetho;
- (b) inkqubo yokuququzelela ukuphunyezwa kwalo Mthetho;
- (c) nawuphi omnye umba oncedisayo okanye onxulumene noko uMphathiswa wePhondo awubona unyanzelekile ukuba awumisele ukuze kuphunyezwe ngokufanelekileyo okanye ulawulo olufanelekileyo lwalo Mthetho.”. 30

### Ukulungiswa kwecandelo 11 loMthetho 4 ka-2014

14. Eli candela lilandelayo lifakelwa endaweni yecandelo 11 loMthetho oyintloko:

#### “Izigqitho nezohlwayo

11. Umntu othi— 35
- (a) asilele okanye wala ukuveza naluphi na uxwebhu [uxwebhu] lwakhe ale ukukhupha naluphi na uxwebhu olukuye okanye oluphantsi kolawulo lwakhe xa ethe wayalelwa ukuba makenze njalo ngumphandi [xa eyalelwe ukuba enze njalo ngumphandi] ukuba ubizwe ukuba avelise ngokomyalelo phantsi kwecandelo 4A(5)(b) okanye icandelo 7(4)(b)(iii), lifundwe necandelo 7(4)(d); 40
- (b) othintele nabani na ukuba anike naluphi na uxwebhu olukuye okanye olukulawulo lwakhe xa loo mntu eyalelwe ukuba enze njalo ngumphandi ngokwecandelo 4A(5)(b) okanye icandelo 7(4)(b)(iii), lifundwe necandelo 7(4)(d); 45
- (c) otyeshela icandelo [7(4)(e)] 7(4)(i); [okanye]
- (d) oneenjongo zokuthintela okanye zokuphazamisana nophando lomba ophandwayo ngumphandi, otshabalalisa okanye ofihla naluphi na uxwebhu[, okanye into,] ngokolwazi lwakhe enokuba luncedo kumphandi[,]; 50



- (e) ngenjongo yokuthintela okanye yokuthintela ukuhlolwa, ukukhusela okanye ukukopa irekhodi ligosa lenkxaso lobulungiseleli ngokwemiqathango yecandelo 4A, atshabalalise okanye afihle nayiphi irekhodi enokuthi ngokolwazi lwalo mntu ibe luncedo kwigosa lenkxaso lobulungiseleli; 5
- (f) usilele ukuthobela umyalelo okhutshwe nguMphathiswa wePhondo ngokwemiqathango yecandelo 7(4)(m)(i);
- (g) Ukuba amanyathelo athatyathwe ngokwecandelo 6(a) okanye (b), uMphathiswa wePhondo kufuneka kwiintsuku ezili-14— 10
- (h) anikezele ngolwazi olungeyonyani okanye olulahlekileyo xa ephendula kwisicelo segosa lenkxaso lesebe okanye umphandi;
- (i) emva kokuba efungile okanye eqinisekile, anike ubungqina bobuxoki phambi komhloli ngalo naliphi na ityala, esazi ukuba obo bungqina bubuxoki okanye engakholelwa ukuba buyinyaso; okanye 15
- (j) uzuza, unyanzelisa, woyikisa, wonakalisa okanye urhwaphiliza naliphi na ingqina ukuba lingafaki ubungqina okanye linike ubungqina bobuxoki phambi komphandi, 20  
wenza isigqitho kwaye usenokuthi akufunyaniswa enetyala agwetywe intlawulo (ifayini) okanye avalelwe entolongweni isithuba esingadlulanga kwiinyanga [ezili-12] ezili-24.”.

### Isihloko esifutshane nomhla wokuqalisa

**15.** Lo Mthetho ubizwa ngokuba nguMthetho woLungiso woBekoliso neNkxaso kooMasipala weNtshona Koloni, 2024, kwaye uya kuqalisa ukusebenza ngaloo mhla ubekwe yiNkulumbuso yePhondo ngompophoso okhutshwe *kwiGazethi yePhondo*.

