



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SAKWAZULU-NATALI

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PROCLAMATION • PROKLAMASIE

PROCLAMATION 5 OF 2018

*by the
Premier of the Province of KwaZulu-Natal*

TRANSFER OF CERTAIN FUNCTIONS AND THE ADMINISTRATION OF CERTAIN LAWS FROM THE PREMIER OF KWAZULU-NATAL TO CERTAIN MEMBERS OF THE EXECUTIVE COUNCIL IN TERMS OF SECTION 137 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

In terms of section 137 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and with effect from 1 April 2019, I hereby –

(a) transfer –

(i) the function “*Casinos, racing, gambling and wagering, excluding lotteries and sports pools*”; and

(ii) the administration all provincial laws relating to that functional area, currently entrusted to the Premier in terms of *Premier’s Minute* No. 2 of 28 September 2016, and the relevant legislation, to the Member of the Executive Council of KwaZulu-Natal responsible for economic development; and

(b) transfer –

(i) the function “*Provincial cultural matters, including provincial heritage matters*”; and

(ii) the administration of all provincial laws relating to that functional area, currently entrusted to the Premier in terms of *Premier’s Minute* No. 2 of 28 September 2016, and the relevant legislation, to the Member of the Executive Council of KwaZulu-Natal responsible for cultural matters.

Given under my Hand at Pietermaritzburg, this 21st day of November, Two thousand and Eighteen.

**MR TW MCHUNU
PREMIER OF KWAZULU-NATAL**

ISIMEMEZELO
sikaNdunankulu wesifundazwe saKwaZulu-Natali

**UKUDLULISELWA KWEMISEBENZI ETHILE KANYE NOKUPHATHWA
KWEMITHETHO ETHILE EPHETHWE NGUNDUNANKULU WESIFUNDAZWE
SAKWAZULU-NATALI KWAMANYE AMALUNGU OMKHANDLU OPHETHE
NGOKWESIGABA 137 SOMTHETHOSISEKELO WERIPHABHULIKHI
YASENINGIZIMU AFRIKA, 1996**

Ngokwesigaba 137 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996 (uMthetho No. 108 ka 1996), kusukela mhla lu-1 kuMbaso 2019, ngalokhu –

(a) ngidlulisela –

(i) umsebenzi *“Wamakhasino, imijaho, ukugembula kanye nokubheja, ngaphandle kwelotho nama-sports pools”*; kanye

(ii) nokuphathwa kwayo yonke imithetho ephathelene nalowo msebenzi, njengamanje ophathiswe uNdunankulu ngokwe-*Premier’s Minute* No. 2 yamhla zingama-28 kuMandulo 2016, kanye nemithetho ehambisana nawo, kwiLungu loMkhandlu oPhethe waKwaZulu-Natali elibhekele ezokuthuthukiswa komnotho; futhi

(b) ngidlulisela –

(i) umsebenzi *“Wezamasiko zesifundazwe, kubandakanya nezamagugu zesifundazwe”*; kanye

(ii) nokuphathwa kwayo yonke imithetho ephathelene nalowo msebenzi, njengamanje ophathiswe uNdunankulu ngokwe-*Premier’s Minute* No. 2 yamhla zingama-28 kuMandulo 2016, kanye nemithetho ehambisana nawo, kwiLungu loMkhandlu oPhethe waKwaZulu-Natali elibhekele ezamasiko.

Sikhishwe ngaphansi kweSandla sami mhla zingama-21 kuLwezi, ngoNyaka weziNkulungwane eziMbili neShumi nesiShiyagalombili.

MNU. TW MCHUNU
UNDUNANKULU WAKWAZULU-NATALI

PROKLAMASIE 5 VAN 2018

*deur die
Premier van die Provinsie van KwaZulu-Natal*

OORDRAG VAN SEKERE FUNKSIES EN DIE ADMINISTRASIE VAN SEKERE WETGEWING VANAF DIE PREMIER VAN KWAZULU-NATAL AAN SEKERE LEDE VAN DIE UITVOERENDE RAAD KRAGTENS ARTIKEL 137 VAN DIE GRONDWET VAN DIE REPUBLIEK VAN SUID-AFRIKA, 1996

Kragtens artikel 137 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 of 1996), en met ingang van 1 April 2019, dra ek hierby –

(a) oor –

(i) die funksie “*Casino’s, wedrenne, dobbelary en weddenskappe, uitgesonderd loterye and sportloterye*”; en

(ii) die administrasie van alle provinsiale wette met betrekking tot daardie funksionele gebied,

tans toevertrou aan die Premier ingevolge *Premiersminuut* No. 2 van 28 September 2016, en die betrokke wetgewing, aan die Lid van die Uitvorende Raad van KwaZulu-Natal verantwoordelik vir ekonomiese ontwikkeling; en

(b) oor –

(i) die funksie “*Provinsiale kultuuraangeleenthede, met inbegrip van provinsiale erfenisaangeleenthede*”; en

(ii) die administrasie van alle provinsiale wette met betrekking tot daardie funksionele gebied,

tans toevertrou aan die Premier ingevolge *Premiersminuut* No. 2 van 28 September 2016, en die betrokke wetgewing, aan die Lid van die Uitvorende Raad van KwaZulu-Natal verantwoordelik vir kultuuraangeleenthede.

Gegee onder my Hand te Pietermaritzburg, op hede die 21^{ste} dag van November, Tweeduisend-en-agttien.

**MR TW MCHUNU
PREMIER VAN KWAZULU-NATAL**

PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 137 OF 2018**KWAZULU-NATAL OFFICE OF THE PREMIER
REGULATION NOTICE****KWAZULU-NATAL AMAFA AND RESEARCH INSTITUTE REGULATIONS, 2018**

In terms of section 23 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), read with section 26 thereof, I hereby make the Regulations contained in the Schedule hereto to regulate –

- (a) the establishment of the provincial heritage resources authority to be known as the KwaZulu-Natal Amafa and Research Institute; and
- (b) the constitution, composition and functioning of the Council of the Institute, as required by the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Given under my Hand at Pietermaritzburg, this 21st day of November, Two thousand and Eighteen.

MR TW MCHUNU, MPL

Premier of the Province of KwaZulu-Natal
responsible for heritage matters

SCHEDULE

Definitions

1. In these Regulations, “the Act” means the KwaZulu-Natal Amafa and Research Institute Act, 2018 (Act No. 5 of 2018), and any word or expression to which a meaning is assigned in the Act bears the meaning so assigned to it, and, unless the context indicates otherwise –

“**Council**” means the Council referred to in regulation 2(3); and

“**Institute**” means the KwaZulu-Natal Amafa and Research Institute established in terms of regulation 2(1).

Establishment of KwaZulu-Natal Amafa and Research Institute

2.(1) An Institute to be known as the KwaZulu-Natal Amafa and Research Institute is hereby established.

(2) The Institute is a body corporate.

(3) The Institute is governed by, and acts through, a Council to be known as the KwaZulu-Natal Amafa and Research Council constituted and composed as contemplated in regulation 3(1), which takes all decisions for the performance of its functions and obligations, except the decisions taken in consequence of a delegation in terms of regulation 12.

(4) The Council is the accounting authority of KwaZulu-Natal Amafa and Research Institute in terms of section 49(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and is subject to the provisions of the Public Finance Management Act, 1999.

(5) The Council is responsible for –

(a) the management, including the safe-guarding, of the assets and for the management of the revenue, expenditure and liabilities of the Institute; and

(b) the submission by the Institute of all reports, returns, notices and other information to the Provincial Legislature and to the responsible Member of the Executive Council or the Provincial Treasury, as may be required by the KwaZulu-Natal Amafa and Research Institute Act, 2018 (Act No. 5 of 2018), or any other law.

(6) A member of the Council may not –

- (a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of the Council, for personal gain or to improperly benefit another person.

(7) If the Institute is unable to comply with any of its responsibilities in terms of the KwaZulu-Natal Amafa and Research Institute Act, 2018 (Act No. 5 of 2018), or any other law, the Council must promptly report the inability, together with reasons, to the responsible Member of the Executive Council and the Provincial Treasury.

Constitution and composition of Council

3.(1) The responsible Member of the Executive Council –

- (a) must, based on nominations received in terms of regulation 5(1) and recommendations by the selection panel contemplated in regulation 5(3), appoint not less than seven and not more than nine persons as members of the Council; and
- (b) must designate one such member to be the Chairperson of the Council to preside at the meetings of the Council and perform other duties related thereto.

(2) At the first meeting of the Council referred to in regulation 10(1) the members of the Council must elect a Deputy Chairperson from amongst its members.

