



**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**

**IZIQUATHO**

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(\*Iikopi eziprintiweyo zifumaneka kwigumbi M21, kwiSakhiwo sePhondo seNdlu yoWiso Nthetho, 7 Dale Street, eKapa 8001.)

**PROVINCIAL NOTICE**

**PROVINSIALE KENNISGEWING**

**ISAZISO SEPHONDO**

The following Draft Admendment Bill is published for comment:

Die volgende Konsepwysigingswetsontwerp word vir kommentaar gepubliseer:

Le mimiseloisayilwayo ilandelayo ipapashelwe ukuba uluntu luvakalise izimvo zalo:

Draft Western Cape Provincial School Education Amendment Bill, 2016

Wes-Kaapse Provinsiale Konsepwysigingswetsontwerp op Skoolonderwys, 2016

UMthetho weZilungiso oSayilwayo weMfundo weZikolo zePhondo leNtshona Koloni, 2016

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Any person or organisation wishing to comment on the Draft Amendment Bill is requested to lodge the comments in writing before or on 23 September 2016 by—

Enige persoon of organisasie wat op hierdie Konsepwysigingswetsontwerp kommentaar wil lewer, word versoek om sodanige kommentaar voor of op 23 September 2016 skriftelik voor te lê deur—

Nawuphi na umntu okanye umbutho ofuna ukuvakalisa izimvo ngale mimiselo isayilwayo uyacelwa ukuba azifake ezibhalile ezo zimvo phambi komhla okanye ngomhla we-23 Eyo-Msintsi (Septemba) 2016, ngokuthi—

- (a) posting the comments to:  
Adv. Lynn Coleridge-Zils  
Director  
Western Cape Education Department  
Private Bag X9114  
Cape Town  
8000;
- (b) e-mailing the comments to:  
Lynn.Coleridge-Zils@westerncape.gov.za;
- (c) faxing the comments to:  
Fax no. 021 425 5689  
(tel. no. 021 467 2055); or
- (d) delivering the comments to:  
Adv. Lynn Coleridge-Zils  
Director  
Western Cape Education Department  
23rd Floor  
Golden Acre Shopping Centre  
Adderley Street  
Cape Town  
8001.

- (a) die kommentaar te pos aan:  
Adv. Lynn Coleridge-Zils  
Direkteur  
Wes-Kaapse Onderwysdepartement  
Privaatsak X9114  
Kaapstad  
8000;
- (b) die kommentaar per e-pos te stuur na:  
Lynn.Coleridge-Zils@westerncape.gov.za;
- (c) die kommentaar te faks na:  
Faksnommer: 021 425 5689  
(tel. no. 021 467 2055); of
- (d) die kommentaar af te lewer by:  
Adv. Lynn Coleridge-Zils  
Direkteur  
Wes-Kaapse Onderwysdepartement  
23ste Verdieping  
Goue Akker-winkelsentrum  
Adderleystraat  
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- (a) azithumele ngeposi ku-:  
Adv. Lynn Coleridge-Zils  
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Private Bag X9114  
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8000;
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Lynn.Coleridge-Zils@westerncape.gov.za;
- (c) azithumele ngefeksi ku-:  
INombolo yefeksi 021 425 5689  
(inombolo yefowuni 021 467 2055); okanye
- (d) ngokuzisa ngesandla ku-:  
Adv. Lynn Coleridge-Zils  
UMlawuli  
ISebe leMfundo leNtshona Koloni  
Umgangatho wama-23  
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**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.
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**DRAFT WESTERN CAPE PROVINCIAL SCHOOL EDUCATION  
AMENDMENT BILL, 2016**

To amend the Western Cape Provincial School Education Act, 1997, so as to delete a definition and to insert and substitute others; to remove cross-references to certain statutory provisions; to remove references to adult education; to make provision for monitoring and support of curriculum delivery at *public schools*; to authorise the Western Cape *Education Council* to provide advisory reports; to make provision for the establishment and functions of a *Schools Evaluation Authority*; to make provision for the establishment of *collaboration schools* and *donor funded public schools*; to make provision for the establishment of intervention facilities to which *learners* may be referred in certain circumstances; to do away with requirements for the concurrence of the *Provincial Minister* responsible for finance to be obtained in respect of certain agreements; to delete a provision that authorises the closure of part of a *public school*; to make further provision for the *Provincial Minister* responsible for *education* to make *regulations*; to repeal an obsolete provision relating to the powers of a children’s court; to authorise certain tests related to the admission of a *learner* to a *public school* for *learners with special education needs*; to make provision regarding the sale of alcoholic liquor on *school* premises or during *school activities*; to provide that a *public school* must obtain the prior written consent of a parent authorising the learner to attend a school activity outside of the school premises; to create further offences; and to provide for matters connected therewith.

**B**E IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

**Amendment of section 1 of Act 12 of 1997, as amended by section 2 of Act 7 of 2010**

1. Section 1 of the Western Cape Provincial School Education Act, 1997 (the principal Act), is amended by—

- (a) the deletion of the definition of “*adult education*”;
- (b) the insertion before the definition of “*authorized person*” of the following definition:

“*assessor*” means an *assessor* of *schools* appointed in terms of section 11A(2)(b)”;

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- (c) the insertion after the definition of “*basic education*” of the following definitions:
- “*Chief Evaluator*” means the *Chief Evaluator of schools* appointed in terms of section 11A(2)(a);
- “*circuit manager*” means the head of a circuit office in an *education district*;
- “*collaboration school*” means a *public school* contemplated in section 12C;”;
- (d) the insertion after the definition of “*dangerous object*” of the following definitions:
- “*district director*” means the head of a district office;
- “*donor*” means a person contemplated in section 12C(2)(a) or 12D(1) who provides funds or property to a *collaboration school* or a *donor funded public school* for the purposes of improving the delivery of education in the province;
- “*donor funded public school*” means a *public school* contemplated in section 12D;”;
- (e) the insertion after the definition of “*intermediate school*” of the following definition:
- “*intervention facility*” means a facility contemplated in section 12E;”;
- (f) the insertion after the definition of “*officer*” of the following definitions:
- “*operating partner*” means a person or an organisation that places their capacity, skills or resources at the disposal of a *school* to empower the *governing body, school management team and educators* at the *school* to develop systems, structures, cultures and capacities necessary to deliver quality *education*;
- “*Schools Evaluation Authority*” means the Western Cape Schools Evaluation Authority contemplated in section 11A(1);
- “*school improvement plan*” means a plan that defines a *public school’s* targeted priorities for improved educational outcomes and for shaping the direction and development of the *school*;” and
- (g) the insertion after the definition of “*specialized education*” of the following definition:
- “*subject advisor*” means a specialist office-based *educator* in a district office or circuit office whose function is to facilitate curriculum implementation and improve the environment and process of learning and teaching by visiting *schools*, and consulting with and advising *school principals and educators* on curriculum matters;”.

#### **Amendment of section 3 of Act 12 of 1997, as amended by section 3 of Act 7 of 2010**

2. Section 3 of the principal Act is amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to the provisions of [the *South African Schools Act* and] the *Constitution*, the *Provincial Minister* may, where necessary, from time to time determine the policy which is to be pursued in respect of *education* in *schools* in the *province*, taking into account the following principles, namely that—”.

#### **Amendment of section 4 of Act 12 of 1997**

3. Section 4 of the principal Act is amended by the deletion of paragraph (b) of subsection (1).

#### **Insertion of section 9A in Act 12 of 1997**

4. The following section is inserted in the principal Act after section 9:

##### **“Monitoring and support of curriculum delivery”**

**9A.** (1) The *Head of Department*, a *district director*, or the *principal* of a *public school* or an *operating partner* in respect of a *public school* to which their duties relate, may conduct monitoring and support of

curriculum delivery by an *educator* in the classroom of a *public school*, or may authorise such monitoring and support by—

- (a) a *subject advisor*;
- (b) a deputy principal;
- (c) a head of department at the *school*; or
- (d) a subject head.

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(2) The *Head of Department*, the *district director* or, if authorised to do so by the *district director*, the *circuit manager*, may conduct monitoring and support of curriculum delivery by a *principal* of a *public school*.

(3) The person who is to conduct monitoring and support in terms of this section shall give the *educator* or *principal* concerned reasonable advance notice of the monitoring and support.

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(4) The *Head of Department* may make rules for monitoring and support in terms of this section.”.

**Amendment of section 11 of Act 12 of 1997, as substituted by section 7 of Act 7 of 2010** 15

5. Section 11 of the principal Act is amended by—

- (a) the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) the prescribed number of **[persons] officials** designated by the *Head of Department* from his or her staff;” and

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- (b) the addition of the following subsection:

“(9)(a) The *Education Council* may provide the *Provincial Minister* with an advisory report.

(b) The *Provincial Minister* may accept or reject the advisory report and inform the Chairperson of the *Education Council* thereof.”.

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**Insertion of sections 11A, 11B, 11C, 11D, 11E, 11F, 11G and 11H in Act 12 of 1997**

6. The following sections are inserted in the principal Act after section 11:

**“Establishment of Schools Evaluation Authority**

**11A.** (1) The *Provincial Minister* may establish an independent evaluation authority to be known as the Western Cape Schools Evaluation Authority. 30

(2) The *Provincial Minister* may appoint to the Schools Evaluation Authority—

- (a) a *Chief Evaluator* of *schools*; and
- (b) *assessors* of *schools*.

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(3) The *Chief Evaluator*—

- (a) shall be appointed for a term of three years; and
- (b) may be reappointed for a maximum period of one term.

**Eligibility for appointment as Chief Evaluator or assessor** 40

**11B.** To be eligible for appointment as *Chief Evaluator* or *assessor* a person shall—

- (a) be a citizen of the Republic;
- (b) not be an unrehabilitated insolvent;
- (c) not at any time have been convicted of—

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- (i) an offence for which he or she was sentenced to imprisonment without the option of a fine; or
- (ii) theft, fraud, forgery, the uttering of a forged document, perjury, any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), or any offence of which dishonesty is an element; and

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- (d) possess appropriate knowledge of or experience in *education* and *schooling*.

**Removal from office**

**11C.** The *Provincial Minister* may, after due process, remove the *Chief Evaluator* or an *assessor* from office—

- (a) if he or she no longer meets the eligibility criteria specified in section 11B; or
- (b) on any reasonable ground, including misconduct, incapacity or incompetence.

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**Functions of Schools Evaluation Authority**

**11D.** (1) The *Chief Evaluator* shall keep the *Provincial Minister* informed of the following in respect of *schools*:

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- (a) the quality of *education* provided at the *school*;
- (b) the extent to which *education* at the *school* meets the diverse needs of the *learners* through a holistic approach;
- (c) the educational standards achieved at the *school*;
- (d) the quality of leadership and management at the *school*;
- (e) the financial resources made available at the *school* and whether they are managed economically, efficiently and effectively;
- (f) the extent to which the *school* is developing rigorous internal procedures of self-evaluation in terms of its *school improvement plans*;
- (g) the behaviour and attendance of *learners* and staff at the *school*;
- (h) the social and cultural development of *learners* at the *school*;
- (i) the performance management and development of educators; and
- (j) the relationship between *parents*, the community and the *school*.

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(2) Upon written request by the *Provincial Minister*, the *Chief Evaluator* shall—

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- (a) advise the *Provincial Minister* on any matter specified in the request; and
- (b) inspect and report on a *school*, or class in a *school*, specified in the request.

(3) The *Chief Evaluator* shall publish reports, which shall include empirical findings and, where applicable, recommendations for improvement.

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(4) The *Chief Evaluator* and *assessors* may—

- (a) on two days' written notice to the *district director*, *principal* and *governing body*, obtain access to and inspect a *school* and any classroom in a *school*, observe lessons and gather first-hand evidence to inform his or her recommendations;
- (b) on two days' written notice, conduct an interview with the *governing body* or any member thereof, an official of the Department, a *member of staff* of a *school*, a *learner* or a *parent*;
- (c) submit a written request for documentation to a *member of staff* at a *school*;
- (d) without notice, enter the *school* and seize financial records, statements and documents, regardless of form or medium, if he or she has—
  - (i) *prima facie* proof of financial mismanagement at the *school*; and
  - (ii) a reasonable suspicion that the records and documents will be hidden, destroyed or tampered with if notice is given; and
- (e) at any time make recommendations to the *Provincial Minister* on any matter concerning a *school*.

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(5) The powers contemplated in subsection (4)(a) and (b) may be exercised without notice if the *Chief Evaluator* or an *assessor* has

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reasonable grounds to believe that this is necessary for the effective performance of his or her functions.

(6)(a) The *Provincial Minister* may, after consultation with the *Chief Evaluator*, authorise him or her to perform additional duties or exercise additional powers if the *Provincial Minister* has reason to believe that—

- (i) the *Chief Evaluator* has the capacity to perform those additional duties or exercise those additional powers; and
- (ii) it would be in the public interest for the *Chief Evaluator* to do so.

(b) The *Provincial Minister* may, after consultation with the *Chief Evaluator*, revoke the authority given to the *Chief Evaluator* in terms of paragraph (a) if the *Provincial Minister* has reason to believe that

- (i) the *Chief Evaluator* no longer has the capacity to perform that additional duty or exercise that additional power; or
- (ii) it would be in the public interest for the *Provincial Minister* to do so.

(c) The *Provincial Minister* may, after consultation with the *Chief Evaluator*—

- (i) exempt the *Chief Evaluator* from performing a duty imposed by subsection (1); or
- (ii) revoke a power conferred on the *Chief Evaluator* or assessors by subsection (4).

#### **Remuneration and allowances**

**11E.** The *Chief Evaluator* and *assessors* shall be paid the remuneration and allowances determined by the *Provincial Minister*.

#### **General support**

**11F.** (1) The *Head of Department* shall provide the *Schools Evaluation Authority* with general support and the necessary resources to perform its functions, including administrative support and infrastructure support.

(2) The *Head of Department* shall designate officials of the Department to assist the *Schools Evaluation Authority*.

#### **Dissolution**

**11G.** (1) The *Provincial Minister* may dissolve the *Schools Evaluation Authority* with effect from a date determined by the *Provincial Minister* if the *Schools Evaluation Authority* has failed to perform its functions in a satisfactory manner, is no longer effective or has acted in a manner which is not in the best interests of *education*.

(2) The *Provincial Minister* may not act under subsection (1) unless he or she has—

- (a) given reasonable notice to the *Schools Evaluation Authority* of his or her intention to do so and his or her reasons therefor;
- (b) granted the *Schools Evaluation Authority* a reasonable opportunity to make representations to him or her in relation to such action; and
- (c) given due consideration to any representations received.

#### **Regulations regarding Schools Evaluation Authority**

**11H.** The *Provincial Minister* may make *regulations* on—

- (a) procedures for the appointment of the *Chief Evaluator* and *assessors* and the filling of vacancies;
- (b) the terms and conditions of appointment of the *Chief Evaluator* and *assessors*;
- (c) procedures for the removal of the *Chief Evaluator* and *assessors*;

- (d) procedures for the exercise of the powers contemplated in section 11D(4); and  
 (e) the preparation and publication of reports by the *Schools Evaluation Authority*.”.

**Amendment of section 12 of Act 12 of 1997**

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7. Section 12 of the principal Act is amended by the insertion in subsection (1) after paragraph (e) of the following paragraphs:

- “(eA) *collaboration schools*;  
 (eB) *donor funded public schools*.”.

**Amendment of section 12A of Act 12 of 1997, as inserted by section 8 of Act 7 of 2010**

8. Section 12A of the principal Act is amended by the substitution for paragraph (b) of subsection (6) of the following paragraph:

- “(b) *The interim governing body* shall decide on the budget and differences in codes of conduct and *school fees*, as well as any issue that is relevant to the merger or which is prescribed, until a new *governing body* is constituted [**in terms of sections 23 and 28 of the South African Schools Act**] in the manner prescribed under section 24.”.

**Insertion of sections 12C, 12D and 12E in Act 12 of 1997**

9. The following sections are inserted in the principal Act after section 12B: 20

**“Collaboration schools**

**12C.** (1) The *Provincial Minister* may identify a *public school* contemplated in section 12(1)(a) to (f) for declaration as a *collaboration school* if he or she is satisfied that such declaration is in the interests of education at the school, having regard to relevant reports on the school, including reports on the performance of the school. 25

(2) Subject to subsection (1), the *Provincial Minister* may enter into an agreement with—

- (a) a *donor*;  
 (b) an *operating partner*; and  
 (c) the *governing body* of a *public school*, 30

in terms of which an existing *public school* contemplated in section 12(1)(a) to (f) is to be declared a *collaboration school*.