**IMEMORANDAM YEENJONGO ZOMTHETHO OYILWAYO  
WOBEKOLISO NENKXASO YOOMASIPALA  
WENTSHONA KOLONI**

**1. IMVELAPHI**

- 1.1 UMthetho woBekoliso neNkxaso kooMasipala weNtshona Koloni, 2014 (uMthetho 4 ka-2014) (uMthetho oyintloko), wamiselwa ngo2014 ukuze uqalise ukusebenza kwicandelo 154(1) nele155(6) loMgaqosiseko weRiphabhliki yoMzantsi Afrika, 1996 (uMgaqosiseko), kunye necandelo 106(1) lomthetho i*Local Government: Municipal System Act, 2000* (uMthetho 32 ka-2000) (umthetho i*Municipal Systems Act*). UMthetho oyintloko ngoku usetyenziswa ngokubambisana nomthetho i*Municipal Systems Act, Local Government: Municipal Finance Management Act, 2003* (uMthetho 56 ka-2003) (iMFMA), kunye nezibonelelo zomgaqosiseko ezilawula ungenelelo lwephondo koomasipala. Enye yezinto ezibalulekileyo ezingekhoyo kwezi zikhokhelo nkqubo kukuba akukho lungiselelo laneleyo lwenziweyo ngamanyathelo okuchonga kwangethuba nokungenelela kwiimeko zorhwaphilizo nolwaphulomthetho lwasekuhlaleni.
- 1.2 Izinto eziluncedo zokungenelela kwangethuba ziquka ukukwazi ukuthintela ubuzaza bokuziphatha kakubi norhwaphilizo ngokuchonga iindlela zokuziphatha ezandulela ukwenzeka kokuziphatha kakubi.
- 1.3 Uphando lubonisa ukuba xa ungenelelo luqalwe phambi kokuba umasipala afikelele kwimeko yokuwa ngokupheleleyo, umasipala wayenethuba elingakumbi lokubuyela kwisiseko esilungileyo sokusebenza nezemali emva kongenelelo. Ngamanye amazwi, okukhona imeko kamasipala imbi, (umzekelo, ukuwa kwemali, ukuwa ngokupheleleyo kwezakhiwo zolawulo, ukuwa kweziseko zophuhliso) phambi kongenelelo, kokukhona kunqabile ukuba akwazi ukubuyela kwimeko ezinzileyo yemali kunye nokusebenza.

**2. IINJONGO ZOMTHETHO OYILWAYO**

Iinjongo zoMthetho woBekoliso neNkxaso yooMasipala weNtshona Koloni, 2024 (uMthetho oSAYILWAYO), kukuba—

- (a) ubonelele ngokubeka iliso kwangaphambili koomasipala ukuze babhaqe ubuqhophololo, urhwaphilizo, ulawulo olugwenxa kunye nezinye izenzo ezigwenxa kwangethuba;
- (b) ukomeleza ukukwazi kweSebe lephondo elinoxanduva lolawulo lwasekuhlaleni (iSebe) ukuxhasa oomasipala;
- (c) ukomeleza isakhono seSebe sokufikelela kulwazi olufunekayo ukuze kuqhutywe uphando novavanyo ngempumelelo;
- (d) ukomeleza ukubek'esweni nokuxhasa oomasipala ngokwenza amalungiselelo okuba amabhunga oomasipala aqhube uvavanyo lokuqala xa kukho izityholo ezingezizo ezingasekelwanga ntweni, ezingezizo ezenzakalisileyo, ezingezizo ezokuqikelela okanye ezicacileyo ukuba azisekelwanga ukuba umasipala akanako okanye akazalisekisi uxanduva lokulawula ngokwemigqaliselo yoMgaqosiseko okanye uxanduva olusemthethweni olubophelela umasipala okanye ukuba kukho ukungalawuleki, ubuqhetseba, urhwaphilizo okanye olunye ulwaphulomthetho olunzulu olwenzeka kumasipala; kunye
- (e) nokunciphisa ulawulo loburhulumente kunye nokwenza ngcono imiqathango yobugcisa kumthetho oyintloko.