(3) The members of the Council contemplated in subregulation (1) must –

- (a) include persons with applicable and proven research expertise;
- (b) include persons who have qualifications or special competence, experience and interest in the field of heritage resources;
- (c) include at least one person possessing proven knowledge or experience in the field of financial management;
- (d) include at least one person possessing proven legal knowledge and expertise;
- (e) include at least one person registered as an architect with the South African Council for the Architectural Profession and domiciled in KwaZulu-Natal; and
- (f) be representative of the relevant sectoral interests and the cultural demographic characteristics of the people of the Province.

(4) The members contemplated in subregulation (1) must be fit and proper persons characterised by their independence, impartiality and fairness.

(5) A person is disqualified from being appointed to the Council or from remaining on the Council, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
 - (b) is or has been declared by a competent court to be of unsound mind;
 - (c) is a person under curatorship;
 - (d) has, at any time, been removed from an office of trust on account of misconduct involving theft or fraud;
 - (e) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon a person who is nominated for appointment disclosing full details of an offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution of the Republic of South Africa, 1996: Provided that a disqualification in terms of this subregulation ends five years after the sentence has been completed;
 - (f) fails to disclose an interest in accordance with regulation 6 or attended or participated in the proceedings of the Council while having an interest contemplated in that section;
- or
- (g) is a political office bearer.

Term of office of member of Council

4.(1) A member of the Council holds office for a period not exceeding three years, and may be reappointed.

(2) No member may be appointed for more than two consecutive terms.

Nominations for membership of Council

5.(1) The responsible Member of the Executive Council must, by notice in the *Gazette* and in at least two newspapers circulating in the Province, invite the nomination of persons for appointment to the Council.

(2) The invitation for nominations in terms of subregulation (1) must specify –

- (a) the nomination procedure;
- (b) the requirements for nomination; and
- (c) the date by which a nomination must be received by the responsible Member of the Executive Council.

(3) The responsible Member of the Executive Council must appoint a selection panel comprising of –

- (a) no more than two Departmental senior officials; and
 - (b) no more than three persons with experience in heritage or research matters,
- to review all nominations and make recommendations regarding the nominees.

(4) The responsible Member of the Executive Council must ensure that members of the first Council are appointed within 90 days of the coming into operation of these Regulations.

Declaration of financial or other interests by nominees to Council

6.(1) A nominee for appointment to the Council must –

- (a) within ten days of accepting the nomination, submit to the responsible Member of the Executive Council a written declaration of any and all financial or other interests in the heritage sector or related sectors, which could be related to or may be in conflict with an appointment as a member of the Council, which declaration must include relevant information about any conviction for a Schedule 2 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) in the declaration referred to in paragraph (a) include financial and other interests in the heritage sector or related sectors of family members or close associates, which could be related to or may be in conflict with an appointment as a member of the Council; and
- (c) not be considered for the position of a member of the Council where it is found that the nominee deliberately withheld information pertaining to financial or other interests contemplated in this section.

(2) Where a member of the Council or family member or close associate experiences a change in financial or any other circumstances or acquires an interest in the heritage sector or related sectors, the member of the Council must, within 10 days of the date of the changed circumstances, submit a written declaration of the change in financial or other interests to the responsible Member of the Executive Council.

(3) The responsible Member of the Executive Council must –

- (a) keep a register of the interests of members of the Council disclosed in terms of this section; and
- (b) update that register from time to time.

Failure of member of Council to declare financial or other interests

7.(1) A member of the Council who fails to make a declaration envisaged in regulation 6 commits an offence.

(2) The Member of the Executive Council, on becoming aware that a member of the Council has failed to comply with the provisions of regulation 6, must investigate the matter and consider appropriate disciplinary action.

Recusal of member of Council

8.(1) A member of the Council must recuse himself or herself from any matter or proceeding where he or she, a family member or close associate has, or reasonably could be expected to have, a financial or other interest in the outcome of a decision by the Council.

(2) Any person may make an application, upon oral or written request, for a member of the Council to recuse himself or herself where that person has reason to believe that the member of the Council, a family member or close associate has, or could reasonably be expected to have, a financial or other conflict of interest in the outcome of a decision by the member of the Council.

(3) A person making an application referred to in subregulation (2) must give reasons for his or her request.

(4) In the event of an application referred to in subregulation (2), the Chairperson of the Council must decide on the matter, save that in cases where the application concerns the Chairperson of the Council, the matter must be decided on by the Deputy Chairperson.

Vacancies, removal and resignation from office of member of Council

9.(1) A member of the Council must vacate office if he or she becomes subject to a disqualification contemplated in regulation 5.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in the sole discretion of the Member of the Executive Council, there are justifiable and cogent reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Council, from two consecutive meetings of the Council for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office, in writing, by giving not less than 30 days' notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice if such waiver would not be detrimental to the efficient functioning of the Council.

(5) Whenever a vacancy occurs in the Council, the responsible Member of the Executive Council must, subject to regulation 5, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

Meetings of Council

10.(1)(a) The first meeting of the Council must be held at a venue, on a date and at a time determined by the responsible Member of the Executive Council, whereafter all future meetings must be as determined by the Chairperson.

(b) The Council must meet at least three times in any given financial year.

(2) Every member of the Council must be notified of each meeting, in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.

(3) In the event that the Chairperson of the Council is absent from any meeting of the Council, the members present at that meeting may elect one of their members to preside at that meeting.

(4) A special meeting of the Council may be called at the request of –

(a) the Chairperson; or

(b) two-thirds of the members of the Council, by written petition, whereupon the Chairperson must, in writing, notify every member of the Council of the place, date and time of the special meeting.

(5) A *quorum* for a meeting of the Council is a majority of its members.

(6) Any decision of the Council must be taken by resolution of the majority of the members present at any meeting of the Council and, in the event of an equality of votes on any matter,

the member presiding at the meeting in question will have a casting vote in addition to his or her deliberative vote as a member of the Council.

(7) The proceedings of all meetings of the Council must be duly recorded and minuted.

(8)(a) The minutes of the previous meeting must be read at the commencement of each meeting.

(b) The minutes may be regarded as read if copies thereof were furnished to the members of the Council prior to the meeting.

(c) The Chairperson may only sign the minutes once objections or corrections have been dealt with.

(9) The Chairperson must decide on questions of order or procedure: Provided that if any member objects to any such decision, the question must be put to the vote and the decision of the majority of the members is final and binding on the Council.

(10) A member of the Council who has an interest in relation to any matter to be discussed at a meeting of the Council, which reasonably considered, may preclude him or her from performing his or her duties in a fair, unbiased and proper manner, must recuse himself or herself from such meeting.

(11) A member of staff of the Institute may, on invitation by the Council, attend a meeting of the Council.

Committees of Council

11.(1) The Council may appoint one or more committees not limited to its own members to assist it in the exercise of its powers and the performance of its duties and functions.

(2) A committee contemplated in subregulation (1) must perform such duties and functions of the Council as the Council may determine.

(3) The Council may, at any time, dissolve or reconstitute such a committee.

(4) The Council –

(a) may delegate any of its powers or assign any of its duties or functions to a committee appointed in terms of subregulation (1);

(b) is not absolved from exercising or performing any power, duty or function so delegated or assigned; and

(c) may amend, review or rescind any decision of a committee.

(5) Any delegated or assigned power, duty or function exercised or performed by the committee is regarded to have been exercised or performed by the Council.

(6) A member of staff of the Institute may, on invitation by the relevant committee, attend a meeting of that committee.

Delegation of powers and assignment of duties by Council

12.(1) When necessary for the proper performance of its functions, the Council may delegate any of its powers or assign any of its duties, excluding those mentioned in subregulation (2), to –

- (a) a member of the Council;
- (b) a committee established in terms of regulation 11; or
- (c) the Head of Secretariat and Administration of the Institute.

(2) The Council may not delegate or assign the following powers and functions –

- (a) the determination of the employment policy, financial limits or terms and conditions;
- (b) the financial management responsibilities assigned to the Council; and
- (c) the approval of the budget.

(3) A delegation or assignment in terms of subregulation (1) –

- (a) must be in writing;
- (b) is subject to such limitations, conditions and directions as the Council may impose;
- (c) does not divest the Council of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty; and
- (d) does not prevent the exercise of the assigned power or the performance of the assigned duty by the Council.

(4) All delegations and assignments in terms of subregulation (1) must be maintained in an updated register.

(5) The Council may confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this regulation, subject to any rights that may have accrued to a person as a result of the decision.

Administrative and secretarial work of Council

13. The administrative and secretarial work incidental to the performance of the functions of the Council or its committees must be performed by members of staff of the Institute as may be designated by the Head of Secretariat and Administration of the Institute.

Remuneration of members of Council and reimbursement of expenses incurred by members of Council and committees of Council

14.(1)(a) A member of the Council may be paid such remuneration or allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.