(3) The *Provincial Minister* may enter into an agreement with a *donor* and an *operating partner* for the establishment of a new *collaboration school* and establish the *school*. 35

(4) The agreements contemplated in subsections (2) and (3) shall contain the minimum requirements prescribed by the *Provincial Minister*.

(5) On conclusion of an agreement contemplated in subsection (2), the *Provincial Minister* may, by notice in the *Provincial Gazette*, declare the *public school* concerned to be a *collaboration school*. 40

(6) On conclusion of an agreement with a *donor* and an *operating partner* as contemplated in subsection (2)(a) and (b), and notwithstanding that the *Provincial Minister* has not entered into an agreement with the *governing body* as contemplated in subsection (2)(c), the *Provincial Minister* may, by notice in the *Provincial Gazette*, declare the *public school* concerned to be a *collaboration school*. 45

(7) The *Provincial Minister* may not make a declaration contemplated in subsection (5) or (6) unless he or she has called for public comment in respect of the intended declaration and given due consideration to any comments received. 50

(8) In the event of the termination of an agreement contemplated in subsection (2) or (3)—

- (a) the school concerned shall cease to be a *collaboration school*;
- (b) the *Provincial Minister* shall, by notice in the *Provincial Gazette*, declare the school to be the applicable type of *public school* contemplated in section 12(1)(a) to (f); and
- (c) a new *governing body* shall be composed in the prescribed manner.

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(9) The membership of the *governing body* of a *collaboration school* shall comprise a majority of representatives of the *operating partner* with voting rights: Provided that the *Provincial Minister* may, on good cause shown, declare that the *governing body* of a particular *collaboration school* shall comprise 50% of representatives of the *operating partner* and 50% of the other members of the *governing body*.

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(10) The *Western Cape Education Department* may make transfer payments to a *collaboration school* for the purposes of funding the allocation of new posts and the filling of vacant posts as contemplated by the *Employment of Educators Act* and the *Public Service Act, 1994* (Proclamation 103 of 1994).

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(11) The *governing body* of a *collaboration school* may, subject to the *Labour Relations Act, 1995* (Act 66 of 1995), and any other applicable law, appoint *educators* and non-*educators* to fill the posts contemplated in subsection (10) in accordance with the staff establishment as determined by the *governing body*.

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#### Donor funded public schools

**12D.** (1) The *Provincial Minister* may enter into an agreement with—

- (a) a *donor*; and
- (b) the *governing body* of a *public school*,

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in terms of which an existing *public school* contemplated in section 12(1)(a) to (f) is to be declared a *donor funded public school* if he or she is satisfied that such declaration is in the interests of *education* at the *school*.

(2) The *Provincial Minister* may enter into an agreement with a *donor* for the establishment of a new *donor funded public school* and establish the *school*.

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(3) The agreements contemplated in subsections (1) and (2) shall contain the minimum requirements prescribed by the *Provincial Minister*.

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(4) On conclusion of an agreement contemplated in subsection (1), the *Provincial Minister* may, by notice in the *Provincial Gazette*, declare the *public school* concerned to be a *donor funded public school*.

(5) The *Provincial Minister* may not make a declaration contemplated in subsection (4) unless he or she has called for public comment in respect of the intended declaration and given due consideration to any comments received.

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(6) In the event of the termination of an agreement contemplated in subsection (1) or (2)—

- (a) the *school* concerned shall cease to be a *donor funded public school*;
- (b) the *Provincial Minister* shall, by notice in the *Provincial Gazette*, declare the *school* to be the applicable type of *public school* contemplated in section 12(1)(a) to (f); and
- (c) a new *governing body* shall be composed in the prescribed manner.

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(7) The membership of the *governing body* of a *donor funded public school*—

- (a) may include representatives of the *donor* with voting rights; and
- (b) may comprise a majority of representatives of the *donor* with voting rights.

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### Intervention facility

**12E.** (1) Subject to the available resources of the Western Cape Education Department, the *Provincial Minister* may establish an *intervention facility* for learners who are subject to compulsory attendance and who have been found guilty of serious misconduct. 5

(2) An *intervention facility* shall provide for therapeutic programmes and intervention strategies, in addition to curriculum delivery, in order to address the serious misconduct.

(3) A *learner* who has been referred to an *intervention facility* shall be given access to *education* in the manner determined by the *Provincial Minister*.”. 10

### Amendment of section 13 of Act 12 of 1997, as substituted by section 9 of Act 7 of 2010

**10.** Section 13 of the principal Act is amended by the substitution for subsection (7) of the following subsection: 15

“(7) If a new *public school* is [**provided in terms of section 12 of the South African Schools Act**] established, the governance of that *school* shall vest in the *Head of Department* until a *governing body* has been constituted in terms of [**that**] this Act.”.

### Amendment of section 14 of Act 12 of 1997 20

**11.** Section 14 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the *Constitution* and *this Act*, a *public school* may be provided on private property only in terms of an agreement between the *Provincial Minister* [**with the concurrence of the financial head,**] and the owner of the private 25 property.”.

### Amendment of section 16 of Act 12 of 1997

**12.** Section 16 of the principal Act is amended by the substitution for subsection (6) of the following subsection:

“(6) No immovable property owned by the State and occupied by a *public school* may be alienated unless an agreement has been concluded between the *Provincial Minister*, with the concurrence of the [**financial head**] Provincial Minister responsible for public works, and the prospective owner of the immovable property.”. 30

### Substitution of section 18 of Act 12 of 1997 35

**13.** The following section is substituted for section 18 of the principal Act:

#### “Closure of public schools

**18.** The *Provincial Minister* may at any time close a *public school* [**or a part thereof**] in terms of section 33 of the *South African Schools Act*.”.

### Amendment of section 20B of Act 12 of 1997, as inserted by section 11 of Act 7 of 2010 40

**14.** Section 20B of the principal Act is amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to any applicable national norms and standards contemplated in section 146(2) of the *Constitution*, the *Provincial Minister* may [**after consulta- 45 tion with the Education Council,**] prescribe by *regulation* minimum uniform norms and standards for—”.

### Repeal of section 40 of Act 12 of 1997

15. Section 40 of the principal Act is repealed.

### Amendment of section 41 of Act 12 of 1997, as substituted by section 15 of Act 7 of 2010

16. Section 41 of the principal Act is amended by the substitution for subsection (2) of the following subsection: 5

“(2) The *governing body* of a *public school* may not administer any test related to the admission of a *learner* to a *public school* or direct or authorise the *principal* of the *school* or any other person to administer such a test, except in the case of the admission of a *learner* to a public school contemplated in section 20A.” 10

### Amendment of section 45 of Act 12 of 1997, as amended by section 18 of Act 7 of 2010

17. Section 45 of the principal Act is amended—

(a) by the substitution for paragraph (b) of subsection (5) of the following paragraph: 15

“(b) make a recommendation to the *Head of Department* to—  
 (i) refer the *learner* to an *intervention facility* for a specified period not exceeding 12 months at any one time if—  
(aa) the *learner* is subject to *compulsory attendance*; and  
(bb) the *parents* consent to the referral; or  
 (ii) expel the *learner* from the *public school*.” 20

(b) by the substitution for subsection (6) of the following subsection:

“(6) The *Head of Department* shall, within 14 days after receiving a recommendation contemplated in subsection (5)(b)—  
 (a) in the case of a recommendation contemplated in subsection (5)(b)(i), decide whether or not to refer the *learner* to an *intervention facility*, for a period not exceeding 12 months at any one time, if—  
 (i) the *learner* is subject to *compulsory attendance*; and  
 (ii) the *parents* consent to the referral; or  
 (b) in the case of a recommendation contemplated in subsection (5)(b)(ii), decide whether or not to expel the *learner*.”; 25 30

(c) by the substitution for subsection (7) of the following subsection:

“(7) A *governing body* may suspend or extend the suspension of a *learner* for a period not longer than 14 *school* days pending the decision by the *Head of Department* whether or not to expel the *learner* from the *public school*, or whether to refer the *learner* to an *intervention facility*.”; 35

(d) by the insertion after subsection (14) of the following subsections:

“(14A) In the case of a *learner* who is subject to *compulsory attendance*, the sanction referred to in subsection (14) may include, on the recommendation of the *governing body* and with the concurrence of the *parents* of the *learner*, referral to an *intervention facility* for a specified period, which may not exceed 12 months at any one time. 40

(14B) A *learner* who has been referred to an *intervention facility* in terms of subsection (6)(a) or (14A) shall, after the lapse of the specified period contemplated in those subsections, be admitted to the same *public school* that he or she attended prior to the referral.”. 45

### Insertion of sections 45B and 45C in Act 12 of 1997

18. The following sections are inserted in the principal Act after section 45A:

“**Alcoholic liquor on school premises or during school activities** 50

**45B.** (1) Notwithstanding section 45A(1), but subject to compliance with the Western Cape Liquor Act, 2008 (Act 4 of 2008), the *governing body* or the *principal* of a *public school* may approve the use or sale of alcoholic liquor on *school premises* or at a *school activity*.

(2) The use or sale of alcoholic liquor on *school premises* or at a *school activity* as contemplated in subsection (1) is subject to any conditions imposed by or in terms of the Western Cape Liquor Act, 2008, and any conditions set by the *governing body* or the *principal*.

**Consent for school outings**

5

**45C.** A *public school* must obtain the prior written consent of a parent authorising the learner to attend a *school activity* outside of the school premises.”.

**Amendment of section 58 of Act 12 of 1997**

**19.** Section 58 of the principal Act is amended by the insertion after paragraph (a) of the following paragraph: 10

“(aA) hinders or obstructs the *Chief Evaluator* or an assessor in the performance of his or her functions in terms of this Act;”.

**Amendment of section 63 of Act 12 of 1997, as amended by section 26 of Act 7 of 2010** 15

**20.** Section 63 of the principal Act is amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

“The *Provincial Minister* may make *regulations* [**which are not inconsistent with any law, and**], where applicable, subject to any national norms and standards contemplated in section 146(2) of the *Constitution*, as to—”; 20

(b) by the insertion after paragraph (cH) of subsection (1) of the following paragraphs:

“(cI) the admission criteria, funding and governance models for *collaboration schools and donor funded public schools*; 25

(cJ) the norms and standards for the granting of subsidies to *independent schools*;

(cK) the promotion and progression of *learners at public schools*;

(cL) the norms and standards for an *intervention facility*; 30

(cM) the admission of learners to *public schools*;

(cN) the procurement of goods and services relating to education in the *province*;”.

**Short title and commencement**

**21.** This Act is called the Western Cape Provincial School Education Amendment Act, 2016, and comes into operation on a date determined by the *Premier* by proclamation in the *Provincial Gazette*. 35

**MEMORANDUM ON THE OBJECTS OF THE DRAFT WESTERN  
CAPE PROVINCIAL SCHOOL EDUCATION AMENDMENT BILL,  
2016**

**1. BACKGROUND**

- 1.1 The Provincial Minister responsible for education in the Province identified the review of provincial education legislation as a strategic priority for the Western Cape Education Department.
- 1.2 The Draft Western Cape Provincial School Education Amendment Bill, 2016 (the Draft Amendment Bill), proposes to amend the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997) (the principal Act), in order to align it with developments in the education landscape, and to ensure that systems of learning and excellence in education are put in place in a manner that respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996. The Act does not make provision for current provincial policy on education in certain respects.

**2. OBJECTS OF THE BILL**

The Draft Amendment Bill proposes to amend the principal Act in order to provide for the matters envisaged in paragraph 1.2 and to make certain technical amendments. The salient objects of the Draft Amendment Bill are to make provision, inter alia, for:

- 2.1 monitoring and support of curriculum delivery in the classroom;
- 2.2 the establishment of an independent body to be known as the Western Cape Schools Evaluation Authority;
- 2.3 the establishment of collaboration schools and donor funded schools; and
- 2.4 the establishment of intervention facilities to which learners who have been found guilty of serious misconduct may be referred in certain circumstances.

**3. CONTENTS OF BILL**

- 3.1 **Clause 1** provides for the deletion of the definition of “adult education” and the insertion of definitions for: “assessor”, “Chief Evaluator”, “circuit manager”, “collaboration school”, “district director”, “donor”, “donor funded public school”, “intervention facility”, “operating partner”, “Schools Evaluation Authority”, “school improvement plan” and “subject advisor”.
- 3.2 **Clause 2** amends section 3 of the principal Act so as to delete the reference to the South African Schools Act, 1996 (Act 84 of 1996).
- 3.3 **Clause 3** amends section 4 of the principal Act by deleting the function of the Provincial Minister in subsection (1)(b) to provide for adult education.
- 3.4 **Clause 4** inserts a provision providing that specified officials may conduct and authorise the monitoring and support of curriculum delivery in the classroom.
- 3.5 **Clause 5** makes a technical amendment to section 11(4)(b) of the principal Act.
- 3.6 **Clause 6** inserts new provisions to permit the Provincial Minister to establish an independent body to be known as the Western Cape Schools Evaluation Authority (“Schools Evaluation Authority”) and to appoint a Chief Evaluator and assessors thereto. This clause further provides for eligibility criteria for the appointment, and the removal from office, of the Chief Evaluator and

assessors, the functions of the Schools Evaluation Authority, the payment of remuneration and allowances to the Chief Evaluator and assessors, the provision of general support to and the possibility of the dissolution of the Schools Evaluation Authority. Provision is also made for the Provincial Minister to make regulations regarding specified matters pertaining to the functioning of the Schools Evaluation Authority.

- 3.7 **Clause 7** inserts a provision that provides that the Provincial Minister may establish collaboration schools and donor funded schools.
- 3.8 **Clause 8** makes a technical amendment to section 12A(6)(b) of the principal Act to change a reference to certain sections of the South African Schools Act, 1996, to a reference to a section in the principal Act.
- 3.9 **Clause 9** makes provision for the establishment of collaboration schools and the declaration of existing schools as collaboration schools by the Provincial Minister. Provision is also made for matters pertaining to the governance of these schools and for the funding of posts for educators and non-educators appointed directly by the governing bodies of these schools. This clause further provides for the establishment of donor funded schools and the declaration of existing schools as donor funded schools by the Provincial Minister and for matters pertaining to the governance of these schools. In addition, this clause provides that the Provincial Minister may establish intervention facilities for learners who have been expelled or suspended from a public school or found guilty of serious misconduct.
- 3.10 **Clause 10** makes a technical amendment to section 13(7) of the principal Act to change a reference to the South African Schools Act, 1996, to a reference to the principal Act.
- 3.11 **Clause 11** amends section 14(1) of the principal Act by deleting the requirement that the Provincial Minister and the Provincial Minister responsible for financial affairs reach consensus when the Provincial Minister enters into an agreement with the owner of private property to provide a public school on the private property concerned.
- 3.12 **Clause 12** amends section 16(6) of the principal Act by providing that the Provincial Minister and the Provincial Minister responsible for public works must reach consensus when the Provincial Minister and the prospective owner of immovable property enter into an agreement for the alienation of land owned by the state that is occupied by a public school.
- 3.13 **Clause 13** substitutes section 18 of the principal Act by deleting certain obligations in respect of the closure of a part of a public school.
- 3.14 **Clause 14** makes a technical amendment to section 20B(1)(a) of the principal Act by deleting the requirement that the Provincial Minister consult with the Education Council when the Provincial Minister makes regulations relating to basic infrastructure and capacity in public schools.
- 3.15 **Clause 15** repeals section 40 of the principal Act.
- 3.16 **Clause 16** amends section 41 of the principal Act to provide that the prohibition on a governing body to administer tests for the admission of a learner to a public school does not apply to public schools contemplated in section 20A of the principal Act.
- 3.17 **Clause 17** amends section 45 of the principal Act to provide for the possibility of the referral of learners who have been found guilty of serious misconduct to an intervention facility for a maximum period of 12 months at a time in certain circumstances.

3.18 **Clause 18** inserts a provision that provides for the governing body or the principal of a public school to authorise the sale of alcoholic liquor on school premises or at a school activity, subject to compliance with the Western Cape Liquor Act, 2008 (Act 4 of 2008), and any conditions that may be imposed by the governing body or the principal. This clause further provides that a *public school* must obtain the prior written consent of a parent authorising the learner to attend a school activity outside of the school premises.