**3. IZIQULATHO ZOMTHETHO OSAYILWAYO**

- 3.1 **Igaty 1** libonelela ngokufakela iinkcazelo “zomkomishinala wezifungo”, “igosa lenkxaso kurhulumente wengingqi”, “igosa lenkxaso kumphathiswa”, “ingcaciso yobuqu”, “igosa lezopolitiko”, “igosa elixhasa iphondo”, “ingxelo”, “Iyunithi yoPhando oluKhethekileyo” kunye “nomsebenzi”.

- 3.2 **Igaty 2** lenza izilungiso kwicandelo 2 loMthetho oyintloko ngokudibanisa igatya eligunyazisa uMphathiswa wePhondo, ngesaziso kwiGazethi yePhondo, ukuba afune ukuba nawuphi na umasipala, okanye naluphi na udidi okanye uhlobo lukamasipala oluchazwe kwisaziso, ukuba angenise kwiziko elithile lephondo likaRhulumente ulwazi olufunekayo kwisaziso, mhlawumbi ngamaxesha athile okanye kwixesha elithile, kunye nommiselo obeka indlela eli gunya ekufuneka lisetyenziswe ngayo.
- 3.3 **Igaty 3** lifaka icandelo 2A no-2B elicetywayo, elibonelela—
- 3.3.1 umasipala, ngokwesicelo sesiGqeba sePhondo, uMphathiswa wePhondo osingethe oorhulumente bamakhaya (uMphathiswa wePhondo), igosa elixhasa uMphathiswa, igosa lenkxaso lephondo okanye amagosa kamasipala. iSebe, ukunika aba bantu ukufikelela kwiirekhodi ezinokuthi zibe yimfuneko ekubekweni kweliso, kuvavanyo okanye kuphando lukamasipala;
- 3.3.2 ukumiselwa kwamagosa enkxaso karhulumente wengingqi ukuba anike inkxaso kumasipala njengoko kukhankanyiwe kwicandelo 154(1) okanye 155(6) loMgaqosiseko.
- 3.4 **Igaty 4** lenza izilungiso kwicandelo 3 loMthetho oyintloko ngoku—
- 3.4.1 misela ukuba ibhunga likamasipala, isithethi, usodolophu okanye umphathi kamasipala ngabasebenzi abathile abanokuthi bacele uMphathiswa wePhondo okanye intloko yalo naliphi na isebe lephondo ukubaancedise umasipala ekwenzeni umsebenzi wawo;
- 3.4.2 phucula ngokobuchule ummiselo obonelela ngentsebenziswano phakathi kukamasipala ocela uncedo neSebe.
- 3.5 **Igaty 5** lifaka icandelo 3A elicetywayo elibonelela ngoku—
- 3.5.1 UMphathiswa wePhondo ukuba atyumbe igosa lenkxaso lephondo ukuze liqinisekise ukuba umasipala uyayithobela imithetho esebenzayo, livavanye ukuphunyezwa komgaqo-nkqubo osebenzayo, iinkqubo ezisemgangathweni zokusebenza kunye namanqaku omkhwa, ukuchonga imingcipheko kunye nokucebisa ukuphuculwa kweenkqubo kunye neenkqubo kunye nokuncedisa ngenkuthalo ekufumameni ubuqhetseba, urhwaphilizo, ulawulo olubi okanye ukungaziphathi kakuhle kumasipala;
- 3.5.2 ukuba uMphathiswa wePhondo amisele umda kunye neminye imiqathango yesalathiso nenkxaso eza kunikwa ukuba igosa lenkxaso lephondo limiselwe;
- 3.5.3 igosa lenkxaso lephondo ukuba linike uMphathiswa wePhondo ingxelo ngeziphumo zokubeka iliso nenkxaso, kunye nezizathu, kunye neengebiso zakhe;
- 3.5.4 uMphathiswa wePhondo ukuba anike ikopi yengxelo kumasipala ochaphazelekayo.
- 3.6 **Igaty 6** lenza izilungiso kwicandelo 4 loMthetho oyintloko ngokucacisa ukuba amanqaku omkhwa akhutshwe ngokwaloo candelo anesimo semiyalelo enganyanzelisiyo.