(b) A member of the Council who receives remuneration, allowances or other benefits by virtue of his or her post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality;
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest; or
- (v) a public entity, a national government business enterprise or a provincial government business enterprise as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999),

and who continues to receive such remuneration, allowances or other benefits while serving as a member of the Council, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position in which he or she would have been were it not for such post or employment.

(2)(a) A member of the Council and a member of a committee of the Council may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Council or a committee of the Council.

(b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

Amendment or substitution of Schedule

15. The responsible Member of the Executive Council, after consultation with the Council, may by notice in the *Gazette* and with effect from a date specified in such notice –

(a) amend; or

(b) substitute,

this Schedule.

Application of Regulations

16.(1) These Regulations must be read and implemented in conjunction with the KwaZulu-Natal Amafa and Research Institute Act, 2018 (Act No. 5 of 2018), the National Heritage Resources Act, 1999 (Act No. 25 of 1999), and the National Heritage Institute Act, 1999 (Act No. 11 of 1999).

(2) Where these Regulations do not regulate a matter pertaining to the Institute as the provincial heritage resources authority for the Province or the protection or management of heritage resources in the Province, the provisions of the KwaZulu-Natal Amafa and Research Institute Act, 2018 (Act No. 5 of 2018), the National Heritage Resources Act, 1999 (Act No. 25 of 1999), and the National Heritage Institute Act, 1999 (Act No. 11 of 1999), apply in the Province and any reference to “provincial heritage resources authority” in the National Heritage Resources Act, 1999, must, unless clearly inappropriate, be construed as a reference to the Institute.

Short title and commencement

17.(1) These Regulations are called the KwaZulu-Natal Amafa and Research Institute Regulations, 2018.

(2) These Regulations take effect on the date of coming into operation of the KwaZulu-Natal Amafa and Research Institute Act, 2018 (Act No. 5 of 2018).

**IHHOVISI LIKANDUNANKULU LAKWAZULU-NATALI
ISAZISO SOMTHETHONQUBO**

**IMITHETHONQUBO YESIKHUNGO SAMAFU NOCWANINGO SAKWAZULU-NATALI,
2018**

Ngokwesigaba 23 soMthetho wezamaGugu kaZwelonke, 1999 (uMthetho No. 25 ka 1999), ufundwa nesigaba 26 sawo, ngalokhu ngenza iMithethonqubo equkethwe oHlelweni olungezansi ukulawula –

- (a) ukusungulwa kwamaziphathe wezamaGugu ozokwaziwa ngesiKhungo saMafu noCwaningo saKwaZulu-Natali; kanye
- (b) nokwakheka, nokubunjwa kanye nokusebenza koMkhandlu wesiKhungo, njengoba kudingwa uMthetho wezamaGugu kaZwelonke, 1999 (uMthetho No. 25 ka 1999).

Sikhishwe ngaphansi kweSandla sami eMgungundlovu ngalolu suku mhla zingama-21 kuLwezi, ngoNyaka weziNkulungwane eziMbili neShumi nesiShiyagalombili.

MNU. TW MCHUNU, ILUNGU LESISHAYAMTHETHO SESIFUNDAZWE

UNdunankulu wesiFundazwe saKwaZulu-Natali
obhekele ezamagugu

UHLELO

Izincazelo

1. Kule Mithethonqubo, “uMthetho” kushiwo uMthetho wesikhungo saMafa noCwaningo waKwaZulu-Natali, 2018 (uMthetho No. 5 ka 2018), futhi noma yiliphi igama noma isisho okunikezwe incazelo eMthethweni kuyoba naleyo ncazelo, ngaphandle uma ingqikithi isho okwehlukile –

“uMkhandlu” kushiwo uMkhandlu okukhulunywe ngawo kumthethonqubo 2(3); kanti

“isiKhungo” kushiwo isikhungo saMafa noCwaningo saKwaZulu-Natali esisungulwe ngokomthethonqubo 2(1).

Ukusungulwa kwesikhungo saMafa noCwaningo saKwaZulu-Natali

2.(1) Isikhungo esizokwaziwa ngesikhungo saMafa noCwaningo ngalokhu siyasungulwa.

(2) Isikhungo siwuhlaka ngokomthetho.

(3) Isikhungo silawulwa uMkhandlu futhi sisebenza ngoMkhandlu ozokwaziwa ngoMkhandlu waMafa noCwaningo waKwaZulu-Natali owakhiwe nobunjwe njengoba kushiwo kumthethonqubo 3(1), othatha zonke izinqumo zokwenziwa kwemisebenzi yaso kanye nokufezwa kwezibopho zaso, ngaphandle kwezinqumo ezithathwe ngenxa yokudluliselwa kwamandla ngokomthethonqubo 12.

(4) UMkhandlu uwuhlaka olunesibopho sokubika sesikhungo saMafa noCwaningo saKwaZulu-Natali ngokwesigaba 49(2)(a) soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999), futhi ulawulwa yizinhlinzeko zoMthetho wokuPhathwa kweziMali zikaHulumeni, 1999.

(5) UMkhandlu unejoka –

(a) lokuphatha, kubandakanya nokuvikela, izimpahla kanye nokuphatha izimali ezingenayo, izimali ezichithwayo kanye nezikweletu zesikhungo; kanye

(b) nokulethwa yisikhungo kwayo yonke imibiko, ingeniso, izaziso kanye nolunye ulwazi kwisiShayamthetho sesiFundazwe kanye nakwiLungu loMkhandlu oPhethe elibhekele ezamagugu noma kwiHhovisi loMgcinimafa, njengoba kungadingeka

ngokoMthetho wesiKhungo saMafa noCwaningo waKwaZulu-Natali, 2018 (uMthetho No. 5 ka 2018), nanoma yimuphi omunye umthetho.

(6) ILungu loMkhandlu angeke –

(a) lenza okuphambene namajoka anikezwe uhlaka olunesibopho sokubika ngokoMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999); noma

(b) lasebenzisa isikhundla noma amalungelo noma ulwazi oluyimfihlo eliluthole njengelungu esinesibopho sokubika noma njengelungu loMkhandlu, ukuzihlomulisa lona ngqo noma ukuhlomulisa omunye umuntu.

(7) Uma isikhungo sihluleka ukufeza noma yimaphi amajoka aso ngokoMthetho wesiKhungo saMafa noCwaningo, 2018 (uMthetho No. 5 ka 2018), nanoma yimuphi omunye umthetho, uMkhandlu kumele ngokushesha ubike ngalokho kuhluleka, futhi ubeke nezizathu, kwiLungu loMkhandlu oPhethe elibhekele ezamagugu kanye nakwiHhovisi loMgcinimafa.

Ukubunjwa nokwakheka koMkhandlu

3.(1) ILungu loMkhandlu oPhethe elibhekele ezamagugu –

(a) kumele, kuncike eziphakamisweni ezitholakele ngokomthethonqubo 5(1) kanye nezincomo zethimba lokuhlunga elishiwo kumthethonqubo 5(3), liqoke abantu abangekho ngaphansi kwabayisikhombisa kodwa abangeqile kwabayisishiyagalolunye njengamalungu oMkhandlu; futhi

(b) kumele liqoke elilodwa lalawo malungu njengoSihlalo woMkhandlu ozokwengamela emihlanganweni yoMkhandlu nozokwenza eminye imisebenzi ephathelene nalokho.

(2) Emhlanganweni wokuqala woMkhandlu okukhulunywe ngawo kumthethonqubo 10(1) amalungu oMkhandlu kumele aqoke iSekela likaSihlalo phakathi kwamalungu awo.