3.19 **Clause 19** amends section 58 of the principal Act by providing for further offences in relation to hindering the Chief Evaluator or assessors in the performance of their functions.

3.20 Clause 20 amends section 63 of the principal Act by making further provision for the Provincial Minister to make regulations.

3.21 **Clause 21** provides for the short title and commencement of the Draft Amendment Bill.

#### **4. CONSULTATION**

The Premier and Members of the Executive Council  
The Head of the Western Cape Education Department  
Department of the Premier: Legal Services  
Officials of the Western Cape Education Department

#### **5. FINANCIAL IMPLICATIONS**

The cost of implementing the Draft Amendment Bill will be covered within the annual budget of the Western Cape Education Department.

#### **6. LEGISLATIVE COMPETENCE**

The Provincial Minister responsible for education is satisfied that the provisions of the Draft Amendment Bill fall within the legislative competence of the Province.

### ALGEMENE VERDUIDELIKENDE NOTA:

- [                    ]    Woorde in vetdruk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- \_\_\_\_\_            Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.
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## WES-KAAPSE PROVINSIALE KONSEPWYSIGINGSWETSONTWERP OP SKOOLONDERWYS, 2016

Om die Wes-Kaapse Provinsiale Wet op Skoolonderwys, 1997, te wysig ten einde 'n omskrywing te skrap en ander in te voeg en te vervang; om kruisverwysings na sekere statutêre bepalings te verwyder; om verwysings na *volwasse onderwys* te verwyder; om voorsiening te maak vir monitering en ondersteuning van kurrikulumlewering by *openbare skole*; om die Wes-Kaapse *Onderwysraad* te magtig om raadgevende verslae te verskaf; om voorsiening te maak vir die instelling en werksaamhede van 'n *Skoolevalueringsgesag*; om voorsiening te maak vir die instelling van *saamwerksskole* en *donateurbefondsde openbare skole*; om voorsiening te maak vir die instelling van *intervensiefasiliteite* waarna *leerders* in sekere omstandighede verwys kan word; om weg te doen met vereistes dat die instemming van die Provinsiale Minister verantwoordelik vir finansies ten opsigte van sekere ooreenkomste verkry moet word; om 'n bepaling te skrap wat die sluiting van 'n gedeelte van 'n *openbare skool* magtig; om verder voorsiening te maak vir die *Provinsiale Minister* verantwoordelik vir *onderwys* om regulasies te maak; om 'n verouderde bepaling in verband met die bevoegdheid van 'n kinderhof te herroep; om sekere toetse te magtig in verband met die toelating van 'n *leerder* tot 'n *openbare skool* vir *leerders met spesiale onderwysbehoefte*; om voorsiening te maak vir die gebruik en verkoop van alkoholiese drank op skoolpersele of gedurende *skoolaktiwiteite*; om te bepaal dat 'n *openbare skool* die voorafverkreë skriftelike toestemming van 'n *ouer* moet bekom wat die *leerder* se bywoning van 'n skoolaktiwiteit buite die skoolperseel magtig; om verdere misdrywe te skep; en om voorsiening vir verwante sake te maak.

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

### Wysiging van artikel 1 van Wet 12 van 1997, soos gewysig by artikel 2 van Wet 7 van 2010

1. Artikel 1 van die Wes-Kaapse Provinsiale Wet op Skoolonderwys, 1997 (die Hoofwet), word gewysig—

- (a) deur voor die omskrywing van "*basiese onderwys*" die volgende omskrywing in te voeg:

“*‘assessor’* ’n assessor van skole aangestel ingevolge artikel 11A(2)(b);”;

- (b) deur na die omskrywing van “*beampte*” die volgende omskrywing in te voeg:  
 “*bedryfsvennoot*’ n persoon of ’n organisasie wat hul vermoë, vaardighede of hulpbronne beskikbaar stel aan ’n skool om die *beheerliggaam*, skoolbestuurspan en *opvoeders* by die skool te bemagtig om die nodige stelsels, strukture, kulture en vermoëns te ontwikkel om *gehalteonderwys* te lewer;”;  
 5
- (c) deur na die omskrywing van “*Departementshoof*” die volgende omskrywing in te voeg:  
 “*distriksdirekteur*’ die hoof van ’n distrikskantoor;  
 “*donateur*’ n persoon beoog in artikel 12C(2)(a) of 12D(1) wat fondse of eiendom aan ’n *saamwerksskool* of ’n *donateurbefondsde openbare skool* verskaf ten einde die lewering van *onderwys* in die *provinsie* te verbeter;  
 “*donateurbefondsde openbare skool*’ n openbare skool beoog in artikel 12D;”;  
 10  
 15
- (d) deur na die omskrywing van “*hierdie Wet*” die volgende omskrywings in te voeg:  
 “*Hoofvalueerder*’ die Hoofvalueerder van skole aangestel ingevolge artikel 11A(2)(a);  
 “*intervensiefasiliteit*’ n fasiliteit beoog in artikel 12E;”;  
 20
- (e) deur na die omskrywing van “*koshuis*” die volgende omskrywing in te voeg:  
 “*kringbestuurder*’ die hoof van ’n kringkantoor in ’n *onderwysdistrik*;”;  
 25
- (f) deur na die omskrywing van “*regulasie*” die volgende omskrywing in te voeg:  
 “*saamwerksskool*’ n openbare skool beoog in artikel 12C;”;  
 25
- (g) deur voor die omskrywing van “*skoolgeld*” die volgende omskrywing in te voeg:  
 “*Skoolevalueringsgesag*’ die Wes-Kaapse Skoolevalueringsgesag beoog in artikel 11A(1);”;  
 30
- (h) deur na die omskrywing van “*skoolgeld*” die volgende omskrywing in te voeg:  
 “*skoolverbeteringsplan*’ n plan wat ’n *openbare skool* se prioriteitsmikpunte omskryf vir verbeterde *onderwysuitkomste* en om vorm aan die rigting en ontwikkeling van die *skool* te gee;”;  
 35
- (i) deur na die omskrywing van “*Suid-Afrikaanse Skolewet*” die volgende omskrywing in te voeg:  
 “*yakadviseur*’ n kantoorgebaseerde spesialisopvoeder in ’n distrikskantoor wie se werk dit is om kurrikulumimplementering te fasiliteer en die omgewing en proses van leer en onderrig te verbeter deur *skole* te besoek en met *prinsipale* en opvoeders oorleg te pleeg en hulle raad te gee oor kurrikulumaangeleenthede;” en  
 40
- (j) deur die omskrywing van “*volwasse onderwys*” te skrap.

#### Wysiging van artikel 3 van Wet 12 van 1997, soos gewysig by artikel 2 van Wet 7 van 2010

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2. Artikel 3 van die Hoofwet word gewysig deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Behoudens die bepalings van [die *Suid-Afrikaanse Skolewet* en] die *Grondwet*, kan die *Provinsiale Minister*, indien nodig, van tyd tot tyd die beleid bepaal wat ten opsigte van *onderwys* in *skole* in die *provinsie* gevolg moet word, met inagneming van die volgende beginsels, naamlik dat—”.

50

#### Wysiging van artikel 4 van Wet 12 van 1997

3. Artikel 4 van die Hoofwet word gewysig deur paragraaf (b) van subartikel (1) te skrap.



### Invoeging van artikel 9A in Wet 12 van 1997

4. Die volgende artikel word na artikel 9 in die Hoofwet ingevoeg:

#### “Monitering en ondersteuning van kurrikulumlewering

- 9A.** (1) Die *Departementshoof* of ’n *distriksdirekteur*, of die *prinsipaal* van ’n *openbare skool* of ’n *bedryfsvennoot* ten opsigte van ’n *openbare skool* wat met hul pligte verband hou, kan monitering en ondersteuning van kurrikulumlewering deur ’n *opvoeder* in die klaskamer van ’n *openbare skool* uitvoer of kan sodanige monitering en ondersteuning deur die volgende persone magtig:
- (a) ’n *vakadviseur*;
  - (b) ’n *adjunkprinsipaal*;
  - (c) ’n *departementshoof* by die *skool*; of
  - (d) ’n *vakhoof*.
- (2) Die *Departementshoof*, die *distriksdirekteur* of, indien gemagtig deur die *distriksdirekteur*, die *kringbestuurder* kan monitering en ondersteuning van kurrikulumlewering deur ’n *prinsipaal* van ’n *openbare skool* uitvoer.
- (3) Die persoon wat die monitering en ondersteuning ingevolge hierdie artikel gaan uitvoer, moet die betrokke *opvoeder* of *prinsipaal* redelike voorafkennisgewing gee van die monitering en ondersteuning.
- (4) Die *Departementshoof* kan reëls maak vir monitering en ondersteuning ingevolge hierdie artikel.”.

### Wysiging van artikel 11 van Wet 12 van 1997, soos gewysig by artikel 7 van Wet 7 van 2010

5. Artikel 11 van die Hoofwet word gewysig—
- (a) deur paragraaf (b) van subartikel (4) deur die volgende paragraaf te vervang: “(b) die *voorgeskrewe* getal [**persone**] *beamptes* deur die *Departementshoof* uit sy of haar personeel aangewys;”; en
  - (b) deur die volgende subartikel by te voeg: “(9)(a) Die *Onderwysraad* kan die *Provinsiale Minister* van ’n raadgewende verslag voorsien.  
(b) Die *Provinsiale Minister* kan die raadgewende verslag aanvaar of verwerp en die voorsitter van die *Onderwysraad* daarvan in kennis stel.”.

### Invoeging van artikels 11A, 11B, 11C, 11D, 11E, 11F, 11G en 11H in Wet 12 van 1997

6. Die volgende artikels word na artikel 11 in die Hoofwet ingevoeg:

#### “Instelling van Skoolevalueringsgesag

- 11A.** (1) Die *Provinsiale Minister* kan ’n onafhanklike evalueringsgesag instel wat as die Wes-Kaapse *Skoolevalueringsgesag* bekend moet staan.
- (2) Die *Provinsiale Minister* kan die volgende persone in die *Skoolevalueringsgesag* aanstel:
- (a) ’n *Hoofvalueerder van skole*; en
  - (b) assessors van *skole*.
- (3) Die *Hoofvalueerder*—
- (a) moet vir ’n termyn van drie jaar aangestel word; en (b)
  - (b) kan heraangestel word vir ’n maksimum tydperk van een termyn.

### Geskiktheid vir aanstelling as Hoofevalueerder of assessor

**11B.** Om in aanmerking te kom vir aanstelling as *Hoofevalueerder of assessor*, moet 'n persoon—

- (a) 'n burger van die Republiek wees;
- (b) nie 'n ongerehabiliteerde insolvent wees nie; 5
- (c) nie te eniger tyd skuldig bevind gewees het nie aan—
  - (i) 'n misdryf waarvoor hy of sy tot gevangenisstraf sonder die opsie van 'n boete gevonnissen is; of
  - (ii) diefstal, bedrog, vervalsing, die uitgee van 'n vervalste dokument, meened, enige misdryf ingevolge die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet 12 van 2004), of enige misdryf waarvan oneerlikheid 'n element is; en 10
- (d) toepaslike kennis van en ondervinding in *onderwys* en skoolonderrig hê. 15

### Verwydering uit amp

**11C.** Die *Provinsiale Minister* kan nadat die behoorlike prosedure gevolg is, die *Hoofevalueerder* of 'n *assessor* uit sy of haar amp verwyder—

- (a) indien hy of sy nie meer aan die aanstellingsmaatstawwe vermeld in artikel 11B voldoen nie; of 20
- (b) op enige redelike gronde, met inbegrip van wangedrag, onvermoë of onbekwaamheid.

### Werkzaamhede van Skoolevalueringgesag

**11D.** (1) Die *Hoofevalueerder* moet die *Provinsiale Minister* op hoogte hou van die volgende ten opsigte van *skole*: 25

- (a) die gehalte van *onderwys* by die *skool*;
- (b) die mate waarin *onderwys* by die *skool* aan die verskeidenheid behoeftes van die *leerders* deur 'n holistiese benadering voldoen; 30
- (c) die onderwysstandaarde bereik by die *skool*;
- (d) die gehalte van leierskap en bestuur by die *skool*;
- (e) die finansiële hulpbronne wat by die *skool* beskikbaar gestel is en of dit spaarsamig, doelmatig en doeltreffend bestuur word;
- (f) die mate waarin die *skool* streng interne prosedures van selfevaluering ontwikkel ingevolge sy *skoolverbeteringsplanne*; 35
- (g) die gedrag en bywoning van *leerders* en personeel by die *skool*;
- (h) die sosiale en kulturele ontwikkeling van *leerders* by die *skool*; 40
- (i) die prestasiebestuur en ontwikkeling van *opvoeders*;
- (j) die verhouding tussen *ouers*, die gemeenskap en die *skool*.

(2) Op skriftelike versoek deur die *Provinsiale Minister* moet die *Hoofevalueerder*—

- (a) die *Provinsiale Minister* raad gee oor enige aangeleentheid vermeld in die versoek; en 45
- (b) 'n *skool*, of 'n klas in 'n *skool*, vermeld in die versoek inspekteer en daarvoor verslag doen.

(3) Die *Hoofevalueerder* moet verslae publiseer wat empiriese bevindings en, waar van toepassing, aanbevelings vir verbetering moet insluit. 50

(4) Die *Hoofevalueerder* en *assessors* kan—

- (a) met twee dae skriftelike kennisgewing aan die *distriksdirekteur*, *prinsipaal* en *beheerliggaam* toegang tot 'n *skool* en enige klaskamer in 'n *skool* verkry en dit inspekteer, lesse observeer en eerste-handse bewyse insamel om sy of haar aanbevelings te maak; 55

- (b) met twee dae skriftelike kennisgewing 'n onderhoud met die *beheerliggaam* of enige lid daarvan, 'n *beampte* van die Departement, 'n *personeellid* van 'n *skool*, 'n *leerder* of 'n *ouer* voer;
- (c) 'n skriftelike versoek om dokumentasie aan 'n *personeellid* by 'n *skool* voorlê; 5
- (d) sonder kennisgewing 'n skool betree en op finansiële rekords, state en dokumente beslag lê, ongeag die vorm of medium daarvan, indien hy of sy—
- (i) *prima facie*-bewys het van finansiële wanbestuur by die skool; en 10
- (ii) 'n redelike vermoede het dat die rekords en dokumente versteek, vernietig of mee geknoei sal word indien kennisgewing gegee word; en
- (e) te eniger tyd aanbevelings aan die *Provinsiale Minister* maak oor enige aangeleentheid rakende 'n *skool*. 15
- (5) Die bevoegdhede beoog in subartikel (4)(a) en (b) kan sonder kennisgewing uitgeoefen word indien die *Hoofvalueerder* of 'n *assessor* redelike gronde het om te glo dat dit nodig is vir die doeltreffende verrigting van sy of haar werksaamhede. 20
- (6)(a) Die *Provinsiale Minister* kan, na oorleg met die *Hoofvalueerder*, hom of haar magtig om bykomende pligte te verrig of bykomende bevoegdhede uit te oefen indien die *Provinsiale Minister* rede het om te glo dat—
- (i) die *Hoofvalueerder* die vermoë het om daardie bykomende pligte te verrig of daardie bykomende bevoegdhede uit te oefen; en 25
- (ii) dit in die openbare belang is dat die *Hoofvalueerder* dit doen.
- (b) Die *Provinsiale Minister* kan, na oorleg met die *Hoofvalueerder*, die magtiging wat ingevolge paragraaf (a) aan die *Hoofvalueerder* gegee is, terugtrek indien die *Provinsiale Minister* rede het om te glo dat— 30
- (i) die *Hoofvalueerder* nie meer die vermoë het om daardie bykomende plig te verrig of daardie bykomende bevoegdheid uit te oefen nie; of 35
- (ii) dit in die openbare belang sal wees vir die *Provinsiale Minister* om dit te doen.
- (c) Die *Provinsiale Minister* kan, na oorleg met die *Hoofvalueerder*— 40
- (i) die *Hoofvalueerder* vrystel van die verrigting van 'n plig wat by subartikel (1) opgelê is; of
- (ii) 'n bevoegdheid wat by subartikel (4) aan die *Hoofvalueerder* of *assessors* verleen is, terugtrek.