- 3.7 **Igaty 7** lifakela amacandelo andululiweyo angala 4A, 4B no4C kuMthetho oyiNtloko abonelela—
- 3.7.1 ukuba uMphathiswa wePhondo, xa efumene ingcaciso yokungaphumeleli komasipala ukuzalisekisa uxanduva olusemthethweni, okanye yokungasebenzi kakuhle, ubuqhetseba, urhwaphilizo okanye enye impazamo enzulu, ukuba unesizathu sokukholelwa ukuba irekhodi enxulumene nengcaciso efunyenweyo iya kufihlwa okanye itshatyalaliswe ukuba ayikhuselekanga njengento ephambili, ukuba atyumbe igosa lenkxaso leSebe ukuba lihambe liye kumasipala ngaphandle kwesaziso sangaphambili kumasipala kwaye lihlole, likhusele kwaye likhuphe irekhodi enxulumene nengcaciso efunyenweyo ngendlela ebonelelwe kwicandelo 4A elicetywayo, lifundwe necandelo 7A elicetywayo njengoko lifakwe kwigaty 11;
- 3.7.2 kuMphathiswa wePhondo, akuba efumene izityholo ezinesiseko esibambekayo zokuba umasipala akanako okanye akazalisekisi isibophelelo solawulo ngokoMgaqosiseko okanye isinyanzeliso esisemthethweni esibophelela kumasipala okanye kulawulo olugwenxa, ubuqhetseba, urhwaphilizo okanye obunye ubugwenxa obunzulu, ukuba ayalele. ibhunga likamasipala ukuba lenze uhlolo lokuqala lwezityholo, kwaye ngaphezulu koko uMphathiswa wePhondo usenokufuna ukuba ibhunga likamasipala limnike ingxelo yovavanyo lokuqala echaza iziphumo kunye namanyathelo athathiweyo okanye aya kuthathwa. ukulungisa umcimbi;
- 3.7.3 ukuze kuthintelwe ukuphindaphindwa kokuvavanywa kunye nophando ngokunika ngokucacileyo uMphathiswa wePhondo ilungelo lokudlulisela isityholo kwiNkonzo yamaPolisa oMzantsi Afrika, kwiziko elikhankanywe kwiSahluko 9 soMgaqosiseko, kwiCandelo eliKhethekileyo loPhando okanye kwelinye iqumrhu likarhulumente ukuba ucinga ukuba kufanelekile ukuba elo qumrhu liphengulule umba kwaye lilinde isiphumo sophando olunjalo phambi kokuthabatha amanyathelo ngokwemiqathango yecandelo 106 lomthetho iMunicipal Systems Act okanye uMthetho oyintloko.
- 3.8 **Igaty 8** lithatha indawo yesoloty 5 loMthetho oyintloko owenziwa izilungiso ngokwenza izilungiso zobuchule kwiinkqubo ezifunekayo phambi kokuba kusetyenziswe icandelo 106(1) lomthetho iMunicipal Systems Act.
- 3.9 **Igaty 9** lenza izilungiso kwicandelo 6 loMthetho oyintloko ngokuthi—
- 3.9.1 ukwenza izilungiso zobuchule kwiinkqubo ezifunekayo xa kubhengezwa icandelo 106(1) lomthetho oyiMunicipal Systems Act;
- 3.9.2 likunika ukuba ukuba uMphathiswa wePhondo uqinisekile ukuba umasipala akakwazi ukuzalisekisa uxanduva olusemthethweni ngenxa yokungakwazi ukusebenza, uMphathiswa wePhondo angamisela amanyathelo afanelekileyo, ngokusebenzisana nomasipala, ukuphuhlisa amandla kamasipala nokuqinisekisa ukuba umasipala uphumeza amanqaku asebenzayo kunye neminye imigangatho yokusebenza kakuhle;
- 3.9.3 ngokucacisa ukuba ukuba uMphathiswa wePhondo usebenza phantsi kwecandelwana (1)(a) lecandelo 6 okanye umhlathi (a) wecandelwana (2), akawalwanga ekuchongeni umntu okanye abantu ukuba baphande ngalo mbandela njengoko kucetywe kwicandelo 7;
- 3.9.4 ukongeza ummiselo othi ukuba uMphathiswa wePhondo unesizathu sokukholelwa, ngokusekelwe kuvavanyo olukhankanyiweyo kwicandelo 5, ukuba umasipala akanako okanye akalisebenzisi uxanduva olusemthethweni okanye ukuba ulawulo olugwenxa, urhwaphilizo okanye naluphi na olunye ulwaphulomthetho olunzulu lwenzekile