(3) Amalungu oMkhandlu ashiwo kumthethonqutshana (1) kumele –

(a) abandakanye abantu abanobuchwepheshe obufanele nobesekwa ubufakazi kwezocwaningo;

(b) abandakanye abantu abaqeqeshiwe noma abanesipiliyoni esikhethekile kanye nentshisekelo emkhakheni wezamagugu;

(c) abandakanye okungenani umuntu oyedwa onolwazi nesipiliyoni okwesekwa ubufakazi emkhakheni wezokuphathwa kwezimali;

- (d) abandakanye okungenani umuntu oyedwa onolwazi nobungcweti okwesekwa ubufakazi kwezomthetho;
- (e) abandakanye okungenani umuntu oyedwa obhalisiwe njengomdwebimapulani noMkhandlu waseNingizimu Afrika oqondene nomsebenzi wabadwebimapulani ohlala KwaZulu-Natali; futhi
- (f) amele yonke imikhakha efanele nabantu besiFundazwe abanamasiko ahlukahlukene.
- (4) Amalungu ashiwo kumthethonqutshana (1) kumele abe ngabantu abafanelekile abazimele, abangachemile nabasebenza ngendlela enobulungiswa.
- (5) Umuntu akafaneleki ukuqokelwa eMkhandlwini noma ukuqhubeka eMkhandlwini, ngenxa yokuthi –
- (a) ucwile ezikweletini noma ucwila ezikweletini ngokungenakuhlengeka;
- (b) umenyazelwa noma umenyazelwe yinkantolo njengongaphilile kahle ngengqondo;
- (c) engumuntu ongaphansi kwesandla somunye umuntu;
- (d) esikhathini esiphambili eke wasuswa esikhundleni ngenxa yokungathembeki okubandakanya ukweba noma ukukhwabanisa;
- (e) eke walahlwa yicala futhi wagwetshwa ngaphandle kokunikezwa ithuba lokhetha phakathi kokuboshwa nokukhokha inhlawulo, ngaphandle uma iLungu loMkhandlu oPhethe elibhekele ezamagugu, ngesikhathi umuntu eqokwa edalula ngokugcwele imininingwane yecala esitatimendeni esifungelwe, lingamthethelela ngokuhambisana nesigaba 106(1)(e) soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996: Kuncike ekutheni lokho kungafaneleki ngokwalo mthethonqutshana kuphela eminyakeni emihlanu emva kokuphela kwesigwebo;
- (f) ehluleka ukudalula ukuhlomula ngokuhambisana nomthethonqubo 6 noma ethamele noma ebe yingxenywe yezingxoxo zoMkhandlu ngesikhathi esahlomula njengoba kushiwo kulesi sigaba; noma
- (g) esesikhundleni ngoba emele iqembu lezopolitiki.

Isikhathi sokuba sesikhundleni selungu loMkhandlu

4.(1) Ilungu loMkhandlu lingaba sesikhundleni isikhathi esingeqile eminyakeni emithathu, futhi lingaphinde liqokwe.

(2) Alikho ilungu elingaqokwa amahlandla angaphezu kwamabili alandelanayo.

Iziphakamiso zobulungu eMkhandlwini

5.(1) ILungu loMkhandlu oPhethe elibhekele ezamagugu kumele, ngesaziso *kwiGazethi* nasemaphandabeni okungenani amabili afundwa kakhulu esiFundazweni, limeme iziphakamiso zabantu abazoqokelwa eMkhandlwini.

(2) Isimemo seziphakamiso ngokomthethonqutshana (1) kumele sibalule –

- (a) inqubo yokwenza isiphakamiso;
- (b) okudingekayo uma kwenziwa isiphakamiso; kanye
- (c) nosuku isiphakamiso okumele sifinyelele ngalo kwiLungu loMkhandlu oPhethe elibhekele ezamagugu.

(3) ILungu loMkhandlu oPhethe elibhekele ezamagugu kumele liqoke ithimba lokuhlunga eliyoba –

- (a) neziphathimandla eziphezulu zoMnyango ezingeqile kwezimbili; kanye
- (b) nabantu abangeqile kwabathathu abanesipiliyoni kwezamagugu nakwezocwaningo,

eliyocubungula zonke iziphakamiso bese lenza izincomo mayelana nabaphakanyisiwe.

(4) ILungu loMkhandlu oPhethe elibhekele ezamagugu kumele liqinisekise ukuthi amalungu oMkhandlu wokuqala aqokwa ezinsukwini ezingama-90 le Mithethonqubo iqale ukusebenza.

Ukudalula ukuhlomula ngokwezezimali noma ngenye indlela kwabaphakanyiselwe ukuqokwa eMkhandlwini

6.(1) Umuntu ophakanyiselwe ukuqokwa eMkhandlwini –

- (a) kumele ezinsukwini eziyishumi eqokiwe futhi wamukela isiphakamiso, adalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele ezamagugu konke ukuhlomula kwakhe ngokwezezimali noma ngenye indlela emkhakheni wezamagugu noma emikhakheni ehlobene nawo noma engahlobana nawo noma okungashayisana nokuqokwa njengelungu loMkhandlu, lokho kudalula kumele kubandakanye imininingwane efanele mayelana nanoma yikuphi ukugwetshelwa icala elisoHlelweni 2 ngokoMthetho weNqubo yokuQulwa kwamaCala obuGebengu, 1977 (uMthetho No. 51 ka 1977);
- (b) kumele ekudaluleni okukhulunywe ngakho endimeni (a) adalule nokuhlomula ngokwezezimali noma ngenye indlela kwamalungu omndeni noma kwabasondelene naye emkhakheni wezamagugu kanye nasemikhakheni ehlobene nawo noma okungashayisana nokuqokwa kwakhe njengelungu loMkhandlu; futhi

(c) akumele aqokwe njengelungu loMkhandlu uma kutholakala ukuthi ugodle ulwazi oluthile ngamabomu oluphathelene nokuhlomula ngokwezezimali noma ngenye indlela okushiwo kulesi sigaba.

(2) Uma ilungu loMkhandlu noma ilungu lomndeni walo noma umuntu osondelene nalo kuba noguquko esimweni salo noma sakhe sezezimali nakunoma yisiphi isimo salo noma sakhe futhi lihlomula noma ehlomlula emkhakheni wezamazagu noma emikhakheni ehlobene nawo, ilungu loMkhandlu kumele, ezinsukwini eziyishumi kusukela osukwini lokushintsha kwesimo, lidalule ngokubhaliwe ngaloloshintsho kwezezimali noma ngenye indlela kwiLungu loMkhandlu oPhethe elibhekele ezamazagu.

(3) ILungu loMkhandlu oPhethe elibhekele ezamazagu kumele –

(a) ligcine irejista yokuhlomula kwamalungu oMkhandlu okudalulwe ngokwalesi sigaba; futhi

(b) livuselele lelo rejista njalo emva kwesikhathi esithile.

Ukuhluleka ukudalula kwelungu loMkhandlu ukuhlomula ngokwezezimali noma ngenye indlela

7.(1) Ilungu loMkhandlu elihluleka ukudalula njengoba kushiwo kumthethonqubo 6 liphula umthetho.

(2) Uma iLungu loMkhandlu oPhethe elibhekele ezamazagu lithola ukuthi ilungu loMkhandlu lihlulekile ukuhambisana nezinhlinzeko zomthethonqubo 6, kumele liphenye lolo daba futhi libheke ukuthi yiziphi izinyathelo zokuqondisa izigwegwe ezingathathwa.

Ukuhoxa kwelungu loMkhandlu

8.(1) Ilungu loMkhandlu kumele lihoxe odabeni lapho, ilungu lomndeni walo lihlomulile noma osondelene nalo ehlomlule, noma kulindeleke ukuthi bahlomule ngokwezezimali noma ngenye indlela esinqumweni esizothathwa uMkhandlu.

(2) Noma yimuphi umuntu angafaka isicelo, noma angacela ngomlomo, ukuthi ilungu loMkhandlu lihoxe uma lowo muntu enesizathu sokukholwa ukuthi ilungu loMkhandlu, ilungu lomndeni walo lihlomulile noma osondelene nalo uhlomulile noma kulindeleke ukuthi bahlomule ngokwezezimali noma ngenye indlela esinqumweni esizothathwa uMkhandlu.

(3) Umuntu ofaka isicelo okukhulunywe ngaso kumthethonqutshana (2) kumele anikeze izizathu zesicelo sakhe.

(4) Uma kunesicelo okukhulunywe ngaso kumthethonqutshana (2), uSihlalo woMkhandlu kumele anqume ngalolo daba, ngaphandle uma isicelo sithinta uSihlalo woMkhandlu udaba kumele lunqunywe yiSekela likaSihlalo.

Izikhala, ukususwa kanye nokusula esikhundleni kwamalungu oMkhandlu

9.(1) Ilungu loMkhandlu kumele lishiye isikhundla uma lingasafanelekile njengoba kushiwo kumthethonqubo 5.

(2) ILungu loMkhandlu oPhethe elibhekele ezamagugu, emva kokunikeza ilungu ithuba lokuziphendulela, nganoma yisiphi isikhathi lingakhipha esikhundleni lelo lungu uma, ngokubona kweLungu loMkhandlu oPhethe, kunezizathu ezizwakalayo zokwenze njalo.

(3) Ilungu kumele lishiye esikhundleni uma liphuthe, ngaphandle kokuthi ilivu liyinikezwe uMkhandlu, emihlanganweni emibili elandelayo yoMkhandlu, isaziso sayo esasinikezwe ilungu uqobo noma sasithunyelwe ngeposi.

(4) ILungu lingasula esikhundleni ngokubhalwe phansi ngokunikeza iLungu loMkhandlu oPhethe elibhekele ezamagugu isaziso sezinsuku ezingengaphansi kwezingamashumi amathathu: Kuncike ekutheni iLungu loMkhandlu oPhethe lingakuchitha lokho kwesula uma lokho kuchithwa kungeke kube nomthelela ongemuhle ekusebenzeni ngendlela efanele kwesiKhungo.