#### Vergoeding en toelaes 45

**11E.** Die *Hoofvalueerder* en *assessors* moet die vergoeding en toelaes betaal word wat die *Provinsiale Minister* bepaal.

#### Algemene ondersteuning

**11F.** (1) Die *Departementshoof* moet die *Skoolevalueringsgesag* voorsien van algemene steun en die nodige hulpbronne om sy werksaamhede te verrig, met inbegrip van administratiewe steun en infrastruktuursteun. 50

(2) Die *Departementshoof* moet *beamptes* aanwys om die *Skoolevalueringsgesag* by te staan.

#### Ontbinding 55

**11G.** (1) Die *Provinsiale Minister* kan die *Skoolevalueringsgesag* ontbind met ingang van 'n datum bepaal deur die *Provinsiale Minister*

indien die *Skoolevalueringsgesag* versuim het om sy werksaamhede voldoende te verrig, nie meer doeltreffend is nie of op 'n wyse gehandel het wat nie in die beste belang van *onderwys* is nie.

(2) Die *Provinsiale Minister* mag nie kragtens subartikel (1) optree nie tensy hy of sy—

- (a) redelike kennis aan die *Skoolevalueringsgesag* gegee het van sy of haar voorneme om dit te doen en sy of haar redes daarvoor;
- (b) die *Skoolevalueringsgesag* 'n redelike geleentheid gegee het om voorleggings aan hom of haar te maak in verband met sodanige optrede; en
- (c) hy of sy enige voorleggings wat ontvang is behoorlik oorweeg het.

### **Regulasies rakende *Skoolevalueringsgesag***

**11H.** Die *Provinsiale Minister* kan *regulasies* maak oor—

- (a) prosedures vir die aanstelling van die *Hoofevalueerder en assessors en die vul van vakatures*;
- (b) die bepalinge en voorwaardes van aanstelling van die *Hoofevalueerder en assessors*;
- (c) prosedures vir die verwydering van die *Hoofevalueerder en assessors*;
- (d) prosedures vir die uitoefening van die bevoegdheids beoog in artikel 11D(4); en
- (e) die opstel en publiserings van verslae deur die *Skoolevalueringsgesag*.”

### **Wysiging van artikel 12 van Wet 12 van 1997**

7. Artikel 12 van die Hoofwet word gewysig deur in subartikel (1) die volgende paragraaf na paragraaf (e) in te voeg:

- “(eA) *saamwerksskole*;
- “(eB) *donateurbefondsde openbare skole*.”

### **Wysiging van artikel 12A van Wet 12 van 1997, soos ingevoeg by artikel 8 van Wet 7 van 2010**

8. Artikel 12A van die Hoofwet word gewysig deur paragraaf (b) van subartikel (6) deur die volgende paragraaf te vervang:

- “(b) Die tussentydse *beheerliggaam* besluit oor die begroting en verskille in gedragskodes en *skoolgeld*, asook oor enige aangeleentheid wat relevant is vir die samesmelting of wat *voorgeskryf* word, totdat 'n nuwe *beheerliggaam* [ingevolge artikels 23 en 28 van die *Suid-Afrikaanse Skolewet*] saamgestel is op die wyse *voorgeskryf* kragtens artikel 24.”

### **Invoeging van artikels 12C, 12D en 12E in Wet 12 van 1997**

9. Die volgende artikels word na artikel 12B in die Hoofwet ingevoeg:

#### **“Saamwerksskole**

**12C.** (1) Die *Provinsiale Minister* kan 'n *openbare skool* beoog in artikel 12(1)(a) tot (f) identifiseer vir verklaring as 'n *saamwerksskool* indien hy of sy tevrede is dat sodanige verklaring in die belang is van *onderwys* by die *skool*, met inagneming van die tersaaklike verslae oor die *skool*, met inbegrip van verslae oor die prestasie van die *skool*.

(2) Behoudens subartikel (1) kan die *Provinsiale Minister* 'n *ooreenkoms aangaan met*—

- (a) 'n *donateur*;
- (b) 'n *bedryfsvennoot*; en
- (c) die *beheerliggaam* van 'n *openbare skool*,

ingevolge waarvan 'n bestaande *openbare skool* beoog in artikel 12(1)(a) tot (f) tot 'n *saamwerksskool* verklaar staan te word.

(3) Die *Provinsiale Minister* kan 'n ooreenkoms met 'n *donateur* en 'n *bedryfsvennoot* aangaan vir die instelling van 'n nuwe *saamwerksskool* en die *skool* instel.

(4) Die ooreenkomste beoog in subartikels (2) en (3) moet die minimumvereistes *voorgeskryf* deur die *Provinsiale Minister* bevat.

(5) By die sluiting van 'n ooreenkoms beoog in subartikel (2) kan die *Provinsiale Minister*, by kennisgewing in die *Provinsiale Koerant*, die betrokke *openbare skool* tot 'n *saamwerksskool* verklaar.

(6) By die sluiting van 'n ooreenkoms met 'n *donateur* en 'n *bedryfsvennoot* soos beoog in subartikel (2)(a) en (b) en ondanks dat die *Provinsiale Minister* nie 'n ooreenkoms met die *beheerliggaam* aangegaan het soos beoog in subartikel (2)(c) nie kan die *Provinsiale Minister*, by kennisgewing in die *Provinsiale Koerant*, die betrokke *openbare skool* as 'n *saamwerksskool* verklaar.

(7) Die *Provinsiale Minister* mag nie 'n verklaring beoog in subartikel (5) of (6) maak nie tensy hy of sy 'n oproep om openbare kommentaar ten opsigte van die voorgenome verklaring gedoen het en enige kommentaar wat ontvang is, behoorlik oorweeg het.

(8) In die geval van die beëindiging van 'n ooreenkoms beoog in subartikel (2) of (3)—

(a) is die betrokke *skool* nie meer 'n *saamwerksskool* nie;

(b) moet die *Provinsiale Minister*, by kennisgewing in die *Provinsiale Koerant*, die *skool* tot die toepaslike tipe *openbare skool* beoog in artikel 12(1)(a) tot (f) verklaar; en

(c) moet 'n nuwe *beheerliggaam* op die voorgeskrewe wyse saamgestel word.

(9) Die lidmaatskap van die *beheerliggaam* van 'n *saamwerksskool* moet uit 'n meerderheid van verteenwoordigers van die *bedryfsvennoot* met stemreg bestaan: Mits die *Provinsiale Minister*, by aanvoering van grondige redes, verklaar dat die *beheerliggaam* van 'n bepaalde *saamwerksskool* uit 50% van die verteenwoordigers van die *bedryfsvennoot* en 50% van die ander lede van die *beheerliggaam* bestaan.

(10) Die *Wes-Kaapse Onderwysdepartement* kan oordragbetalings aan 'n *saamwerksskool* doen vir die doel om die toekenning van nuwe poste en die vul van vakante poste soos beoog by die *Wet op die Indiensneming van Opvoeders* en die Staatsdienswet, 1994 (Proklamasie 103 van 1994), te befonds.

(11) Die *beheerliggaam* van 'n *saamwerksskool* kan, behoudens die *Wet op Arbeidsverhoudinge*, 1995 (Wet 66 van 1995), en enige ander toepaslike wet, *opvoeders* en nie-opvoeders aanstel om poste beoog in subartikel (10) te vul ooreenkomstig die diensstaat soos bepaal deur die *beheerliggaam*.

### **Donateurbefondsde openbare skole**

**12D.** (1) Die *Provinsiale Minister* kan 'n ooreenkoms aangaan met—

(a) 'n *donateur*; en

(b) die *beheerliggaam* van 'n *openbare skool*,

ingevolge waarvan 'n bestaande *openbare skool* beoog in artikel 12(1)(a) tot (f) tot 'n *donateurbefondsde openbare skool* verklaar staan te word indien hy of sy tevrede is dat sodanige verklaring in die belang van *onderwys* by die *skool* is.

(2) Die *Provinsiale Minister* kan 'n ooreenkoms met 'n *donateur* aangaan vir die instelling van 'n nuwe *donateurbefondsde openbare skool* en die *skool* instel.

(3) Die ooreenkomste beoog in subartikels (1) en (2) moet die minimumvereistes *voorgeskryf* deur die *Provinsiale Minister* bevat.

(4) By die sluiting van 'n ooreenkoms beoog in subartikel (1) kan die *Provinsiale Minister*, by kennisgewing in die *Provinsiale Koerant*, die

betrokke *openbare skool* tot 'n *donateurbefondsde openbare skool* verklaar.

(5) Die *Provinsiale Minister* mag nie 'n verklaring beoog in subartikel (4) maak nie tensy hy of sy 'n oproep om openbare kommentaar ten opsigte van die voorgenome verklaring gedoen het en enige kommentaar wat ontvang is, behoorlik oorweeg het.

(6) In die geval van die beëindiging van 'n ooreenkoms beoog in subartikel (1) of (2)—

(a) is die betrokke *skool* nie meer 'n *donateurbefondsde openbare skool* nie;

(b) moet die *Provinsiale Minister*, by kennisgewing in die *Provinsiale Koerant*, die *skool* tot die toepaslike tipe *openbare skool* beoog in artikel 12(1)(a) tot (f) verklaar; en

(c) moet 'n nuwe *beheerliggaam* op die voorgeskrewe wyse saamgestel word.

(7) Die lidmaatskap van die *beheerliggaam* van 'n *donateurbefondsde openbare skool*—

(a) kan verteenwoordigers van die *donateur* met stemreg insluit; en

(b) kan uit 'n meerderheid van verteenwoordigers van die *donateur* met stemreg bestaan.

#### **Intervensiefasiliteit**

**12E.** (1) Behoudens die beskikbaarheid van hulpbronne van die *Wes-Kaapse Onderwysdepartement* kan die *Provinsiale Minister* 'n *intervensiefasiliteit* vir *leerders* wat aan *verpligte skoolbywoning* onderworpe is en aan ernstige wangedrag skuldig bevind is, instel.

(2) 'n *Intervensiefasiliteit* moet, benewens kurrikulumlewering, terapeutiese programme en ingrypingstrategieë verskaf ten einde aandag aan die ernstige wangedrag te gee.

(3) 'n *Leerder* wat na 'n *intervensiefasiliteit* verwys is, moet toegang tot *onderwys* gegee word op die wyse bepaal deur die *Provinsiale Minister*."

#### **Wysiging van artikel 13, soos vervang by artikel 9 van Wet 7 van 2010**

**10.** Artikel 13 van die Hoofwet word gewysig deur subartikel (7) deur die volgende subartikel te vervang:

“(7) Indien 'n nuwe *openbare skool* [**ingevolge artikel 12 van die Suid-Afrikaanse Skolewet voorsien**] ingestel word, setel die beheer van daardie *skool* in die *Departementshoof* totdat 'n *beheerliggaam* ingevolge [**daardie**] hierdie Wet ingestel is.”.

#### **Wysiging van artikel 14 van Wet 12 van 1997**

**11.** Artikel 14 van die Hoofwet word gewysig deur subartikel (1) deur die volgende artikel te vervang:

“(1) [**Onderworpe aan**] Behoudens die *Grondwet* en hierdie *Wet* kan 'n *openbare skool* op private eiendom geleë wees en voorsien word slegs kragtens 'n ooreenkoms tussen die *Provinsiale Minister* [**met die instemming van die** *finansiële hoof*] en die eienaar van die private eiendom.”.

#### **Wysiging van artikel 16 van Wet 12 van 1997**

**12.** Artikel 16 van die Hoofwet word gewysig deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Geen vaste eiendom wat deur die Staat besit word en deur 'n *openbare skool* beset word, mag vervreem word nie, tensy 'n ooreenkoms tussen die *Provinsiale Minister*, met die instemming van die [**finansiële hoof**] Provinsiale Minister verantwoordelik vir openbare werke, en die voornemende eienaar van die vaste eiendom aangegaan is.”.

**Wysiging van artikel 18 van Wet 12 van 1997**

13. Artikel 18 van die Hoofwet word deur die volgende artikel vervang:

**“Sluiting van openbare skole**

18. Die *Provinsiale Minister* kan, te eniger tyd ’n *openbare skool* [of ’n deel daarvan] sluit ingevolge artikel 33 van die *Suid-Afrikaanse Skolewet*.”. 5

**Wysiging van artikel 20B van Wet 12 van 1997, soos ingevoeg by artikel 11 van Wet 7 van 2010**

14. Artikel 20B van die Hoofwet word gewysig deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Behoudens enige toepaslike nasionale norme en standarde wat in artikel 146(2) van die *Grondwet* beoog word, kan die *Provinsiale Minister* [ **ná oorlegpleging met die Onderwysraad,**] by *regulasie* minimum eenvormige norme en standarde voorskryf vir—”. 10

**Herroeping van artikel 40 van Wet 12 van 1997**

15. Artikel 40 van die Hoofwet word herroep. 15

**Wysiging van artikel 41 van Wet 12 van 1997, soos vervang by artikel 15 van Wet 7 van 2010**

16. Artikel 41 van die Hoofwet word gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die *beheerliggaam* van ’n *openbare skool* mag geen toets afneem in verband met die toelating van ’n *leerder* tot ’n *openbare skool* of die *prinsipaal* van die *skool* of enige ander persoon aansê of magtig om sodanige toets af te neem nie, behalwe in die geval van die toelating van ’n *leerder* by ’n openbare skool beoog in artikel 20A.”. 20

**Wysiging van artikel 45 van Wet 12 van 1997, soos gewysig by artikel 18 van Wet 7 van 2010** 25

17. Artikel 45 van die Hoofwet word gewysig—

(a) deur paragraaf (b) van subartikel (5) deur die volgende paragraaf te vervang:

“(b) ’n aanbeveling aan die *Departementshoof* maak om—  
(i) die *leerder* na ’n *intervensiefasiliteit* te verwys vir ’n bepaalde tydperk van hoogstens 12 maande op ’n keer, indien—  
(aa) die *leerder* aan *verpligte skoolbywoning* onderworpe is;  
en  
(bb) die *ouers* tot die verwysing toestem; of  
(ii) die *leerder* uit die *openbare skool* te sit.”; 30 35

(b) deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Die *Departementshoof* moet binne 14 dae na ontvangs van ’n aanbeveling beoog in subartikel (5)(b)—  
(a) in die geval van ’n aanbeveling beoog in subartikel (5)(b)(i), besluit om die *leerder* na ’n *intervensiefasiliteit* te verwys al dan nie, vir ’n tydperk van hoogstens 12 maande op ’n keer, indien—  
(i) die *leerder* aan *verpligte skoolbywoning* onderworpe is;  
en  
(ii) die *ouers* tot die verwysing toestem; of  
(b) in die geval van ’n aanbeveling beoog in subartikel (5)(b)(ii), besluit om die *leerder* uit te sit al dan nie.”; 40 45

- (c) deur subartikel (7) deur die volgende artikel te vervang:  
 “(7) ’n *Beheerliggaam* kan ’n *leerder* skors of die skorsing van ’n leerder verleng vir ’n tydperk van hoogstens 14 skooldae in afwagting van die besluit deur die *Departementshoof* om die leerder uit die *openbare skool* te sit al dan nie, of om die leerder na ’n *intervensiefasiliteit* te verwys al dan nie.”; 5
- (d) deur na subartikel (14) die volgende subartikels in te voeg:  
 “(14A) In die geval van ’n leerder wat aan *verpligte skoolbywoning* onderworpe is, kan die sanksie bedoel in subartikel (14), op die aanbeveling van die *beheerliggaam* en met die instemming van die *ouers* van die leerder, verwysing na ’n *intervensiefasiliteit* vir ’n bepaalde tydperk insluit, welke tydperk nie 12 maande op ’n keer mag oorskry nie. 10  
 (14B) ’n *Leerder* wat ingevolge subartikel (6)(a) of (14A) verwys is na ’n *intervensiefasiliteit* moet, by die verval van die bepaalde tydperk beoog in daardie subartikels, by dieselfde *openbare skool* toegelaat word wat hy of sy voor die verwysing bygewoon het.”. 15

### Invoeging van artikel 45B en 45C in Wet 12 van 1997

18. Die volgende artikel word na artikel 45A van die Hoofwet ingevoeg:

#### “Alkoholiese drank op skoolperseel of gedurende skoolaktiwiteite

**45B.** (1) Ondanks artikel 45A(1), maar behoudens voldoening aan die Wes-Kaapse Drankwet, 2008 (Wet 4 van 2008), kan die *beheerliggaam* of die *prinsipaal van ’n openbare skool* die gebruik of verkoop van alkoholiese drank op die skoolperseel of by ’n *skoolaktiwiteit* goedkeur. 20

(2) Die gebruik of verkoop van alkoholiese drank op ’n skoolperseel of by ’n *skoolaktiwiteit* soos beoog in subartikel (1) is onderhewig aan enige voorwaardes opgelê by of ingevolge die Wes-Kaapse Drankwet, 2008, en enige voorwaardes gestel deur die *beheerliggaam* of die *prinsipaal*. 25

#### **Toestemming vir skooluitstappies**

**45C.** ’n *Openbare skool* moet die voorafverkreë skriftelike toestemming van ’n *ouer* bekom wat die leerder se bywoning van ’n *skoolaktiwiteit* buite die skoolperseel magtig.”. 30

### Wysiging van artikel 58 van Wet 12 van 1997

19. Artikel 58 van die Hoofwet word gewysig deur die volgende paragraaf na paragraaf (a) in te voeg: 35

“(a) die *Hoofvalueerder of ’n assessor* in die verrigting van sy of haar werksaamhede ingevolge hierdie Wet hinder of belemmer;”.