okanye luyenzeka kumasipala, kodwa akacingi ukuba kuyimfuneko ukutyumba umntu okanye abantu ukuba baphande umcimbi, angayalela umasipala ukuba alungiselele ingxelo echaza amanyathelo athathiweyo, okanye aza kuthathwa ngumasipala ukulungisa umba.

**3.10 Igatya 10** lenza izilungiso kwicandelo 7 loMthetho oyintloko ngokuthi—

3.10.1 ngokunika amagunya ongezelelweyo umphandi anokuwasebenzisa ngeenjongo zophando olucamngciweyo kwicandelo 6(1)(b) loMthetho, kuquka nelungelo lokungena kumagumbi okanye kwipropati kamasipala apho akrokrela ngokufanelekileyo ukuba kuginwa irekhodi elinokuba nefuthe kuphando, ukukopa okanye ukwenza izicatshulwa kulo naluphi na irekhodi okanye ukususa naluphi na irekhodi (kuquka isixhobo se-elektroniki), phantsi komqathango wokuba irekhodi (okanye isixhobo se-elektroniki) libuyiselwe kumasipala ngaphandle kokulibaziseka okungafanelekanga, ngenjongo yokuqinisekisa nawuphi na umba onxulumene nomxholo wophando, ukufuna umntu ukuba enze ingxelo ngomlomo okanye ebhaliweyo phantsi kwesifungo okanye isiqinisekiso okanye ukubiza nawuphi na umntu ukuba aveze nayiphi na irekhodi okanye into enxulumene nophando ngexesha nakwindawo echazwe kwisamani;

3.10.2 ukuba umphandi unakho ukufikelela ngokupheleleyo nangokungenamida kuyo nayiphi na irekhodi likamasipala okanye ilungu labasebenzi okanye igosa likamasipala ngendlela echazwe kwelo lungiselelo nakulo lungiselelo kucetywayo ukuba lifakwe kwigatya 11 loMthetho oYilwayo, ukuba umphandi unamathandabuzo afanelekileyo okuba irekhodi okanye ilungu labasebenzi okanye igosa lezopolitiko echaphazelekayo linganika ukufikelela okanye linikezele ngolwazi olunxulumene nophando;

3.10.3 ukubonelela ukuba uMphathiswa wePhondo abelane ngengxelo neengcebiso zomphandi neNkonzo yamaPolisa oMzantsi Afrika, iziko ekuthethwa ngalo kwiSahluko 9 soMgaqosiseko, iCandelo eliKhethekileyo loPhando, elinye iqumrhu likarhulumente okanye nabacebisi bakamasipala ochaphazelekayo;

3.10.4 ukongeza ummiselo obonelela ukuba, kwimeko apho ingxelo yomphandi ibonisa ukuba umasipala akakwazi okanye akazalisekisi uxanduva olusemthethweni okanye kukho ulawulo olugwenxa, ubuqhetseba, urhwaphilizo okanye naluphi na olunye ulwaphulo-mthetho olunzulu olwenzekileyo okanye olwenzekayo kumasipala, uMphathiswa wePhondo angayalela ukuba umasipala alungiselele ingxelo, ngomhla omiselweyo, ebonisa amanyathelo athathiweyo, okanye aza kuthathwa ngumasipala ukuphumeza iziphumo kunye neengcebiso zengxelo yomphandi.