(5) Noma kunini uma kuvela isikhala eMkhandlwini, iLungu loMkhandlu oPhethe elibhekele ezamagugu kumele, kuncike kumthethonqubo 5, liqoke umuntu ozogcwalisa lesi sikhala isikhathi esisele esikhundleni selungu lowo muntu aqokelwe sona.

Imihlangano yoMkhandlu

10.(1)(a) Umhlangano wokuqala woMkhandlu kumele ubanjwe endaweni, ngosuku nangesikhathi esiyonqunywa yiLungu loMkhandlu oPhethe elibhekele ezamagugu, bese kuthi emva kwalokho yonke imihlangano eyolandela kumele inqunywe uSihlalo.

(b) UMkhandlu kumele uhlangane okungenani kathathu ngonyaka wezimali.

(2) ILungu loMkhandlu ngalinye kumele laziswe ngomhlangano ngamunye ngokubhalwe phansi, okungenani ezinsukwini eziyishumi nane ngaphambi kwalowo mhlango, futhi lesa saziso kumele sibe nohlelo lomhlangano ohlongozwayo.

(3) Uma uSihlalo woMkhandlu engekho emhlanganweni woMkhandlu, amalungu akhona kulowo mhlango angaqoka elinye lamalungu awo ukuthi lengamele kulowo mhlango.

(4) Umhlangano oyisipesheli woMkhandlu ungabizwa ngesicelo –

(a) sikaSihlalo; noma

(b) samalungu amabili kwamathathu oMkhandlu ngesinxuso esibhalwe phansi, lapho uSihlalo kumele, ngokubhalwe phansi, azise ilungu loMkhandlu ngalinye ngesikhathi, ngosuku nangendawo okuzobanjelwa kuyo umhlangano oyisipesheli.

(5) Ikhoramun yomhlangano woMkhandlu yiningi lamalungu awo.

(6) Noma yisiphi isinqumo soMkhandlu kumele sithathwe ngesixazululo seningi lamalungu akhona kunoma yimuphi umhlangano woMkhandlu futhi, uma kuba nokulingana kwamavoti nganoma yiluphi udaba, ilungu elengamele umhlangano okukhulunywa ngawo liyokuba nevoti eliwujuqu ngaphezu kwevoti lalo elijwayelekile njengelungu loMkhandlu.

(7) Okudingidwa kuyona yonke imihlangano yoMkhandlu kumele kuqoshwe futhi kubhalwe emaminithini.

(8)(a) Amaminithi omhlangano odlule kumele afundwe ekuqaleni komhlangano ngamunye.

(b) Amaminithi kungathathwa ngokuthi afundiwe uma amakhophi awo athunyelwa kumalungu oMkhandlu ngaphambi komhlangano.

(c) USihlalo angasayina amaminithi kuphela uma sekudingidwe iziphikiso noma eselungisiwe.

(9) USihlalo kumele anqume ngemibuzo nangenqubo ezolandelwa: Kuncike ekutheni uma noma yiliphi ilungu eliphikisana nanoma yisiphi isinqumo, umbuzo kumele uvotelwe bese kuthi isinqumo seningi lamalungu sibe wujuqu futhi kube yisona esibophezela uMkhandlu.

(10) Ilungu loMkhandlu elithintekayo kunoma yiluphi udaba oludingidwa emhlanganweni woMkhandlu, okubonakala sengathi, lungalivimbela ekwenzeni umsebenzi walo ngendlela efanele, engachemile nelungile, kumele lihoxe kulowo mhlango.

(11) Umsebenzi wesiKhungo, uma emenywe uMkhandlu, angathamela umhlangano woMkhandlu.

Amakomidi oMkhandlu

11.(1) UMkhandlu ungasokisa ikomidi elilodwa noma ngaphezulu kungacini nje ngamalungu awo ukuba asize ekusebenziseni amandla nasekwenzeni imisebenzi yawo.

(2) Ikomidi elishiwo kumthethonqutshana (1) kumele lenze leyo misebenzi yoMkhandlu njengoba uMkhandlu unganquma.

(3) UMkhandlu, nganoma yisiphi isikhathi, ungahlakaza noma ubumbe kabusha lelo komidi.

(4) UMkhandlu –

(a) ungasokisa amandla awo noma imisebenzi yawo kwikomidi eliqokwe ngokomthethonqutshana (1);

(b) awunqatshelwe ukusebenzisa amandla adluliselwe noma ukwenza noma yimuphi umsebenzi odluliselwe; futhi

(c) ungachibiyela, ubukeze noma uhoxise noma yisiphi isinqumo sekomidi.

(5) Noma yimaphi amandla adluliselwe asetshenziswa noma umsebenzi odluliselwe owenziwa yikomidi kuthathwa ngokuthi asetshenziswa noma wenziwa uMkhandlu.

(6) Umsebenzi wesiKhungo, uma emenywe yikomidi elifanele, angathamela umhlangano walelo komidi.

Ukudluliselwa kwamandla kanye nokwabiwa kwemisebenzi yoMkhandlu

12.(1) Uma kunesidingo ukuze kwenziwe ngendlela efanele imisebenzi yawo, uMkhandlu ungasokisa noma yimaphi amandla awo, wabe noma yimiphi imisebenzi yawo, ngaphandle kwalokho okubalulekile kumthethonqutshana (2), –

(a) kwilungu loMkhandlu;

(b) kwikomidi elisungulwe ngokomthethonqubo 11; noma

(c) kwiNhloko yeHhovisi likaNobhala nezokuPhatha yesiKhungo.

(2) UMkhandlu angeke udlulisele la mandla nale misebenzi elandelayo –

- (a) ukunqunywa kwenqubomgomo yokuqasha, imikhawulo noma imigomo nemibandela yezezimali;
 - (b) imisebenzi yokuphathwa kwezezimali eyabelwe uMkhandlu; kanye
 - (c) nokugunyazwa kwesabelomali.
- (3) Ukudluliselwa kwamandla noma ukwabiwa komsebenzi okwenziwe ngokomthethonqutshana (1) –
- (a) kumele kubhalwe phansi;
 - (b) kuncike kuleyo mikhawulo, migomo kanye nemiyalelo uMkhandlu ongayibeka;
 - (c) akuphuci uMkhandlu igunya lokuthi usebenzise amandla adluliselwe noma wenze umsebenzi odluliselwe; futhi
 - (d) akuvimbi uMkhandlu ekutheni usebenzise amandla adluliselwe noma wenze umsebenzi owabiwe.
- (4) Konke ukudluliselwa kwamandla nokwabiwa komsebenzi okwenziwe ngokomthethonqutshana (1) kumele kugcinwe kwirejista elivuselelwe.
- (5) UMkhandlu ungaqinisekisa, uguqule noma uchithe noma yisiphi isinqumo esithathwe ngenxa yokudluliselwa kwamandla noma yokwabiwa komsebenzi ngokwalo mthethonqubo, kuncike kunoma yimaphi amalungelo umuntu awathole ngenxa yesinqumo.

Imisebenzi yokuphatha neyobubhalane yoMkhandlu

13. Imisebenzi yokuphatha neyobubhalane ehambisana nokwenziwa kwemisebenzi yoMkhandlu noma yamakomidi awo, kumele yenziwe abasebenzi besiKhungo njengoba bengaqokwa yiNhloko yeHhovisi likaNobhala nezokuPhatha yesiKhungo.

Amaholo abasebenzi boMkhandlu kanye nokukhokhwa kwezindleko zamalungu oMkhandlu noma amakomidi oMkhandlu angene kuzona

14.(1)(a) Ilungu loMkhandlu lingakhokhelwa lelo holo noma lezo zibonelelo njengoba kunganqunywa yiLungu loMkhandlu oPhethe elibhekele ezamagugu ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(b) Ilungu loMkhandlu elithola iholo, izibonelelo kanye neminye imihlomulo ngenxa yesikhundla salo noma yokuqashwa kwalo –

- (i) kuhulumeni kazwelonke;
- (ii) kuhulumeni wesifundazwe;

(iii) kumasipala;

(iv) enhlanganweni, emgwamandeni noma esikhungweni esilawulwa nguhulumeni kazwelonke noma wesifundazwe; noma

(v) ohlakeni lukahulumeni, ebhizinisini likahulumeni kazwelonke noma ebhizinisini likahulumeni wesifundazwe njengoba kuchazwe esigabeni 1 soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999),

lisasebenza njengelungu loMkhandlu, lingathola iholo noma izibonelelo okukhulunywe eliqhubekayo nokuthola lelo holo, lezo zibonelelo noma leyo mihlomulo ngesikhathi ngazo endimeni (a) kuphela ngendlela edingekayo ukubeka lelo lungu esimweni sezimali ebelizoba kusona uma belingekho kuleso sikhundla.