### Wysiging van artikel 63 van Wet 12 van 1997, soos gewysig by artikel 26 van Wet 7 van 2010

20. Artikel 63 van die Hoofwet word gewysig—

- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan, deur die volgende woorde te vervang:  
 “Die *Provinsiale Minister* kan *regulasies [wat nie met die een of ander wet strydig is nie, en]*, indien toepaslik, behoudens enige nasionale norme en standaard wat in artikel 146(2) van die *Grondwet* beoog word, **[uitvaardig] maak** betreffende—”; 45
- (b) deur in subartikel (1) na paragraaf (cH) die volgende paragrawe in te voeg:  
 “(cI) die toelatingsvereistes, befondsing en bestuursmodelle vir *saamwerkenskole* en *donateurbefondsde openbare skole*; 50  
 (cJ) die norme en standaard vir die bestaan van subsidies aan *onafhanklike skole*;  
 (cK) die bevordering en vordering van *leerders* by *openbare skole*;



- (cL) die norme en standarde vir 'n *intervensiefasiliteit*;
- (cM) die toelating van *leerders* by *openbare skole*;
- (cN) die verkryging van goedere en dienste wat met onderwys in die *provinsie verband hou*;"

**Kort titel en inwerkingtreding**

5

**21.** Hierdie Wet heet die Wes-Kaapse Provinsiale Wysigingswet op Skoolonderwys, 2016, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

## MEMORANDUM VAN DIE OOGMERKE VAN DIE WES-KAAPSE PROVINSIALE KONSEPWYSIGINGSWETSONTWERP OP SKOOLONDERWYS, 2016

### 1. AGTERGROND

- 1.1 Die Provinsiale Minister verantwoordelik vir onderwys in die Provinsie het die hersiening van provinsiale onderwyswetgewing as 'n strategiese prioriteit van die Wes-Kaapse Onderwysdepartement geïdentifiseer.
- 1.2 Die Wes-Kaapse Provinsiale Konsepwysigingswetsontwerp op Skoolonderwys, 2016 (die Konsepwysigingswetsontwerp), stel voor om die Wes-Kaapse Provinsiale Wet op Skoolonderwys, 1997 (Wet 12 van 1997)(die Hoofwet), te wysig ten einde dit in ooreenstemming te bring met ontwikkelinge in die onderwyslandskap en om toe te sien dat stelsels van leer en uitnemendheid in onderwys in werking gestel word op 'n wyse wat die reg op basiese opvoeding, vasgelê in artikel 29(1) van die Grondwet van die Republiek van Suid-Afrika, 1996, eerbiedig, beskerm, bevorder en verwezenlik. In sekere opsigte maak die Wet nie voorsiening vir huidige provinsiale beleid oor onderwys nie.

### 2. OOGMERKE VAN WETSONTWERP

Die Konsepwysigingswetsontwerp stel voor om die Hoofwet te wysig om voorsiening te maak vir die aangeleenthede beoog in paragraaf 1.2 en om sekere tegniese wysigings te maak. Die hoofsaaklike oogmerke van die Konsepwysigingswetsontwerp is om onder meer voorsiening te maak vir—

- 2.1 monitering en ondersteuning van kurrikulumlewering in die klaskamer;
- 2.2 die instelling van 'n onafhanklike liggaam wat bekend sal staan as die Wes-Kaapse Skoolevalueringsgesag;
- 2.3 die instelling van saamwerksskole en donateurbefondsde skole; en
- 2.4 die instelling van intervensiefasiliteite waarna leerders wat aan ernstige wangedrag skuldig bevind is in sekere omstandighede verwys kan word.

### 3. INHOUD VAN WETSONTWERP

- 3.1 **Klousule 1** maak voorsiening vir die skraping van die omskrywing van “volwasse onderwys” en die invoeging van die omskrywings vir: “assessor”, “bedryfsvennoot”, “distriksdirekteur”, “donateur”, “donateurbefondsde openbare skool”, “Hoofvalueerder”, “intervensiefasiliteit”, “kringbestuurder”, “saamwerksskool”, “Skoolevalueringsgesag”, “skoolverbeteringsplan” en “vakadviseur”.
- 3.2 **Klousule 2** wysig artikel 3 van die Hoofwet ten einde die verwysing na die Suid-Afrikaanse Skolewet (Wet 84 van 1996), te skrap.
- 3.3 **Klousule 3** wysig artikel 4 van die Hoofwet deur die werksaamheid van die Provinsiale Minister in subartikel (1)(b), om vir volwasse onderwys voorsiening te maak, te skrap.
- 3.4 **Klousule 4** voeg 'n bepaling in wat bepaal dat sekere beamptes die monitering en ondersteuning van kurrikulumlewering in die klaskamer kan uitvoer en magtig.
- 3.5 **Klousule 5** maak 'n tegniese wysiging aan artikel 11(4)(b) van die Hoofwet.
- 3.6 **Klousule 6** voeg nuwe bepalings in om die Provinsiale Minister toe te laat om 'n onafhanklike liggaam in te stel wat bekend sal staan as die Wes-Kaapse Skoolevalueringsgesag (“Skoolevalueringsgesag”) en om 'n Hoof-

evalueerder en assessors daarin aan te stel. Hierdie klousule maak verder voorsiening vir aanstellingsgeskiktheidsvereistes vir die aanstelling van die Hoofevalueerder en assessors en hul verwydering uit hul amp, die werksaamhede van die Skoolevalueringsgesag, die betaling van vergoeding en toelaes aan die Hoofevalueerder en assessors, die verskaffing van algemene steun aan en die moontlikheid van die ontbinding van die Skoolevalueringsgesag. Voorsiening word ook gemaak vir die Provinsiale Minister om regulasies te maak oor bepaalde aangeleenthede rakende die werking van die Skoolevalueringsgesag.

- 3.7 **Klousule 7** voeg 'n bepaling in wat bepaal dat die Provinsiale Minister saamwerksskole en donateurbefondsde skole kan instel.
- 3.8 **Klousule 8** maak 'n tegniese wysiging aan artikel 12A(6)(b) van die Hoofwet om 'n verwysing na sekere artikels van die Suid-Afrikaanse Skolewet, 1996, te verander na 'n verwysing na 'n artikel in die Hoofwet.
- 3.9 **Klousule 9** maak voorsiening vir die instelling van saamwerksskole en die verklaring van bestaande skole as saamwerksskole deur die Provinsiale Minister. Voorsiening word ook gemaak vir aangeleenthede rakende die beheer van hierdie skole en vir die befondsing van poste vir opvoeders en nie-opvoeders wat direk deur die beheerliggame van hierdie skole aangestel word. Hierdie klousule maak verder voorsiening vir die instelling van donateurbefondsde skole en die verklaring van bestaande skole as donateurbefondsde skole deur die Provinsiale Minister en vir aangeleenthede rakende die beheer van hierdie skole. Hierbenewens bepaal hierdie klousule dat die Provinsiale Minister intervensiefasiliteite kan instel vir leerders wat geskors of uitgesit is uit 'n openbare skool of skuldig bevind is aan ernstige wangedrag.
- 3.10 **Klousule 10** maak 'n tegniese wysiging aan artikel 13(7) van die Hoofwet om 'n verwysing na die Suid-Afrikaanse Skolewet, 1996, te verander na 'n verwysing na die Hoofwet.
- 3.11 **Klousule 11** wysig artikel 14(1) van die Hoofwet deur die vereiste te skrap dat die Provinsiale Minister en die Provinsiale Minister verantwoordelik vir finansiële aangeleenthede konsensus moet bereik wanneer die Provinsiale Minister 'n ooreenkoms aangaan met die eienaar van private eiendom om 'n openbare skool op die betrokke private eiendom daar te stel.
- 3.12 **Klousule 12** wysig artikel 16(6) van die Hoofwet deur te bepaal dat die Provinsiale Minister en die Provinsiale Minister verantwoordelik vir openbare werke konsensus moet bereik wanneer die Provinsiale Minister en die voornemende eienaar van onroerende eiendom 'n ooreenkoms aangaan oor die vervreemding van grond wat die staat besit en wat deur 'n openbare skool beset word.
- 3.13 **Klousule 13** vervang artikel 18 van die Hoofwet deur sekere verpligtinge ten opsigte van die sluiting van 'n gedeelte van 'n openbare skool te skrap.
- 3.14 **Klousule 14** wysig artikel 20B(1)(a) van die Hoofwet deur die vereiste te skrap dat die Provinsiale Minister met die Onderwysraad moet oorleg pleeg wanneer die Provinsiale Minister regulasies maak in verband met basiese infrastruktuur en kapasiteit in openbare skole.
- 3.15 **Klousule 15** herroep artikel 40 van die Hoofwet.
- 3.16 **Klousule 16** wysig artikel 41 van die Hoofwet om te bepaal dat die verbod op 'n skoolbeheerliggaam om toetse te administreer vir die toelating van 'n leerder tot 'n openbare skool nie geld vir openbare skole beoog in artikel 20A van die Hoofwet nie.

- 3.17 **Klousule 17** wysig artikel 45 van die Hoofwet om voorsiening te maak vir die moontlikheid van die verwysing in sekere omstandighede van leerders wat skuldig bevind is aan ernstige wangedrag na 'n intervensiefasiliteit vir 'n maksimum tydperk van 12 maande.
- 3.18 **Klousule 18** voeg 'n bepaling in wat voorsiening maak vir die beheerliggaam of die prinsipaal van 'n openbare skool om die verkoop van alkoholiese drank op 'n skoolperseel of by 'n skoolaktiwiteit te magtig, onderhewig aan voldoening aan die Wes-Kaapse Drankwet, 2008 (Wet 4 van 2008), en enige voorwaardes wat deur die beheerliggaam of die prinsipaal opgelê kan word. Hierdie klousule bepaal verder dat 'n openbare skool die voorafverkreë skriftelike toestemming van 'n ouer moet bekom wat die leerder se bywoning van 'n skoolaktiwiteit buite die skoolperseel magtig.
- 3.19 **Klousule 19** wysig artikel 58 van die Hoofwet deur voorsiening te maak vir verdere misdrywe in verband met die verhinderende van die Hoofevalueerder of assessors in die verrigting van hul werksaamhede.
- 3.20 **Klousule 20** wysig artikel 63 van die Hoofwet deur verder voorsiening te maak vir die Provinsiale Minister om regulasies te maak.
- 3.21 **Klousule 21** maak voorsiening vir die kort titel en inwerkingtreding van die Konsepwysigingswetsontwerp.

#### **4. OORLEGPLERING**

Die Premier en Lede van die Uitvoerende Raad  
Die Hoof van die Wes-Kaapse Onderwysdepartement  
Departement van die Premier: Regsdienste  
Beamptes van die Wes-Kaapse Onderwysdepartement

#### **5. FINANSIELE IMPLIKASIES**

Die koste van die implementering van die Konsepwysigingswetsontwerp sal binne die jaarlikse begroting van die Wes-Kaapse Onderwysdepartement gedek word.

#### **6. WETGEWENDE BEVOEGDHEID**

Die Provinsiale Minister verantwoordelik vir onderwys is tevrede dat die bepalings van die Konsepwysigingswetsontwerp onder die wetgewende bevoegdheid van die Provinsie ressorteer.

**INKCAZELO-GABALALA:**

- [ ] Amagama abhalwe ngqindilili akwizigweqe ezisisikwere abonisa oko kususiweyo kwimithetho ekhoyo.
- \_\_\_\_\_ Amagama akrwelelwe umgca ongqindilili abonisa oko kufakelweyo kwimithetho ekhoyo.

**UMTHETHO WEZILUNGISO OSAYILWAYO WEMFUNDO  
WEZIKOLO ZEPHONDO LENTSHONA KOLONI, 2016**

Ukwenza izilungiso kuMthetho weMfundo weZikolo zePhondo leNtshona Koloni, 1997, ukucima iinkcazelo nokufakela ezinye endaweni yazo; ukususa izinto ezibhekisele kweminye imithetho ethile; ukususa izinto ezibhekisele kwimfundo yabadala; ukwenza imiqathango yokubeka iliso nokuxhasa ukuphunyezwa kwekharithulam *kwizikolo zikarhulumente*; ukugunyazisa *iKhansili yezeMfundo yeNtshona Koloni* ukuba inike iingxelo zeengcebiso; ukwenza imiqathango yomiselo nemisebenzi *yoGunyaziwe woHlolo lweZikolo*; ukwenza imiqathango yomiselo *lwezikolo zentsebenziswano nefasilithu yongenelelo ngoncedo*; ukwenza imiqathango yomiselo *lwezibonelelo zeenkqubo zongenelelo ekunokuthunyelwa kuzo abafundi* kwiimeko ezithile; ukususa imiqathango enyanzelisa ukuba kufunyanwe imvume *yoMphathiswa wePhondo ojongene nezimali kwizivumelwano ezithile*; ukucima umqathango ogunyazisa ukuvalwa kwenxalenye yesikolo *sikarhulumente*; ukwenza omnye umqathango wokuba *uMphathiswa wePhondo ojongene nezemfundo* ukuba enze *imigaqo*; ukutshitshisa umgaqo wakudala omalunga namagunya enkundla yabantwana; ukugunyazisa ukuba kwenziwe iimvavanyo ezithile ezimalunga nokwamkelwa *komfundi kwisikolo sikarhulumente sabafundi abanezidingo zemfundo ezizodwa*; ukwenza imiqathango emalunga nokuthengiswa kotywala kumasango esikolo okanye xa kukho imisitho ezikolweni; ukubonelela ngokuba *isikolo sikarhulumente* sifumane imvume ebhaliweyo yomzali egunyazisa ukuba umfundi azimase inkqubo yesikolo eyenziwa ngaphandle kwamasango esikolo; kunye nokubonelela ngemiba ehambelana nale ikhankanyiweyo.