**3.11 Igatya 11** lifaka icandelo 7A elicetywayo elibonelela ngendlela igosa lenxaso yomphathiswa kunye nomphandi ekufuneka benze ngayo imisebenzi yabo—

3.11.1 ngokunika ukuba igosa lenxaso likarhulumente okanye umphandi angafuna ukuba umsebenzi, ilungu lebhunga okanye umntu osebenza kwizikhundla zobupolitika kumasipala athobele imiyalelo okanye aphenzule imibuzo ebekwe kuye nangona enyanzelekile ukuba angahleli ngokungenamkhethe ngokomthetho olawula, okanye isivumelwano esinxulumene nokuziphatha kwelungu labasebenzi, ilungu lebhunga okanye umntu osebenza kwizikhundla zobupolitika kumasipala okanye nawuphi na ummiselo womthetho okanye olunye uxwebhu olusebenzayo olulawula ulawulo lweerekhodi kumasipala;

3.11.2 ngokubonisa indlela igosa lenxaso likarhulumente kunye nomphandi ekufuneka alisebenzise ngayo igunya lokungena kwipropati okanye

kwizakhiwo zikamasipala kubandakanywa nommiselo wokuba elo gunya lingasetyenziswa kuphela ngenxa yewaranti ekhutshwe ngamagumbi ngumgwebi wenkundla ephakamileyo onegunya ngaphandle kokuba oyena msebenzi uphambili okanye umntu osebenza kwizikhundla zobupolitika okhoyo kwipropati uvuma ukungena okanye kukho izizathu ezivakalayo zokukholelwa ukuba iwaranti iya kukhutshwa ngesicelo kodwa ukulibaziseka okunokubangelwa kukufaka isicelo sewaranti kuya kuphelisa injongo yokufumana iwaranti.

3.12 **Igaty 12** lenza izilungiso kwicandelo 9 loMthetho oyintloko ngokususa imfuneko yokunika ingxelo emva kwenyathelo elithatyathwe ngokwecandelo 6(1)(a) okanye (b) loMthetho.

3.13 **Igaty 13** lithatha indawo yecandelo 10 loMthetho oyintloko ngokwenza amalungiselelo okuba uMphathiswa wePhondo enze imigaqo—

3.13.1 iinkqubo zokuququzelela ukuphunyezwa koMthetho;

3.13.2 iinkqubo zokuququzelela ukuphunyezwa koMthetho.

Le mimiselo ngamalungiselelo okunika amandla agunyazisa uMphathiswa wePhondo ukuba enze imiqathango kwimicimbi enjalo ukuququzelela ukuphuculwa kokuphunyezwa komthetho xa sele uphunyezwe ukuba kukho imfuneko. Le miba yeyolawulo kwaye igqalwa njengefanelekileyo ukuba ifakwe kwimimiselo.