(2)(a) ILungu loMkhandlu kanye nelungu lekomidi loMkhandlu, maqondana nemisebenzi yalo njengelungu, lingabuyiselwa izindleko zokuhamba ngomsebenzi okudalwe ukwethamela umhlangano woMkhandlu noma wekomidi loMkhandlu.

(b) ILungu loMkhandlu oPhethe elibhekele ezezimali kumele linqume inqubo, kubandakanya nezindlela zokulawula nezokuphatha izimali zokukhokhelwa izindleko zokuhamba ngomsebenzi okushiwo endimeni (a).

Ukuchitshiyelwa noma ukuguqulwa koHlelo

15. ILungu loMkhandlu oPhethe elibhekele ezamagugu, ngemuva kokubonisana noMkhandlu, ngesaziso kwiGazethi futhi kusukela ngosuku olubalulwe kuleso saziso –

(a) lingachibiyela; noma

(b) liguqule,

lolu Hlelo.

Ukusebenza kweMithethonqubo

16.(1) IMithethonqubo kumele ifundwe futhi iqaliswe ukusebenza kanye noMthetho wesiKhungo saMafa noCwaningo waKwaZulu-Natali, 2018 (uMthetho No. 5 ka 2018), noMthetho wezamaGugu kaZwelonke, 1999 (uMthetho No. 25 ka 1999), kanye noMthetho wesiKhungo samaGugu kaZwelonke, 1999 (uMthetho No. 11 ka 1999).

(2) Uma le Mithethonqubo ingalulawuli udaba oluphathelele nesiKhungo njengomaziphathe wezamaGugu wesiFundazwe noma nokuvikelwa noma nokuphathwa kwamagugu esiFundazweni, izinhlinzeko zoMthetho wesiKhungo saMafa noCwaningo waKwaZulu-Natali, 2018 (uMthetho No. 5 ka 2018), zoMthetho wezamaGugu kaZwelonke, 1999 (uMthetho No.

25 ka 1999), kanye nezoMthetho wesiKhungo samaGugu kaZwelonke, 1999 (uMthetho No. 11 ka 1999), ziyasebenza esiFundazweni kanti uma kukhulunywa “ngohlaka olubhekele izindaba zamagugu esifundazweni” eMthethweni wezamaGugu kaZwelonke, 1999, kumele, ngaphandle uma ngempela kungafanele, kuthathwe ngokuthi kukhulunywa ngesiKhungo.

Isihloko esifingqiwe nokuqala kokusebenza

17.(1) Le Mithethonqubo ibizwa ngeMithethonqubo yesiKhungo saMafa noCwaningo, 2018.

(2) Le Mithethonqubo iyoqala ukusebenza ngosuku uMthetho wesiKhungo saMafa noCwaningo waKwaZulu-Natali, 2018 (uMthetho No. 5 ka 2018) oyoqala ngalo ukusebenza.

PROVINSIALE KENNISGEWING 137 VAN 2018
KWAZULU-NATAL KANTOOR VAN DIE PREMIER
REGULASIEKENNISGEWING

KWAZULU-NATAL REGULASIES OP AMAFA- EN NAVORSINGSINSTITUUT, 2018

Ingevolge artikel 23 van die Wet op Nasionale Erfenishulpbronne, 1999 (Wet No. 25 van 1999), gelees met artikel 26 daarvan, vaardig ek hiermee die Regulasies vervat in die meegaande Bylae uit ten einde die volgende te reguleer –

- (a) die instelling van die provinsiale erfenishulpbronne gesag wat bekend sal staan as die KwaZulu-Natal Amafa- en Navorsingsinstituut; en
- (b) die konstituering, samestelling en werksaamhede van die Raad van die Instituut, soos vereis deur die Nasionale Wet op Erfenishulpbronne, 1999 (Wet No. 25 van 1999).

Gegee onder my Hand te Pietermaritzburg, op hierdie 21^{ste} dag van November, Tweeduisend-en-agttien.

MNR TW MCHUNU, LPW

Premier van die Provinsie van KwaZulu-Natal
verantwoordelik vir erfenisaangeleenthede

BYLAE**Omskrywings**

1. In hierdie Regulasies beteken “die Wet” die Wet op KwaZulu-Natal Amafa- en Navorsingsinstituut, 2018 (Wet No. 5 van 2018), en enige woord of uitdrukking waaraan ‘n betekenis in die Wet toegewys is dra daardie betekenis en, tensy uit die samehang anders blyk beteken –

“**Instituut**” die KwaZulu-Natal Amafa- en Navorsingsinstituut ingevolge regulasie 2(1) ingestel; en

“**Raad**” die Raad verwys na in regulasie 2(3).

Instelling van KwaZulu-Natal Amafa- en Navorsingsinstituut

2.(1) ‘n Instituut wat bekend sal staan as die KwaZulu-Natal Amafa- en Navorsingsinstituut word hiermee ingestel.

(2) Die Instituut is ‘n regspersoon.

(3) Die Instituut word beheer deur, en handel deur, ‘n Raad wat bekend sal staan as die KwaZulu-Natal Amafa- en Navorsingsraad, saamgestel soos bedoel in regulasie 3(1), wat alle besluite vir die verrigting van sy werksaamhede en verpligtinge neem, met uitsondering van besluite as gevolg van ‘n delegering ingevolge regulasie 12 geneem.

(4) Die Raad is die rekenpligtige gesag van KwaZulu-Natal Amafa- en Navorsingsinstituut ingevolge artikel 49(2)(a) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), en is onderworpe aan die bepalings van die Wet op Openbare Finansiële Bestuur, 1999.

(5) Die Raad is verantwoordelik vir –

(a) die bestuur, ingesluit die beveiliging, van die bates en vir die bestuur van die inkomste, uitgawes en laste van die Instituut; en

(b) die indiening van alle verslae, opbrengste, kennisgewings en ander inligting deur die Instituut by die Provinsiale Wetgewer en die verantwoordelike Lid van die Uitvoerende Raad of die Provinsiale Tesourie, soos vereis mag word deur die Wet op die KwaZulu-

Natal Amafa- en Navorsingsinstituut, 2018 (Wet No. 5 van 2018), of enige ander wetgewing.

(6) 'n Raadslid mag nie –

(a) op 'n wyse wat strydig is met die verantwoordelikhede wat aan 'n rekenkundige gesag toegewys is ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), optree nie; of

(b) die posisie of voorregte van, of vertroulike inligting verkry as, rekenpligtige gesag of 'n Raadslid, vir persoonlike gewin gebruik of om op onbehoorlike wyse 'n ander persoon voordeel daaruit laat trek nie.

(7) Indien die Instituut nie in staat is om enige van sy verantwoordelikhede ingevolge die Wet op KwaZulu-Natal Amafa- en Navorsingsinstituut, 2018 (Wet No. 5 2018), of enige ander wetgewing, na te kom nie, moet die Raad onmiddelik die onvermoë, redes ingesluit, onder die aandag van die verantwoordelike Lid van die Uitvoerende Raad en die Provinsiale Tesourie bring.

Konstituering en samestelling van Raad

3.(1) Die verantwoordelike Lid van die Uitvoerende Raad –

(a) moet, gebaseer op benoemings ontvang ingevolge regulasie 5(1) en aanbevelings deur die keuringspaneel bedoel in regulasie 5(3), nie minder nie as sewe en nie meer nie as nege persone aanstel as Raadslede; en

(b) moet een sodanige lid aanwys as die Voorsiter van die Raad om voor te sit by Raadsvergaderings en om ander pligte wat verwant daaraan is na te kom.

(2) By die eerste Raadsvergaderings, verwys na in regulasie 10(1), moet die Raadslede 'n Ondervoorsitter vanuit sy geledere kies.

(3) Die Raadslede bedoel in subregulasie (1) moet –

(a) persone met toepaslike en bewese navorsingservaring insluit;

(b) persone wat oor kwalifikasies, of spesiale bevoegdheid, ervaring en belang in die veld van erfenishulbronne beskik, insluit;

(c) minstens een persoon wat oor bewese kennis of ervaring in die gebied van finansiële bestuur beskik, insluit;

(d) minstens een persoon wat oor bewese regs-kennis en -kundigheid beskik, insluit;

(e) minstens een persoon wat geregistreer is as 'n argitek met die Suid-Afrikaanse Raad vir die Argitektuur-professie en in KwaZulu-Natal gedomisileer; en

(f) verteenwoordigend wees van die tersaaklike sektorale belange en die kulturele demografiese eienskappe van die mense van die Provinsie.