**N**NGOKO OKO KE KUQINGQWA UMTHETHO yiPalamente yePhondo ekwi-Phondo leNtshona Koloni, ngolu hlobo lulandelayo:—

**Ukwenziwa kwezilungiso kwicandelo 1 loMthetho 12 ka-1997, njengoko lenziwe izilungiso kwicandelo 2 loMthetho 7 ka-2010**

1. Icandelo 1 loMthetho weMfundo weZikolo zePhondo leNtshona Koloni, 1997 5  
(uMthetho-ngqangi), lenziwa izilungiso—

- (a) ngokucinywa kwenkcazelo yebinzana “*imfundo yabadala*”;
- (b) ngokufakela phambi kwenkcazelo yebinzana “*umntu ogunyazisiweyo*” kwale nkcazelo ilandelayo:

“umvavanyi’ uthetha umvavanyi wezikolo oqeshwe kulandelwa 10  
icandelo 11A(2)(b);”;

- (c) ngokufakela emva kwenkcazelo yebinzana **“imfundo esisiseko”** kwezi nkcazelo zilandelayo: 5  
 “**‘Umhloli oyiNtloko’** uthetha uMhloli oyiNtloko weZikolo oqeshwe ngokwecandelo 11A(2)(a);  
**‘Umphath wesekeke’** uthetha intloko ye-ofisi yesekethe kwisithili *semfundo*; 5  
**‘isikolo sentsebenziswano’** nefasilithe yongenelelo ngoncedo sithetha *isikolo sikarhulumente* esichazwe kwicandelo 12C;”;
- (d) ngokufakela emva kwenkcazelo yebinzana **“isixhobo esiyingozi”** kwezi nkcazelo zilandelayo: 10  
 “**‘umlawuli wesithili’** uthetha intloko ye-ofisi yesithili;  
**‘Umniki-sipho’** uthetha umntu ochazwe kwicandelo 12C(2)(a) okanye 12D(1) obonelela ngezimali okanye ngepropati *isikolo sentsebenziswano okanye isikolo sikarhulumente esixhaswa ngumntu onikeza amalizo* ngenjongo yokuphucula imfundo kwiphondo; 15  
**‘isikolo sikarhulumente esixhaswa ngumntu onikeza amalizo’** sithetha *isikolo sikarhulumente* esichazwe kwicandelo 12D;”;
- (e) ngokufakela emva kwenkcazelo yebinzana **“isikolo samabakala aphakathi”** kwale nkcazelo ilandelayo: 20  
 “**‘ifasilithi yongenelelo ngoncedo’** lithetha iziko elichazwe kwicandelo 12E;”;
- (f) ngokufakela emva kwenkcazelo yegama **“igosa”** kwezi nkcazelo zilandelayo: 25  
 “**‘ihlakani elisebenzayo’** lithetha umntu okanye umbutho oxhobisa isikolo okanye onikeza izakhono okanye izibonelelo *kwisikolo* ukuxhobisa *ibhunga elilawula isikolo, isikolo, iqela elilawula isikolo nootitshala abasesikolweni* ukuphuhlisa iisitimbu, izigqeba, iinkcubeko nezinto zokuxhobisa ezidingekayo ukuzisa *imfundo* esemgangathweni;  
**‘UGunyaziwe woHlolo lweZikolo’** uthetha uGunyaziwe woHlolo lweZikolo zeNtshona Koloni ochazwe kwicandelo 11A(1); 30  
**‘isicwangciso sophucule lwesikolo’** sithetha isicwangciso esichaza izinto ezibekwe phambili *kwisikolo sikarhulumente* ukuphucula *iziphumo zemfundo nokulungisa iinkqubela nophuhliso lwesikolo;*”  
 kananjalo
- (g) nangokufakela emva kwenkcazelo yebinzana **“imfundo eneemfuno ezizodwa”** kwale nkcazelo ilandelayo: 35  
 “**‘umcebisi wesifundo’** uthetha *utitshala* oyingcali osebenzela e-ofisini kwi-ofisi yesithili okanye kwi-ofisi yesekethe omsebenzi wakhe ikukuququzelela umiselo lwekharithulam nokuphucula imeko nenkqubo yokufunda nokufundisa ngokuthi atyelele *izikolo*, ebonisana yaye ecebisa *iinqununu zezikolo* kunye *neetitshala* kwimiba yekharithulam;” 40

### Ukwenziwa kwezilungiso kwicandelo 3 loMthetho 12 ka-1997, njengoko lenziwe izilungiso kwicandelo 3 loMthetho 7 ka-2010

2. Icandelo 3 loMthetho-ngqangi lenziwa izilungiso ngokutshintsha kwicandelwana (1) amagama aphambi komhlathi (a) ze kufakelwe la magama alandelayo endaweni yawo: 45

“Phantsi kwemigaqo [yoMthetho weZikolo zaseMzantsi Afrika kunye] noMgaqosiseko, uMphathiswa wePhondo unokuthi, apho kuyimfuneko, amaxesha ngamaxesha, amisele umgaqo-nkqubo oya kulandelwa ngokumalunga nemfundo kwizikolo ezikweli phondo, ethathela ingqalelo le migaqo ilandelayo, eyile ukuba—”. 50

**Ukwenziwa kwezilungiso kwicandelo 4 loMthetho 12 ka-1997**

3. Icandelo 4 loMthetho-ngqangi lenziwa izilungiso ngokucinywa komhlathi (b) wecandelwana (1).

**Ukufakelwa kwecandelo 9A kuMthetho 12 ka-1997**

4. Eli candelo lilandelayo liyafakelwa kuMthetho-ngqangi emva kwecandelo 9: 5

**“Ukubeka iliso nokuxhasa ukuphunyezwa kwekharithulam**

**9A.** (1) *INtloko yeSebe*, umlawuli wesithili okanye *inqununu yesikolo sikarhulumente* okanye *ihlakani elisebenzayo kwisikolo sikarhulumente* kwimisebenzi abayenzayo, bangabeka iliso okanye baxhase ukuphunyezwa kwekharithulam *ngutitshala* eklasini, okanye bangagunyazisa olo beko-liso nalo nkxaso emayenziwe— 10

(a) *ngumcebisi wesifundo*;

(b) *lisekela-nqununu*;

(c) *yintloko yesebe esikolweni*; okanye

(d) *yintloko yesifundo*. 15

(2) *INtloko yeSebe*, umlawuli wesithili okanye, ukuba ugunyaziswe *ngumlawuli wesithili, umanejala wesekehe*, angabeka iliso okanye axhase ukuphunyezwa kwekharithulam *yinqununu yesikolo sikarhulumente*. 20

(3) Umntu owenza uhlobo okanye inkxaso ngokweli candelo uya kunikeza *utitshala* okanye *inqununu* echaphazelekayo isaziso kwangethuba solo hlolo naloo nkxaso. 20

(4) *INtloko yeSebe* ingenza imigaqo yobeko-liso nenkxaso ngokweli candelo.”.

**Ukwenziwa kwezilungiso kwicandelo 11 loMthetho 12 ka-1997, njengoko endaweni yalo kungene icandelo 7 loMthetho 7 ka-2010** 25

5. Icandelo 11 loMthetho-ngqangi lenziwa izilungiso—

(a) ngokufakela endaweni yomhlathi (b) wecandelwana (4) kwalo mhlathi ulandelayo:

“(b) inani [**labantu**] lamagosa *elimiselweyo* elityunjwe yiNtloko yeSebe leMfundo kubasebenzi bayo;”; kanaanjalo 30

(b) nokufakelwa kweli candelwana lilandelayo:

“(9)(a) *Ikhansili yezeMfundo inganika uMphathiswa wePhondo ingxelo yeengcebiso*. 35

(b) *UMphathiswa wePhondo* angayamkela okanye ayikhabe ingxelo yeengcebiso ze azise uSihlalo *weKhansili yeZemfundo* malunga noko.”.

**Ukufakelwa kwamacandelo 11A, 11B, 11C, 11D, 11E, 11F, 11G no-11H kuMthetho 12 ka-1997**

6. La macandelo alandelayo ayafakelwa kuMthetho-ngqangi emva kwecandelo 11:

**“UGunyaziwe woHlolo lweZikolo** 40

**11A.** (1) *UMphathiswa wePhondo* angamisela ugunyaziwe woHlolo ozimeleyo oya kwaziwa ngokuba *nguGunyaziwe woHlolo lweZikolo weNtshona Koloni*. 40

(2) *UMphathiswa wePhondo* angaqesha kweli *Candelo loGunyaziwe weZikolo—* 45

(a) *uMhloli oyiNtloko wezikolo*; kunye

(b) *nabahloli bezikolo*.

(3) *UMhloli oyiNtloko—*

(a) uya kutyunjelwa ixesha leminyaka emithathu; yaye

(b) angaphinde atyunjwe kwakhona isithuba esinye kuphela. 50

**Izinto ezenza ukuba ubani avumeleke ukuba aqeshwe njengoMhloli oyiNtloko okanye umvavanyi**

- 11B.** Ukuze umntu avumeleke ukuba uqeshwe njengoMhloli oyiNtloko okanye umvavanyi, kufuneka—
- (a) abe ungummi weRiphabliki; 5
  - (b) abe akazange wantyumpantyumpeka ematyaleni;
  - (c) abe zange abanjwe ngenxa—
    - (i) yetyala elakhokelela ekubeni avalelwe enganikwanga ithuba lokuba ahlawule imali; okanye
    - (ii) yobusela, ubuqhophololo, ukufoja izinto, ukufoja amaxwebhu, ubuxoki, naliphi ityala elenzeke ngenxa yokophula umthetho iPrevention and Combating of Corrupt Activities Act, 2004 (uMthetho 12 ka-2004), okanye naliphi ityala lokungathembeki; yaye 10
  - (d) abe unolwazi olufanelekileyo okanye amava kwezemfundo nezokufunda. 15

**Ukususwa esikhundleni**

- 11C.** *UMphathiswa wePhondo* angathi, emva kokulandela inkqubo efanelekileyo, amsuse uMhloli oyiNtloko okanye umvavanyi kwisikhundla sakhe—
- (a) ukuba akasahambelani nenkqubo yokulungela isikhundla eso echazwe kwicandelo 11B; okanye 20
  - (b) nangasiphi na isizathu esivakalayo, esibandakanya ukuziphatha kakubi, ukwenzakala ze angakwazi ukuphangela okanye ukungawazi umsebenzi. 25

**Imisebenzi yeCandelo laBahloli beZikolo**

- 11D. (1)** *UMhloli oyiNtloko* uya kuhlala esazisa *uMphathiswa wePhondo* ngezi zinto zilandelayo kwizikolo:
- (a) umgangatho wemfundo obonelelwa kweso sikolo;
  - (b) indlela imfundo kweso sikolo ebonelela ngayo izidingo ezahlukileyo zabafundi isebenzisa inkqubo ehlanganisa yonke into; 30
  - (c) imigangatho yemfundo ephunyezwe kweso sikolo;
  - (d) umgangatho wobunkokeli nowolawulo kweso sikolo;
  - (e) imithombo yemali efumanekayo kweso sikolo kwanokuba ilawulwa ngendlela engenankcitho na yaye imali isetyenziswa ngendlela eyiyo na; 35
  - (f) siziphuhlisa kangakanani na iinkqubo zangaphakathi zokuzivavanya ngokumandla eso sikolo ngokwezicwangciso zophuculo lwesikolo; 40
  - (g) ukuziphatha kwabafundi nokuzimasa isikolo kwabafundi notitshala kweso sikolo;
  - (h) uphuhliso lwentlalo nolwenkcubeko lwabafundi kweso sikolo;
  - (i) ulawulo lwentsebenzo kunye nophuhliso lweetitshala; kunye
  - (j) nobudlelane phakathi kwabazali, uluntu nesikolo. 45
- (2) Xa efumene isicelo esibhaliweyo soMphathiswa wePhondo, uMhloli oyiNtloko uya kuthi—
- (a) acebise uMphathiswa wePhondo ngawo nawuphi na umba ochazwe kweso sicelo; yaye
  - (b) uya kuhlola ze anike ingxelo ngesikolo, okanye iklasi esesikolweni, ekhankanywe kweso sicelo. 50
- (3) *UMhloli oyiNtloko* uya kupapasha iingxelo, eziya kubandakanya uphando kunye nezindululo zophuculo apho oko kuyimfuneko.
- (4) *UMhloli oyiNtloko* nabahloli bangathi—
- (a) emva kokunikeza isaziso esibhaliweyo seentsuku ezimbini esiya kumlawuli wesithili, inqununu nebhunga lolawulo, bafumane imvume yokungena neyokuhlola isikolo, kunye naliphi na igumbi leklasi elisesikolweni, bamamele xa 55



- kufundiswa, baze baqokelele ubungqina ngokwabo ukuze bakwazi ukwenza izindululo;
- (b) emva kokunikeza isaziso esibhaliweyo seentsuku ezimbini, benze udliwano-ndlebe *nebhunga lolawulu* naliphi ilungu lalo, igosa leSebe, *umsebenzi osebenza kweso sikolo, umfundi okanye umzali*; 5
- (c) bangenise ingxelo ebhaliweyo ukuze igcinwe *liungu lesitafu* elisebenza kweso *sikolo*;
- (d) benganikanga saziso, bangene *kwisikolo* baze bathathe onke amaxwebhu email, iziteyitimenti nawo nawaphi na amanye amaxwebhu nokuba anjani okanye ngawaluphi na uhlobo, ukuba ngaba— 10
- (i) kukho ubungqina obubambekayo bokutyiwa kwemali kweso *sikolo*; yaye
- (ii) kuyakrokreleka ukuba ezo rekhodi naloo maxwebhu ziza kufihlwa, zitshatyalaliswe okanye zitshintshwe ukuba kukhe kwanikwa isaziso; yaye 15
- (e) nanini banganika iingcebiso *kuMphathiswa wePhondo* ngawo nawuphi na umba ochaphazela *isikolo*. 20
- (5) Amagunya axelwe kwicandelwana (4)(a) no-(b) angasetyenziswa kunganikwanga saziso ukuba ngaba *uMhloli oyiNtloko* okanye *umhloli unezizathu ezivakalayo* zokuba oku kuyimfuneko ukuze enze umsebenzi wakhe ngempumelelo. 20
- (6)(a) *UMphathiswa wePhondo angathi*, emva kokubonisana *noMhloli oyiNtloko*, amgunyazise ukuba enze imisebenzi eyongezelekileyo okanye amnike amagunya ongeziweyo ukuba *uMphathiswa wePhondo* ukholelwa ukuba— 25
- (i) *uMhloli oyiNtloko* uyakwazi ukwenza loo misebenzi yongezelekileyo okanye ukusebenzisa loo magunya ongeziweyo; yaye 30
- (ii) oko iya kuba yinto eya kunceda uluntu ukuba *uMhloli oyiNtloko* akwenze oko.
- (b) *UMphathiswa wePhondo angathi*, emva kokubonisana *noMhloli oyiNtloko*, aaxuthe amagunya anikwe *uMhloli oyiNtloko* ngokomhlathi (a) ukuba *uMphathiswa wePhondo* unesizathu sokukholelwa ukuba— 35
- (i) *uMhloli oyiNtloko* akasakwazi ukwenza loo msebenzi wongezelelweyo okanye asebenzise loo magunya ongeziweyo; okanye
- (ii) oko iya kuba yinto eya kunceda uluntu ukuba *uMphathiswa wePhondo* akwenze oko. 40
- (c) *UMphathiswa wePhondo angathi*, emva kokubonisana *noMhloli oyiNtloko*—
- (i) amkhulule *uMhloli oyiNtloko* ekwenzeni umsebenzi okwicandelwana (1); okanye 45
- (ii) asuse igunya elinikwe *uMhloli oyiNtloko* okanye abahloli licandelwana (4).

#### Uhlawulo-mivuzo nonikezo lwemali esisibonelelo

**11E.** *UMhloli oyiNtloko nabahloli* baya kuhlawulwa imivuzo nezibonelelo ezigqitywe ngu*Mphathiswa wePhondo* emva kokubonisana *nentloko yezimali*. 50

#### Inkxaso ngokubanzi

**11F.** (1) *INtloko yeSebe* iya kunikeza *iCandelo laBahloli* inkxaso ngokubanzi nemithombo edingekayo ukuba lenze imisebenzi yalo, kubandakanywa imisebenzi ye-ofisi nenkxaso ngezibonelelo. 55

(2) *INtloko yeSebe* iya kutyumba abasebenzi *beSebe* abaya *kunceda iCandelo laBahloli*.

**Utshithshiso**

- 11G.** (1) *UMphathiswa wePhondo* angaliphelisa *iCandelo laBahloli* ukususela ngomhla obekwe ngu*Mphathiswa wePhondo* ukuba *iCandelo laBahloli* liye lasilela ekwenzeni imisebenzi yalo ngendlela eyanelisayo, naxa lingasadingeki okanye lisebenza ngendlela engelolutho kwezemfundo (2) *UMphathiswa wePhondo* akanakuthatha amanyathelo elandela icandelwana (1) ngaphandle kokuba—
- (a) unikeze isaziso esivakalayo kwi*Candelo laBahloli* seenjongo zakhe zokwenza oko okanye izizathu zoko;
  - (b) unikeze *iCandelo laBahloli* ithuba elaneleyo lokuvakalisa ezabo izimvo ngaloo ntshukumo; yaye
  - (c) abe uthathele ingqalelo izimvo azifumeneyo.

**Imiqathango emalunga neCandelo laBahloli**

- 11H.** *UMphathiswa wePhondo* angenza *imiqathango* malunga—
- (a) neenkqubo zokutyumba u*Mhloli oyiNtloko nabahloli* nokuzaliswa kwezithuba;
  - (b) nemiqathango yokuqesha u*Mhloli oyiNtloko nabahloli*;
  - (c) neenkqubo zokususa u*Mhloli oyiNtloko nabahloli*;
  - (d) neenkqubo zokusetyenziswa kwamagunya axelwe kwicandelwana (4); kunye
  - (e) nokwenziwa kunye nokupapashwa kweengxelo ngu*Gunyaziwe woHlolo lweZikolo*.”.