Ummiselo ocetywayo okhankanywe kumhlathi 3.13.1 apha ngasentla, ogunyazisa uMphathiswa wePhondo ukuba enze imiqathango malunga “nokuqinisekiswa okwaneleyo kokuqhutywa kolwazi lomntu” kufuneka ufundwe necandelo 7A(5) elicetywayo elifakwe kwigaty 11, elinxulumene nendlela ulwazi lomntu ekufuneka luphathwe ngayo ligosa lenkxaso leSebe, igosa lenkxaso lephondo, igosa lenkxaso likarhulumente wengingqi okanye umphengululi. Kuqatshelwe ukuba umthetho *iProtection of Personal Information Act, 2013* (uMthetho 4 ka-2013) (i-POPIA) unokusetyenziswa kulwazi olufunyenwe liPhondo ngokoMthetho oYilwayo woLungiso, wakuba uwisiwe. Ukukhululwa kwimimiselo ekhankanyiweyo kwicandelo 38 lePOPIA, nangona kunjalo, kunokwenzeka ukuba kusebenze. Ngokubhekiselele koku, iPhondo liziko likarhulumente (njengoko lichaziwe kwicandelo 1 lePOPIA) kwaye imisebenzi ekuMthetho Sihlomelo osaYilwayo ikwayimisebenzi enokuthi ithathelwe ingqalelo ukukhusela uluntu ekunganyanisekiyo, kwisenzo esigwenxa okanye okanye ukuziphatha okungafanelekanga ngokugqithisileyo ngokuthi, okanye ukungafaneleki okanye ukungakwazi, abantu abagunyazisiweyo ukuba baqhube nawuphi na umsebenzi okanye omnye umsebenzi. Ngokufanelekileyo, amacandelo 11(3) kunye nele (4), 12 nele15 alisayi kusebenza kangangokuba usetyenziso lwaloo malungiselelo lunokuthi luthintele ukuphunyezwa ngokufanelekileyo kwaloo msebenzi.\*

\* Icandelo 38 lePOPIA libonelela ukuba:

“(1) Inkcazelo yobuqu eqhutyelwa injongo yokuphumeza umsebenzi ofanelekileyo ayichatshazelwa kumacandelo 11 (3) no (4), 12, 15 no-18 nangayiphi na imeko ukuya kuthi ga kwinqanaba apho ukusetyenziswa kwaloo mimiselo kwinkcazelo yobuqu kunokuthi kukhathaze ukuphunyezwa kakuhle kwalo msebenzi.

(2) “Umsebenzi ofanelekileyo” ngeenjongo zecandelwana (1), uthetha nawuphi na umsebenzi—

(a) yequmrhu loluntu

(b) ezinikelwe kuye nawuphi na umntu ngokomthetho, owenziwe ngenjongo yokukhusela amalungu ngokuchasene—

(i) ilahleko yezemali ngenxa yokunganyaniseki, ulawulo olugwenxa okanye enye indlela yokuziphatha engalunganga, okanye ukungakwazi okanye ukungakwazi kwabantu, abachaphazelekayo ekunikelweni kweenkonzo zebhanki, zeinshurensi, zotyalo-mali okanye ezinye iinkonzo zemali okanye kulawulo lwamaqumrhu; okanye

(ii) ukunganyaniseki, ulawulo olugwenxa okanye enye indlela yokuziphatha engafanelekanga, okanye ukungafaneleki okanye ukungakwazi kwabantu abagunyazisiweyo ukwenza nawuphi na umsebenzi okanye omnye umsebenzi.”

ICandelo 6(1)(c)(ii) lePOPIA lilizwi ukuba ukusetyenzwa kolwazi akungokufana nesicelo, kungokufana nokwakhe—

“... ukusetyenzwa kolwazi lomntu—

(c) **ngo okanye egameni lequmrhu loluntu—**

(ii) injongo yazo kukuthintela, **ukufumanisa**, kuquka ukuncedisa ekuchongeni ingeniso yemisebenzi engekho mthethweni nokulwa nemisebenzi yokuhlunjwa kwemali, **uphando okanye ubungqina bamatyala**, ukutshutshiswa kwabenzi bobubi okanye ukuphunyezwa kwesigwebo okanye amanyathelo okhuseleko,

ukuya kuthi ga ekumiselweni kokhuseleko olwaneleyo kuwisomthetho lokukhusela olo lwazi lobuqu;”.