(4) Die lede bedoel in subregulasie (1) moet geskikte en gepaste persone wees met karaktereieskappe van onafhanklikheid, onpartydigheid en regverdigheid.

(5) 'n Persoon is onbevoeg om op die Raad aangestel te word of om op die Raad te bly indien hy of sy –

(a) 'n ongerehabiliteerde insolvent is of word;

(b) deur 'n bevoegde hof as ontoerekeningsvatbaar verklaar is;

(c) 'n persoon onder kuratorskap is;

(d) te eniger tyd uit sy of haar vertrouensamp ontslaan is op grond van wangedrag wat diefstal of bedrog insluit;

(e) skuldig bevind en gevonnissen is tot 'n termyn van gevangenisstraf sonder keuse van 'n boete, behalwe dat die verantwoordelike Lid van die Uitvoerende Raad by die volle openbaarmaking van die misdryf in 'n beëdigde verklaring van sodanige benoemde 'n skuldigbevinding mag oorsien op 'n wyse wat in ooreenstemming is met artikel 106(1)(e) van die Grondwet: Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel vyf jaar nadat die vonnis uitgedien is, eindig;

(f) versuim om 'n belang te verklaar in ooreenstemming met regulasie 6 of die verrigtinge van die Raad bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het, soos bedoel in die vermelde artikel; of

(g) 'n politieke ampsdraer is.

Ampstermyn van Raadslid

4.(1) 'n Raadslid beklee amp vir 'n tydperk wat nie drie jaar oorskry nie en mag her aangestel word.

(2) Geen lid mag aangestel word vir meer as twee opeenvolgende termyne nie.

Benoemings vir lidmaatskap van Raad

5.(1) Die verantwoordelike Lid van die Uitvoerende Raad moet, by wyse van kennisgewing in die *Koerant* en minstens twee koerante wat in die Provinsie sirkuleer, belanghebbende partye binne die Provinsie uitnooi om kandidate te benoem om as Raadslede te dien.

(2) Die uitnodigings vir benoemings ingevolge subartikel (1) moet die –

- (a) benoemingsprosedure;
- (b) vereistes vir benoeming; en
- (c) sperdatum vir die ontvangs van 'n benoeming deur die verantwoordelike Lid van die Uitvoerende Raad,

spesifiseer.

(3) Die verantwoordelike Lid van die Uitvoerende Raad moet 'n keurpaneel aanstel wat bestaan uit –

- (a) nie meer as twee senior Departementele beamptes nie; en
- (b) nie meer as drie persone met ervaring in erfenis- of navorsingsaangeleenthede nie, ten einde alle benoemings na te gaan en aanbevelings betreffende die benoemdes te maak.

(4) Die verantwoordelike Lid van die Uitvoerende Raad moet toesien dat lede van die eerste Raad aangestel word binne 90 dae vanaf die datum van inwerkingtreding van hierdie Regulasies.

Verklaring van finansiële of ander belange deur benoemdes aan Raad

6.(1) 'n Benoemde vir aanstelling op die Raad moet –

- (a) 'n skriftelike verklaring van enige en alle finansiële of ander belange in die erfenissektor of verwante sektore, wat verbonde kan wees aan, of teenstrydig mag wees met, 'n aanstelling as Raadslid, binne tien dae vanaf aanvaarding van die benoeming aan die verantwoordelike Lid van die Uitvoerende Raad voorlê. Sodanige verklaring moet tersaaklike inligting oor enige skuldigbevinding aan 'n Skedule 2 oortreding ingevolge die Strafproseswet, 1977 (Wet No. 51 van 1977), insluit;
- (b) finansiële en ander belange in die erfenissektor of verwante sektore van familieledede of nabye vennote, wat verbonde kan wees aan, of teenstrydig mag wees, met 'n aanstelling as 'n Raadslid moet ingesluit word in die verklaring verwys na in paragraaf (a); en
- (c) nie oorweeg word vir die amp van 'n Raadslid nie waar bevind word dat die benoemde doelbewus inligting betreffende finansiële of ander belange bedoel in hierdie artikel weerhou het.

(2) Waar 'n Raadslid of familielid of nabye vennoot 'n verandering in finansiële of enige ander omstandighede ervaar het, of 'n belang in die erfenissektor of verwante sektore bekom het, moet die Raadslid, binne 10 dae vanaf die datum van die veranderde omstandighede, 'n skriftelike verklaring van die verandering in finansiële of ander belange aan die verantwoordelike Lid van die Uitvoerende Raad voorlê.

(3) Die verantwoordelike Lid van die Uitvoerende Raad moet –

- (a) 'n register van Raadslede se belange soos verklaar ingevolge hierdie artikel aanhou; en
- (b) van tyd tot tyd daardie register opdateer.

Versuim van Raadslid om finansiële of ander belange te verklaar

7.(1) 'n Raadslid wat versuim om 'n verklaring af te lê, soos beoog in regulasie 6, begaan 'n oortreding.

(2) Wanneer die Lid van die Uitvoerende Raad bewus word daarvan dat 'n Raadslid versuim het om te voldoen aan die bepalings van regulasie 6, moet die aangeleentheid ondersoek en toepaslike dissiplinêre stappe oorweeg word.

Onttrekking van Raadslid

8.(1) 'n Raadslid moet hom- of haarself van enige aangeleentheid of verrigting onttrek waar hy of sy, 'n familielid of nabye vennoot het, of redelikerwys van verwag kan word om 'n finansiële of ander belang te besit in die uitslag van 'n besluit deur die Raad.

(2) Enige persoon mag 'n mondelinge of skriftelike versoek indien dat 'n Raadslid hom- of haarself moet onttrek indien daardie persoon rede het om te glo dat die Raadslid 'n familielid of nabye vennoot het, of daar redelikerwys verwag kan word dat die lid 'n finansiële of ander strydige belang in die uitslag van 'n besluit deur die Raad sal besit.

(3) 'n Persoon wat aansoek doen, soos vermeld in subartikel (2), moet redes vir sy of haar versoek verskaf.

(4) In die geval van 'n aansoek soos vermeld in subartikel (2) moet die Voorsitter van die Raad oor die aangeleentheid beslis, met uitsondering van gevalle waar die aansoek betrekking het op die Voorsitter van die Raad, waar die Adjunkvoorsitter oor die aangeleentheid moet beslis.

Vakatures, ontslag en bedanking uit amp deur Raadslid

9.(1) 'n Raadslid moet amp ontruim indien hy of sy onderhewig aan 'n onbevoegdheid bedoel in regulasie 5 raak.

(2) Die verantwoordelike Lid van die Uitvoerende Raad mag, nadat 'n geleentheid aan die lid gebied is om sy of haar saak te stel, die ampstermyn van sodanige lid te eniger tyd beëindig indien, na sy of haar uitsluitlike goeddunke, daar grondige redes is om so te doen.

(3) 'n Lid moet sy of haar amp ontruim indien hy of sy sonder vooraf toestemming, toegestaan deur die Raad, afwesig is van twee opeenvolgende Raadsvergaderings waarvoor redelike kennis, persoonlik of per pos, aan daardie lid gegee is.

(4) 'n Lid kan skriftelik uit sy of haar amp bedank deur minstens 30 dae kennis aan die verantwoordelike Lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike Lid van die Uitvoerende Raad kan afsien, indien sodanige afsiening nie nadelig sal wees vir die doeltreffende werksverrigting van die Raad nie.

(5) Wanneer 'n vakature op die Raad ontstaan, moet die verantwoordelike Lid van die Uitvoerende Raad, onderhewig aan regulasie 5, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke gedeelte van die ampstydperk van die lid in wie se plek sodanige persoon aangestel is.

Raadsvergaderings

10.(1)(a) Die eerste Raadsvergadering moet gehou word op 'n tyd, datum en by 'n plek deur die verantwoordelike Lid van die Uitvoerende Raad bepaal. Daarna moet alle toekomstige vergaderings plaasvind soos deur die Voorsitter bepaal.

(b) Die Raad moet daarna minstens drie keer in enige gegewe finansiële jaar vergader.

(2) Elke Raadslid moet, skriftelik, minstens 14 dae voor sodanige vergadering in kennis gestel word en sodanige kennisgewing moet 'n agenda vir die voorgenome vergadering insluit.

(3) Indien die Voorsitter van die Raad afwesig is van enige Raadsvergadering, mag die lede teenwoordig by daardie vergadering 'n lid uit eie geledere verkies om by daardie vergadering voor te sit.