**Ukwenziwa kwezilungiso kwicandelo 12 loMthetho 12 ka-1997**

7. Icandelo 12 loMthetho-ngqangi lenziwa izilungiso ngokufakela kwicandelwana (1) emva komhlathi (e) kwale mhlathi ilandelayo:
- “(eA) *izikolo zentsebenziswano*;  
 (eB) *izikolo ezifumana amalizo enkxaso*.”.

**Ukwenziwa kwezilungiso kwicandelo 12A loMthetho 12 ka-1997, ngokufakelwa kwecandelo 8 loMthetho 7 ka-2010**

8. Icandelo 12A loMthetho-ngqangi lenziwa izilungiso ngokufakela endaweni yomhlathi (b) kwecandelwana (6) kwalo mhlathi ulandelayo:
- “(b) *Ibhunga lolawulo lethutyana* liya kwenza izigqibo ngebhujethi nezinto ezingumahluko kwimigaqo yokuziphatha (*codes of conduct*) neefizi zesikolo, kwakunye nangawo nawuphi na umba ofanelekileyo koko kudityaniswa kwezikolo okanye okumiselwe ngumthetho, kude kwenziwe *ibhunga lolawulo elitsha elenziwe [ngokweziqendu 23 no-28 zoMthetho weZikolo zaseMzantsi Afrika]* ngokwendlela *echazwe* kwicandelo 24.”.

**Ukufakelwa kwamacandelo 12C, 12D no-12E kuMthetho 12 ka-1997**

9. La macandelo alandelayo ayafakelwa kuMthetho-ngqangi emva kwecandelo 12B:

**“Izikolo zentsebenziswano”**

- 12C.** (1) *UMphathiswa wePhondo* angachonga *isikolo sikarhulu mente* esichazwe kwicandelo 12(1)(a) ukuya ku(f) ukuba sibhengezwe njengesikolo esilawula *ngurhulumente neziko labucala* ukuba wanelisekile ukuba olo bhengezo luya kunceda ezemfundo kweso sikolo ethathele ingqalelo iingxelo ezimalunga neso sikolo, ezibandakanya iingxelo ngendlela esiqhuba ngayo eso sikolo.
- (2) Kuxhomekeke kwicandelwana (1), u*Mphathiswa wePhondo* angangena kwisivumelwano—
- (a) nomxhasi-ngezimali;
  - (b) ihlakani elisebenzayo; kunye
  - (c) *nebhunga lolawulo* kwisikolo sikarhulumente,

apho *isikolo sikarhulumente* esichazwe kwicandelo 12(1)(a) ukuya ku-(f) siya kubhengezwa njengesikolo esilawula ngurhulumente neziko labucala ngaxeshanye.

(3) *UMphathiswa wePhondo* angenza isivumelwano *nomxhasi* ngezimali nehlakani elisebenzayo lomiselo lesikolo *sentsebenziswano ngurhulumente neziko labucala ngaxeshanye* esitsha ze kumiselwe eso sikolo

(4) Izivumelwano ezixelwe kumacandelo (2) no-(3) ziya kuqulatha eyona miqathango ingundoqo ebekwe nguMphathiswa wePhondo.

(5) Kwakugqitywa ngesivumelwano esixelwe kwicandelwana (2), uMphathiswa wePhondo angathi, ekhuphe isaziso kwiGazethi yePhondo, *abhengeze isikolo sikarhulumente* esichaphazelekayo ukuba sisisikolo *esilawula ngurhulumente neziko labucala ngaxeshanye*.

(6) Kwakugqitywa isivumelwano *nomxhasi ngezimali* nehlakani elisebenzayo elixelwe kwicandelwana (2)(a) no-(b), kwaye nokuba uMphathiswa akakangeni kwisivumelwano *nebhunga lolawulo lesikolo* esixelwe kwicandelwana (2)(c), uMphathiswa wePhondo angathi, ekhuphe isaziso kwiGazethi yePhondo, *abhengeze isikolo sikarhulumente* esichaphazelekayo ukuba sisisikolo *esilawula ngurhulumente neziko labucala ngaxeshanye*.

(7) UMphathiswa wePhondo akanakwenza isibhengezo esixelwe kwicandelwana (5) okanye (6) ngaphandle kokuba uqale wafuna izimvo zoluntu malunga nesibhengezo azimisele ukusenza yaye abe unike ingqwalasela kuzo zonke izimvo azifumeneyo.

(8) Apho kupheliswe isivumelwano esixelwe kwicandelwana (2) okanye (3)—

(a) isikolo esichaphazelekayo siya kuyeka ukuba *sisikolo esilawula ngurhulumente neziko labucala ngaxeshanye*;

(b) uMphathiswa wePhondo uya kuthi ekhuphe isaziso kwiGazethi yePhondo, *abhengeze isikolo njengohlobo lwesikolo sikarhulumente* esichazwe kwicandelo 12(1)(a) ukuya ku-(f); kwaye

(c) amalungu *ebhunga lolawulo* aya kutyunjwa ngendlela echaziweyo.

(9) Ubuninzi bamalungu *kwibhunga lolawulo lesikolo esilawula ngurhulumente* iya kuba ngabameli behlakani elisebenzayo abanamalungelo okuvota: Ukuba ngaba uMphathiswa wePhondo unokuthi ngesizathu esivakalayo, *abhengeze ukuba ibhunga lolawulo lesikolo esithile esilawulwa ngurhulumente neziko labucala ngaxeshanye* liya kuba ne-50% yabameli behlakani elisebenzayo ne-50% yamanye amalungu *elilawula isikolo*.

(10) *Isebe leMfundo leNtshona Koloni* linokwenza iintlawulo kwisikolo *esilawulwa ngurhulumente neziko labucala ngaxeshanye* ngenjongo yokuxhasa ngezimali izithuba ezitsha nokuzalisa ezingenabantu njengoko kuxeliwe kwimodeli yobonelelo ngemisebenzi echazwe kwicandelo 5(2) le-*Employment of Educators Act*.

(11) *Ibhunga lolawulo lesikolo esilawula ngurhulumente neziko labucala* linokuthi, lilandela iLabour Relations Act, 1995 (UMthetho 66 ka-1995), kunye nawuphi na omnye umthetho ochaphazelekayo, liqeshe *ootitshala* nabanye abasebenzi abangezotitshala ukuzalisa izithuba ezixelwe kwicandelwana (10) ngokwenani labasebenzi abafanele ukuqeshwa, elibekwe *libhunga lolawulo*.

### **Izikolo zikarhulumente ezifumana amalizo enkxaso-mali**

**12D.** (1) *UMphathiswa wePhondo* angenza isivumelwano—

(a) *nomxhasi ngezimali*; kunye

(b) *nebhunga lolawulo lesikolo sikarhulumente*,

apho *isikolo sikarhulumente* esichazwe kwicandelo 12(1)(a) ukuya ku-(f) siya kubhengezwa njengesikolo *sikarhulumente esinomntu osixhasa ngezimali* ukuba wanelisekile ukuba olo bhengezo luya kunceda ezemfundo kweso sikolo.

(2) *UMphathiswa wePhondo* angenza isivumelwano *nomxhasi ngezimali* somiselo *lwesikolo sikarhulumente esitsha esinomntu osixhasa ngezimali* ze *asimisele eso sikolo*.

(3) Izivumelwano ezixelwe kumacandelo (1) no-(2) ziya kuqulatha eyona miqathango ingundoqo ebekwe *nguMphathiswa wePhondo*. 5

(4) Kwakugqitywa ngesivumelwano esixelwe kwicandelwana (1), *uMphathiswa wePhondo* angathi, ekhuphe isaziso kwiGazethi yePhondo, abhengeze *isikolo sikarhulumente esichaphazelekayo* ukuba sisisikolo *sikarhulumente esinomntu osixhasa ngezimali*. 10

(5) *UMphathiswa wePhondo* akanakwenza isibhengezo esixelwe kwicandelwana (4) ngaphandle kokuba uqale wafuna izimvo zoluntu malunga nesibhengezo azimisele ukusenza yaye abe unike ingqwalasela kuzo zonke izimvo azifumeneyo. 10

(6) Apho kupheliswe isivumelwano esixelwe kwicandelwana (1) okanye (2)— 15

(a) isikolo esichaphazelekayo siya kuyeka ukuba *sisikolo sikarhulumente esinomntu osixhasa ngezimali*;

(b) *uMphathiswa wePhondo* uya kuthi ekhuphe isaziso kwiGazethi yePhondo, abhengeze *isikolo njengohlobo lwesikolo sikarhulumente* esichazwe kwicandelo 12(1)(a) ukuya ku(f); yaye 20

(c) *ibhunga lolawulo* elitsha liya kutyunjwa ngendlela echaziweyo.

(7) Amalungu *ebhunga lolawulo isikolo lesikolo sikarhulumente esinomntu osixhasa ngezimali*— 25

(a) angabandakanya abameli *bomxhasi ngezimali* abanamalungelo okuvota; yaye

(b) angabandakanya ubuninzi babameli *bomxhasi ngezimali* abanamalungelo okuvota.

### Iziko lenkqubo yongenelelo 30

**12E.** (1) Kuxhomekeke kwizibonelelo ezikhoyo kwiSebe lezeMfundo leNtshona Koloni, *uMphathiswa wePhondo* angamisela iziko lenkqubo yongenelelo *labafundi* ekusafuneka *bahambe isikolo* abafunyenwe benetyala lokuziphatha kakubi kakhulu.

(2) *Iziko longenelelo* liya kubonelela ngeenkqubo zoncedo lwemeko leyo kunye neendlela zongenelelo, nokongeza kwikharithyulam efundiswayo, ukuze kujongwane nokuziphatha kakubi okumandla. 35

(3) *Umfundi* othunyelwe kwiziko lenkqubo yongenelelo uza kunikwa ithuba lokuba ayifumane *imfundo* ngendlela egqitywe *nguMphathiswa wePhondo*.”. 40

### Ukwenziwa kwezilungiso kwicandelo 13 loMthetho 12 ka-1997, njengoko endaweni yalo kungene icandelo 9 loMthetho 7 ka-2010

**10.** Icandelo 13 loMthetho-ngqangi lenziwa izilungiso ngokufakela endaweni yecandelwana (7) eli candelwana lilandelayo:

“(7) Ukuba [**kubonelelwa isikolo sikarhulumente esitsha ngokwecandelo 12 loMthetho weZikolo zaseMzantsi Afrika**] kumiselwa isikolo esitsha, ulawulo lweso *sikolo* luya kuthweswa *iNtloko yeSebe* de kube kusekwe *ibhunga lolawulo [ngokwala] ngokwalo* Mthetho.”. 45

### Ukwenziwa kwezilungiso kwicandelo 14 loMthetho 12 ka-1997

**11.** Icandelo 14 loMthetho-ngqangi lenziwa izilungiso ngokufakela endaweni yecandelwana (1) eli candelwana lilandelayo: 50

“(1) Phantsi ko**Mgaqo-siseko** naphantsi *kwalo Mthetho, isikolo sikarhulumente* sinokubakwipropathi yabucala kuphela ngemvumelwano ephakathi ko**Mphathiswa wePhondo [ngokuvumelana nentloko yezemali]**, kunye nomnini-propathi yabucala.”. 55

**Ukwenziwa kwezilungiso kwicandelo 16 loMthetho 12 ka-1997**

12. Icandelo 16 loMthetho-ngqangi lenziwa izilungiso ngokufakela endaweni yecandelwana (6) eli candelwana lilandelayo:

“(6) Akukho propathi engenakushenxiswa engekho phantsi kukaRhulumente nekumi kuyo *isikolo sikarhulumente* inokutshintsha ubunini bayo ngaphandle kokuba kukho imvumelwano eyenziwe phakathi koMphathiswa wePhondo, ngokuvumelana [*nentloko yezemali*] noMphathiswa wePhondo ojongene nemisebenzi karhulumente, kunye nalowo uya kuba ngumnini wale propathi ingenakushenxiswa.”.

**Ukutshintshwa kwecandelo 18 loMthetho 12 ka-1997**

13. Eli candelo lilandelayo lingena endaweni yecandelo 18 loMthetho-ngqangi:

**“Ukuvalwa kwezikolo zikarhulumente**

18. *UMphathiswa wePhondo* unako nanini na ukuvala isikolo sikarhulumente [okanye *inxalenye yaso*] ngokwesicandelo 33 loMthetho weZikolo zaseMzantsi Afrika.”.

**Ukwenziwa kwezilungiso kwicandelo 20B loMthetho 12 ka-1997, ngokufakelwa kwecandelo 11 loMthetho 7 ka-2010**

14. Icandelo 20B loMthetho-ngqangi lenziwa izilungiso ngokutshintsha kwicandelwana (1) amagama aphambi komhlathi (a) ze kufakelwe la magama alandelayo endaweni yawo:

“Phantsi kwayo nayiphi na imimiselo nemigangatho esebenzayo echatshazelweyo kwicandelo 146(2) loMgaqo-siseko, uMphathiswa wePhondo unokuthi [, **emva kokuthetha-thethana neBhunga lezeMfundo,**] amisele ngommiselo eyona mimiselo nemigangatho isezantsi efanayo—”.

**Ukutshitshiswa kwecandelo 40 loMthetho 12 ka-1997**

15. Icandelo 40 loMthetho-ngqangi liyatshitshiswa.

**Ukwenziwa kwezilungiso kwicandelo 41 loMthetho 12 ka-1997, njengoko endaweni yalo kungene icandelo 15 loMthetho 7 ka-2010**

16. Icandelo 41 loMthetho-ngqangi lenziwa izilungiso ngokufakela endaweni yecandelwana (2) eli candelwana lilandelayo:

“(2) *Ibhunga lolawulo lesikolo sikarhulumente* alinakwenza naluphi na uvavanyo olunxulumene nokwamkelwa *komfundi kwisikolo sikarhulumente* okanye liyalele okanye ligunyazise *inqununu yesikolo* okanye nabani na ongomnye ukuba aqhube olo vavanyo lunjalo, ngaphandle kwakwimeko yokwamkelwa komfundi kwisikolo sikarhulumente esichazwe kwicandelo 20A.”.

**Ukwenziwa kwezilungiso kwicandelo 45 loMthetho 12 ka-1997, njengoko lenziwe izilungiso kwicandelo 18 loMthetho 7 ka-2010**

17. Icandelo 45 loMthetho-ngqangi lenziwa izilungiso—

(a) ngokufakela endaweni yomhlathi (b) wecandelwana (5) kwalo mhlathi ulandelayo:

“(b) linike ingcebiso *iNtloko yeSebe* ukuba—

(i) ithumele *umfundi* kwiziko lenkqubo yongenelelo kangangexesha elichaziweyo elingekho ngaphezu kweenyanga ezili-12 ngexesha ukuba—

(aa) *umfundi kufuneka ahambe isikolo*; yaye

(bb) kufunyenwe imvume *yomzali* yokusiwa kweso sikolo; okanye

(ii) ligxothe *umfundi kwisikolo sikarhulumente.*”;

- (b) ngokufakela endaweni yecandelwana (6) kweli candelwana lilandelayo:  
 “(6) *INtloko yeSebe* iya kuthi kwiintsuku ezili-14 emva kokufumana isindululo esixelwe kwicandelwana (5)(b)—  
 (a) kwimeko yesindululo esixelwe kumqathango wecandelwana (5)(b)(i), igqibe ngokuba *umfundi* angathunyelwa kwiziko lenkqubo yongenelelo na kangangexesha elichaziweyo elingekho ngaphezu kweenyanga ezili-12 ngexesha, ukuba—  
 (i) *umfundi* kufuneka *ahambe isikolo*; yaye  
 (ii) kufunyenwe imvume *yomzali yokusiwa apho*; okanye  
 (b) kwimeko yesindululo esixelwe kumqathango wecandelwana (5)(b)(ii), igqibe ngokuba agxothwe okanye angagxothwa na *umfundi*.”;
- (c) ngokufakela endaweni yecandelwana (7) kweli candelwana lilandelayo:  
 “(7) *Ibhunga lolawulo elilawula isikolo* lingammisa umfundi okanye longeze ixeshwa lokumiswa kwakhe isithuba esingekho ngaphezu kweentsuku ezili-14 zokuhamba isikolo, ngeli lixa kusalindwe isigqibo *seNtloko yeSebe* sokuba agxothwe okanye angagxothwa na umfundi *kwisikolo sikarhulumente*, okanye sokuthumela umfundi kwiziko longenelelo.”;
- (d) nokufakela emva kwecandelwana (14) la macandelwana alandelayo:  
 “(14A) Kwimeko yomfundi ekufuneka *ehambe isikolo*, isohlwayo ekubhekiswe kuso kwicandelwana (14) singabandakanya, ngokwesindululo *sebhunga lolawulo* nangokwemvume *yomzali womfundi*, uthunyelwa kwiziko lenkqubo yongenelelo isithuba esithile esichaziweyo esingekho ngaphezu kweenyanga ezili-12 ngexesha.  
 (14B) *Umfundi* othunyelwe kwiziko lenkqubo yongenelelo ngokwecandelwana (6)(a) okanye (14)(a), iya kuthi emva kokuphela kwesithuba esichaziweyo kuloo macandelo aphinde amkelwe kwakwesaa *sikolo sikarhulumente* ebekuso phambi kokuthunyelwa kwiziko longenelelo.”.