Imisebenzi phantsi koMthetho osaYilwayo iwela ku 6(c)(iii) kwaye ngenxa yoko ilungiselelo libandakanyiwe ngokufanelekileyo kuMthetho osaYilwayo ogunyazisa uMphathiswa wePhondo ukuba enze imigaqo yokhuseleko olwaneleyo lokusetyenzwa kolwazi lomntu” njengendlela yokukhetha ngelixa elizayo.

3.14 **Igaty 14** lithatha indawo yecandelo 11 loMthetho eliyintloko ngokuthi libonelele ngamatyala awongezelelweyo.

#### 4. UTHETHWANO

4.1 Kwaboniswa naba bathathinxaxheba balandelayo:

IRejistra eyiNtloko yeNkundla ePhakamileyo yeNtshona Koloni  
ISebe leNkulumbuso: iiNkonzo zoMthetho  
Amanye amaSebe ePhondo  
Salga  
UMlawuli weeNkcukacha

4.2 Izilungiso ezicetywayo kulo Mthetho zathiwa thaca kwaye zaxoxwa kwintlanganiso yeQela eliSebenzayo loWisomthetho kunye noMgaqosiseko phakathi kweSebe, iSebe leNkulumbuso (iiNkonzo zoMthetho), amanye amaSebe ePhondo, iSalga kunye noomasipala (abacebisi bomthetho, abalawuli: iiNkonzo eziManyanisiweyo kunye nabaphathi bakamasipala), ibibanjwe ngomhla wesi5 kweyoKwindla ka-2021. Lo Mthetho-siHlomelo usaYilwayo wawuthiwe thaca waze waxoxwa kwiQela eliSebenzayo loLawulo lweSALGA eNtshona Koloni kunye noBudlelwane phakathi kooRhulumente obubanjwe ngomhla we10 kuCanzibe ka-2023.

4.3 UMthetho osaYilwayo wapapashwa ukuze kuthethwe ngawo kwiGazethi yePhondo 8723 yomhla wamashumi amabini anesine kweyoMdumba ka-2023, ngomhla wokuvalwa komhla wesi6 kuTshazimpuzi ka-2023. Ixesha lokunika izimvo zoluntu landiswa ngesibhengezo esitsha kwiGazethi yePhondo kunye nomhla wokuvalwa kwezimvo zoluntu ngomhla wama28 kuTshazimpuzi ka-2023, ukuze kunikwe ithuba elongezelelekileyo lokuba uluntu lunike izimvo.

4.4 UMthetho osaYilwayo uye wajikeleziswa, ngeSetyhula, C11 ka-2023, kubo bonke oomasipala bePhondo kunye noSalga, umemelela ukuba kuhlomlwe malunga noMthetho osaYilwayo.

#### 5. IINKCUKACHA ZEMALI

Ezi zilungiso zicetywayo aziqwalaseli (i) ukusekwa kwezakhiwo ezongezelelweyo kwiSebe; okanye (ii) ukuqeshwa kwamalungu angakumbi kwisiseko sabasebenzi. Ukuba amandla angaphakathi akavumeli amagosa kaRhulumente wePhondo okanye abasebenzi abasuka kumasipala kwiPhondo ukuba batyunjwe nguMphathiswa wePhondo njengagosa loxhaso lukarhulumente wengingqi, igosa

loxhaso loMphathiswa okanye igosa loxhaso lephondo, kuya kufuneka kutyunjwe abantu bangaphandle, kunye nemiphumo yeendleko ezinxulumene noko.

Iindleko ezingqalileyo kurhulumente ziza kuquka iindleko zohambo lwabasebenzi beSebe ukuba baye kuMasipala, phakathi kwezinye izinto, ukuze benze uvavanyo oluqhubekayo. Iindleko azinakuchongwa kweli nqanaba njengoko kuya kuxhomekeka xa kufunwa olu vavanyo.

## **6. ISAKHONO SOMTHETHO**

UMphathiswa wePhondo onoxanduva lolawulo loorhulumente bamakhaya wanelisekile ukuba zonke izibonelelo ezikuMthetho oSaYilwayo ziphantsi kolawulo lwePhondo.