(4) 'n Spesiale Raadsvergadering mag belê word op versoek van –

- (a) die Voorsitter; of
- (b) twee derdes van die Raadslede by wyse van 'n skriftelike petisie, waarna die Voorsitter elke Raadslid skriftelik in kennis moet stel van die tyd, datum en plek van die spesiale vergadering.
- (5) 'n *Kworum* vir 'n Raadsvergadering is 'n meerderheid van sy lede.
- (6) Enige besluit van die Raad moet geneem word deur 'n meerderheidstem van die lede teenwoordig by enige Raadsvergadering en, in die geval van 'n staking van stemme ten opsigte van enige aangeleentheid, het die lid wat op die tersaaklike vergadering voorsit 'n beslissende stem, bykomend tot sy of haar gewone stem as Raadslid.
- (7) Die verrigtinge van alle Raadsvergaderings moet behoorlik vasgelê en genotuleer word.
- (8)(a) Die notule van die vorige vergadering moet by die aanvang van elke vergadering gelees word.
- (b) Die notule mag as gelees beskou word indien afskrifte daarvan voor die vergadering aan die Raadslede verskaf is.
- (c) Die Voorsitter mag slegs die notule teken wanneer besware of regstellings afgehandel is.
- (9) Die Voorsitter moet oor orde- of prosedure-aangeleenthede besluit: Met dien verstande dat indien enige lid teen enige sodanige besluit beswaar maak, die aangeleentheid tot stemming gebring moet word, en die besluit van die meerderheid van die lede is finaal en bindend op die Raad.
- (10) 'n Raadslid wat 'n belang betreffende enige aangeleentheid wat op 'n Raadsvergadering bespreek word besit en wat, redelikerwys oorweeg, hom of haar kan verhinder om sy of haar pligte op 'n regverdige, onbevooroordeelde en behoorlike wyse na te kom, moet hom- of haarself van sodanige vergadering onttrek.
- (11) Enige personeellid van die Instituut mag, op uitnodiging van die Raad, die Raadsvergadering bywoon.

Komitees van Raad

11.(1) Die Raad mag een of meer komitees, nie beperk tot sy eie lede nie, aanstel om bystand te lewer in die uitoefening van sy bevoegdhede, nakoming van sy pligte en sy werksaamhede te verrig.

(2) 'n Komitee bedoel in subregulasie (1) moet sodanige pligte nakom en werksaamhede van die Raad verrig as wat die Raad mag bepaal.

(3) Die Raad mag sodanige komitee te eniger tyd ontbind of hersaamstel.

(4) Die Raad –

(a) mag enige van sy bevoegdhede delegeer of enige van sy pligte of werksaamhede toewys aan 'n komitee aangestel ingevolge subregulasie (1);

(b) word nie van die uitoefening van enige bevoegdheid, nakoming van enige plig of verrigting van enige werksaamheid kwytgeskeld nie; en

(c) mag enige besluit van 'n komitee wysig, hersien of intrek.

(5) Enige gedelegeerde of toegewysde bevoegdheid, plig of werksaamheid uitgeoefen of verrig deur die komitee word beskou as uitgeoefen of verrig deur die Raad.

(6) 'n Personeellid van die Instituut mag, op uitnodiging deur die tersaaklike komitee, 'n vergadering van daardie komitee bywoon.

Delegering van bevoegdhede en toewysing van werksaamhede deur Raad

12.(1) Wanneer nodig vir die behoorlike verrigting van sy werksaamhede mag die Raad enige van sy bevoegdhede delegeer of enige van sy pligte toewys, uitgesluit daardie genoem in subregulasie (2), aan –

(a) 'n Raadslid;

(b) 'n komitee ingevolge regulasie 11 ingestel; of

(c) die Hoof van Sekretariaat en Administrasie van die Instituut.

(2) Die Raad mag nie die volgende bevoegdhede en werksaamhede delegeer of toewys nie

–

(a) die bepaling van die indiensnemingsbeleid, finansiële beperkings of bepalings of voorwaardes;

(b) die finansiële bestuursverantwoordelikeid aan die Raad toegewys; en

(c) die goedkeuring van die begroting.

(3) 'n Delegering of toewysing ingevolge subregulasie (1) –

(a) moet skriftelik wees;

(b) is onderworpe aan sodanige beperkings, voorwaardes, en opdragte as wat die Raad mag oplê;

(c) ontnem nie die Raad van die verantwoordelikheid met betrekking tot die uitoefening van die gedelegeerde bevoegdheid of die nakoming van die toegewysde plig nie; en

(d) voorkom nie die uitoefening van die toegewysde bevoegdheid of die nakoming van die toegewysde plig deur die Raad nie.

(4) Alle delegerings en toewysings ingevolge subregulasie (1) moet in 'n opgedateerde register opgeneem word.

(5) Die Raad mag enige besluit geneem as gevolg van 'n delegering of toewysing ingevolge hierdie regulasie, bevestig, verander of intrek behoudens enige regte wat vir 'n persoon mag toegeneem het as gevolg van die besluit.

Administratiewe en sekretariële werk van Raad

13. Die administratiewe en sekretariële werk bykomend tot die verrigting van die werksaamhede van die Raad of sy komitees moet verrig word deur personele van die Instituut soos aangewys mag word deur die Hoof van Sekretariaat en Administrasie van die Instituut.

Besoldiging van Raadslede en vergoeding van uitgawes aangegaan deur Raadslede en komitees van Raad

14.(1)(a) 'n Raadslid mag sodanige vergoeding of toelaes betaal word soos bepaal mag word deur die verantwoordelike Lid van die Uitvoerende Raad in oorleg met die Lid van die Uitvoerende Raad verantwoordelik vir finansies.

(b) 'n Raadslid wat vergoeding, toelaes of ander voordele ontvang uit hoofde van sy of haar pos of diens in –

(i) die nasionale regering;

(ii) 'n provinsiale regering;

(iii) 'n munisipaliteit;

(iv) 'n korporasie, liggaam of instituut waarin die nasionale of 'n provinsiale regering 'n beherende belang het; of

(v) 'n openbare entiteit, 'n nasionale regeeringsakeonderneming of 'n provinsiale sakeonderneming soos omskryf in artikel 1 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999),
en wat voortgaan om sodanige vergoeding, toelaes of ander voordele te ontvang terwyl hy of sy as 'n Raadslid dien, mag slegs vergoeding en toelaes ontvang soos vermeld in paragraaf (a) tot die omvang wat vereis word om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou gewees het as dit nie vir sodanige pos of aanstelling was nie.

(2)(a) 'n Raadslid en 'n lid van 'n komitee van die Raad mag, met betrekking tot sy of haar werksaamhede as 'n lid, terugbetaling vir redelike werklike reis- en verblyfkostes genoodsaak deur die werklike bywoning van 'n Raadsvergadering of 'n komitee ontvang.

(b) Die Lid van die Uitvoerende Raad verantwoordelik vir finansies moet prosedures, ingesluit beheermaatreëls, vir die bestuur, hantering en verwerking van eise vir reis- en verblyfkostes bedoel in paragraaf (a) bepaal.

Wysiging of vervanging van Bylae

15. Die verantwoordelike Lid van die Uitvoerende Raad, na oorleg met die Raad, kan, deur kennisgewing in die *Koerant* en met inwerkingtreding vanaf 'n datum gespesifiseer in sodanige kennisgewing, hierdie Bylae –

- (a) wysig; of
- (b) vervang.

Toepassing van Regulasies

16.(1) Hierdie Regulasies moet ge lees en geïmplementeer word tesame met die Wet op Amafa- en Navorsingsinstituut, 2018 (Wet No. 5 van 2018), die Nasionale Wet op Erfenishulpbronne, 1999 (Wet No. 25 van 1999), en die Wet op die Nasionale Erfenisinstituut, 1999 (Wet No. 11 van 1999).

(2) Indien hierdie Regulasies nie 'n aangeleentheid met betrekking tot die Instituut reguleer as die provinsiale erfenishulpbronne gesag vir die Provinsie of die beskerming of bestuur van erfenishulpbronne in die Provinsie nie, is die bepalings van die KwaZulu-Natal Wet op Amafa- en Navorsingsinstuut, 2018 (Wet No. 5 van 2018), die Nasionale Wet op Erfenishulpbronne, 1999 (Wet No. 25 van 1999), en die Wet op die Nasionale Erfenisinstituut, 1999 (Wet No. 11 van 1999), van toepassing in die Provinsie en enige verwysing na “provinsiale

erfenishulpbronne gesag” in die Nasionale Wet op Erfenishulpbronne, 1999, moet, tensy ongetwyfeld ontoepaslik, vertolk word as ‘n verwysing na die Instituut.

Kort titel en inwerkingtreding

17.(1) Hierdie Regulasies word die KwaZulu-Natal Regulasies op Amafa- en Navorsingsinstituut, 2018, genoem.

(2) Hierdie Regulasies is van krag vanaf die datum van inwerkingtreding van die KwaZulu-Natal Wet op Amafa- en Navorsingsinstituut, 2018 (Wet No. 5 van 2018).