#### Ukufakelwa kwecandelo 45B no-45C kuMthetho 12 ka-1997

18. Eli candelo lilandelayo lifakelwa emva kwecandelo 45A loMthetho-ngqangi:

##### **“Utywala kumasango esikolo okanye kumcimbi wesikolo**

**45B.** (1) Nangona kukho icandelo 45A(1), kodwa kuxhonyekekwe kwicandelwana (2) noMthetho woTywala weNtshona Koloni, 2008 (uMthetho 4 ka-2008), *ibhunga lolawulo isikolo lesikolo sikarhulumente* lingagunyazisa ukusetyenziswa okanye ukuthengiswa kotywala kumasango *esikolo okanye kumcimbi wesikolo*.

(2) Ukuthengiswa okanye ukusetyenziswa kotywala kumasango *esikolo okanye kumcimbi wesikolo* okuxelwe kwicandelwana (1) kufuneka kuthobeke uMthetho woTywala weNtshona Koloni, 2008, kubandakanywa imiqathango ebekwe *libhunga lolawulo isikolo* okanye *yinqununu*.

##### **Imvume yokuba abafundi baphume nesikolo**

**45C.** *Isikolo sikarhulumente* kufuneka sifumane imvume ebhaliweyo yomzali egunyazisa ukuba umfundi azimase inkqubo yesikolo eyenziwa ngaphandle kwamasango esikolo.”.

#### Ukwenziwa kwezilungiso kwicandelo 58 loMthetho 12 ka-1997

19. Icandelo 58 loMthetho-ngqangi lenziwa izilungiso ngokufakela emva komhlathi (a) kwalo mhlathi ulandelayo:

“(aA) othintela okanye oxaba endleleni *yoMhloli oyiNtloko* okanye yomhloli ekwenzeni umsebenzi wakhe ngokwalo Mthetho;”.

**Ukwenziwa kwezilungiso kwicandelo 63 loMthetho 12 ka-1997, njengoko lenziwe izilungiso kwicandelo 26 loMthetho 7 ka-2010**

20. Icandelo 63 loMthetho-ngqangi lenziwa izilungiso—

- (a) kufakelwe la magama alandelayo phambi komhlathi (a):
- “*UMphathiswa wePhondo unokwenza imimiselo [engayi 5*  
*kungangqinelani nawo nawuphi na umthetho, yaye]* apho  
 kusebenzayo oku, phantsi kwayo nayiphi na imimiselo nemigangatho  
 kazwelonke echatshazelwe kwicandelo 146(2) loMgaqo-siseko  
 engokumalunga—”;
- (b) nangokufakela emva komhlathi (cH) wecandelwana (1) kwale mihlathi 10  
 ilandelayo:
- “(cI) inkqubo yolwamkelo, yenkxaso-mali neyeemodeli zolawulo  
*zezikolo ezilawulwa ngurhulumente namaziko abucala 15*  
*ngaxeshanye nezikolo zikarhulumente ezifumana amalizo*  
*enkxaso;*
- (cJ) iinqobo nemigangatho yokunikezwa kwenkxaso-mali kwisikolo  
*esizimeleyo;*
- (cK) ukunyuselwa nokupasiswa kwabafundi kwizikolo zikarhulumente;
- (cL) iinqobo nemigangatho yeziko lenkqubo yongenelelo;
- (cM) ukwamkelwa kwabafundi kwizikolo zikarhulumente; 20
- (cN) ukuthengwa kwezinto neenkonzo ezidibene nezemfundo  
*kwiphondo;”*.

**Isihloko esifutshane nokuQala ukuSebenza koMthetho**

21. Lo Mthetho ubizwa ngokuba nguMthetho weZilungiso weMfundo weZikolo zePhondo leNtshona Koloni, 2016, yaye uya kuqala ukusebenza ngomhla ogqitywe 25  
 yiNkulumbuso ngokuthi yenze isibhengezo kwiGazethi yePhondo.

**IMEMORANDAM YEENJONGO ZOMTHETHO WEZILUNGISO  
OSAYILWAYO WEMFUNDO WEZIKOLO ZEPHONDO  
LENTSHONA KOLONI, 2016**

**1. INTSUKAPHI**

- 1.1 UMphathiswa wePhondo ojongene nezemfundo kwiPhondo uchonge uphononongo lomthetho wemfundo wephondo njengento ebekwe phambili emayenziwe liSebe leMfundo leNtshona Koloni.
- 1.2 UMthetho weZilungiso oSayilwayo weMfundo weZikolo zePhondo leNtshona Koloni, 2016 (uMthetho weZilungiso oSayilwayo), uphakamisa ukwenza izilungiso kumthetho iWestern Cape Provincial School Education Act, 1997 (uMthetho 12 ka-1997) (uMthetho-ngqangi), ukuze uwulungelelanise nezinto eziqhubekayo kwezemfundo, nokuqinisekisa ukuba iinkqubo zokufundisa nezokugqwesa kwezemfundo ziyamiselwa ngendlela ehlonipha, ekhusela, ephakamisa nezalisekisa ilungelo kwimfundo esisiseko echazwe kwicandelo 29(1) loMgaqosiseko weRiphabliki yoMzantsi Afrika, 1996. Lo Mthetho awenzi mqathango womgaqonkqubo okhoyo ngoku wephondo wezemfundo kwimiba ethile.

**2. IINJONGO ZOMTHETHO OSAYILWAYO**

UMthetho weZilungiso oSayilwayo undulula ukwenza izilungiso kuMthetho-ngqangi ukuze wenze imiqathango kwimiba exelwe kumhlathi 1.2 nokwenza izilungiso ezithile ezinobuzaza. Iinjongo eziphambili zoMthetho weZilungiso oSayilwayo kukwenza imiqathango yokuphumeza oku:

- 2.1 ukubeka iliso nokuxhasa ukuhanjiswa kwekharithulam eziklasini;
- 2.2 umiselo lwebhunga elizimeleyo eliya kubizwa ngokuba nguGunyaziwe woHlolo weZikolo zaseNtshona Koloni;
- 2.3 umiselo lwezikolo zentsebenziswano nezikolo ezixhaswa ngamalizo; kunye
- 2.4 nomiselo lweefasilithi zongenetelo loncedo apho abafundi abafunyenwe benetyala lokuziphatha kakubi kakhulu benokuthunyelwa khona.

**3. IZINTO EZIQULETHWE NGULO MTHETHO USAYILWAYO**

- 3.1 **Isoloty 1** libonelela ngokucinywa kwenkcazelo “yemfundo yabadala”, nokufakelwa kwezi nkcazelo zilandelayo: “umvavanyi”, “uMhloli oyiNtloko”, “umanejala wesekeke”, “isikolo zentsebenziswano”, “umlawuli wesithili”, “umntu onikeza amalizo”, “isikolo sikarhulumente esixhaswa ngumntu onikeza amalizo”, “lweefasilithi zongenetelo loncedo”, “ihlakani elisebenzayo”, “uGunyaziwe woHlolo lweZikolo”, “isicwangciso sokuphucula isikolo” kunye “nomcebisi wesifundo”.
- 3.2 **Isoloty 2** lenza izilungiso kwicandelo 3 loMthetho-ngqangi ukuze kucinywe oko kubhekisa kwiSouth African Schools Act, 1996 (uMthetho 84 ka-1996).
- 3.3 **Isoloty 3** lenza izilungiso kwicandelo 4 loMthetho-ngqangi ngokucima umsebenzi woMphathiswa wePhondo kwicandelwana (1)(b) ukubonelela ngemfundo yabadala.
- 3.4 **Isoloty 4** lifakela umqathango obonelela ukuba amagosa athile angenza ze agunyazise ukubekwa kweliso nokuxhaswa kokuhanjiswa kwekharithulam eziklasini.
- 3.5 **Isoloty 5** lenza isilungiso esinobuzaza kwicandelo 11(4)(b) loMthetho-ngqangi.



- 3.6 **Isoloty 6** lifakela imiqathango emitsha yokuvumela uMphathiswa wePhondo ukuba amisele iqumrhu elizimeleyo eliya kwaziwa ngokuba nguGunyaziwe woHlolo lweZikolo zeNtshona Koloni (“uGunyaziwe woHlolo lweZikolo”) nokuqesha uMhloli oyiNtloko nabahloli abaza kusebenza naye. Eli soloty likwabonelela ngenkqubo emayilandelwe ukuqesha nokususa uMhloli oyiNtloko nabahloli abaza kusebenza naye kwisikhundla, imisebenzi yoGunyaziwe woHlolo lweZikolo, ukuhlawulwa komvuzo kaGunyaziwe woHlolo lweZikolo nabahloli ubonelelo lwenkxaso yabo nokupheliswa kwesikhundla soGunyaziwe woHlolo. Kwenziwe nomqathango wokuba uMphathiswa wePhondo enze imigaqo yemiba ethile yokusebenza koGunyaziwe woHlolo lweZikolo.
- 3.7 **Isoloty 7** lifakela umqathango obonelela ukuba uMphathiswa wePhondo angamiselwa isikolo sentebenziswano nesikolo sikarhulumente esixhaswa ngumntu onikeza amalizo.
- 3.8 **Isoloty 8** lenza isilungiso esinobuzaza kwicandelo 12A(6)(b) loMthetho-ngqangi ukutshintsha oko kubhekisa kwiSouth African Schools Act, 1996, ukuze kubhekise kwicandelo elikulo Mthetho-ngqangi.
- 3.9 **Isoloty 9** lenza umqathango wokumiselwa “kwezikolo zentsebenziswano” nokubhengezwa kwezikolo ezikhoyo njengezikolo zentsebenziswano nguMphathiswa wePhondo. Kwenziwe nemiqathango yemiba yolawulo lwezi zikolo nokuxhaswa ngezimali kwezikhundla zootitshala nabanye abasebenzi abangezootitshala abaqeshwe ngamaqumrhu alawula izikolo. Eli soloty likwabonelela ngokumiselwa kwezikolo zikarhulumente ezixhaswa ngumntu onikeza amalizo. nokubhengezwa kwezikolo ezikhoyo njengezikolo ezixhaswa ngamalizo nguMphathiswa wePhondo nemiba yolawulo lwezi zikolo. Ngaphezu koko, eli soloty libonelela ukuba uMphathiswa wePhondo angamiselwa ifasilithe yongenelelo ngoncedo abagxothiweyo ezikolweni okanye abafunyenwe benetyala lokuziphatha kakubi kakhulu.
- 3.10 **Isoloty 10** lenza isilungiso esinobuzaza kwicandelo 13(7) loMthetho-ngqangi ukutshintsha oku kubhekisa kwiSouth African Schools Act, 1996, ukuze kubhekise kuMthetho-ngqangi.
- 3.11 **Isoloty 11** lenza izilungiso kwicandelo 14(1) loMthetho-ngqangi ngokucima umqathango wokuba uMphathiswa wePhondo noMphathiswa wePhondo ojongene nemiba yezezimali ukuba bavumelane xa uMphathiswa wePhondo esenza isivumelwano nomnini wepropati yabucala ukuba abonelele ngesikolo sikarhulumente kuloo propati yabucala kubhekiswa kuyo.
- 3.12 **Isoloty 12** lenza izilungiso kwicandelo 16(6) loMthetho-ngqangi ngokubonelela ukuba uMphathiswa wePhondo noMphathiswa wePhondo ojongene nemisebenzi karhulumente bavumelane xa uMphathiswa wePhondo nomnini wepropati engahambisekiyo bengena kwisivumelwano sokuthathwa komhlaba karhulumente onesikolo sikarhulumente.
- 3.13 **Isoloty 13** lingena endaweni yecandelo 18 loMthetho-ngqangi ngokucima uxanduva oluthile lokuvalwa kwenxalenye yesikolo sikarhulumente.
- 3.14 **Isoloty 14** lenza isilungiso esinobuzaza kwicandelo 20B(1)(a) loMthetho-ngqangi ngokucima umqathango wokuba uMphathiswa wePhondo abonisane neKhansili yeZemfundo xa uMphathiswa wePhondo esenza imigaqo emalunga nezibonelelo ezingundoqo nezinto ezifunekayo kwisikolo sikarhulumente.
- 3.15 **Isoloty 15** libhangisa icandelo 40 loMthetho-ngqangi.
- 3.16 **Isoloty 16** lenza izilungiso kwicandelo 41 loMthetho-ngqangi ukubonelela ngokuba ukuthintelwa kwequmrhu elilawula isikolo ukuba lilawule ukwamkelwa komfundi kwisikolo sikarhulumente kungachaphazeli izikolo zikarhulumente ezixelwe kwicandelo 20A loMthetho-ngqangi.

- 3.17 **Isoloty 17** lenza izilungiso kwicandelo 45 loMthetho-ngqangi ukubonelela ngokuthunyelwa kwabafundi abafunyenwe benetyala lokuziphatha kakubi kakhulu kwifasilithi yongenelelo ngoncedo isithuba esingekho ngaphezulu kweenyanga ezili-12 ngexesha kwiimeko ezithile.
- 3.18 **Isoloty 18** lifakela umqathango wokubonelela iqumrhu elilawula isikolo okanye inqununu yesikolo sikarhulumente ukuba igunyazise ukuthengiswa kotywala kumasango esikolo okanye kumsitho owenziwa esikolweni, kodwa konke oko kufuneka kuthobele uMthetho woTywala weNtshona Koloni ka-2008 (uMthetho 4 ka-2008), kunye nayo nayiphi na imiqathango enokubekwa liziko libhunga lolawulo okanye yinqununu. Eli soloty likwabonelela ukuba *isikolo sikarhulumente* kufuneka sifumane imvume ebhaliweyo yomzali egunyazisa umfundi ukuba azimase into yesikolo eyenzelwa ngaphandle kwamasango esikolo.
- 3.19 **Isoloty 19** lenza izilungiso kwicandelo 58 loMthetho-ngqangi ngokubonelela ngokubekwa kwamanye amatyala amalunga nokuthintela uMhloli oyiNtloko okanye abahloli xa besenza umsebenzi wabo.
- 3.20 **Isoloty 20** lenza izilungiso kwicandelo 63 loMthetho-ngqangi ngokwenza eminye imiqathango evumela uMphathiswa wePhondo ukuba enze imigaqo.
- 3.21 **Isoloty 21** libonelela ngesihloko esifutshane nokuqala kokusebenza koMthetho weZilungiso oSayilwayo.

#### **4. EKUBONISWENE NABO**

Inkulumbuso naMalungu eKhabhinethi yePhondo  
INtloko yeSebe lezeMfundo laseNtshona Koloni  
ISebe leNkulumbuso: Inkonzo zoMthetho  
Amagosa eSebe lezeMfundo laseNtshona Koloni

#### **5. IFUTHE LEZIMALI**

Iindleko zokumisela uMthetho oSayilwayo weZilungiso ziya kuthathwa kwibhajethi yonyaka yeSebe lezeMfundo laseNtshona Koloni.

#### **6. UCHAPHAZELEKO LWEMITHEHO**

UMphathiswa wePhondo ojongene nezemfundo wanelisekile ukuba imiqathango yoMthetho uSayilwayo weZilungiso ihambelana nemithetho yePhondo.



