

NORTH WEST COMMISSIONS ACT**NO. 18 OF 1994**

[ASSENTED TO 16 NOVEMBER, 1994] [DATE OF COMMENCEMENT: 18 NOVEMBER, 1994]

(English text signed by the Premier)

ACT

To make provision for the conferment of certain powers on commissions appointed by the Premier in terms of section 147 (1) (d) of the Constitution of the Republic of South Africa Act, 1993 to investigate matters of public concern; to regulate certain matters pertaining to the investigations and proceedings of commissions; to repeal the Bophuthatswana Commissions Act, 1985; and to provide for incidental matters.

1. Application of Act, and Premier's power to make regulations, in relation to commissions.—(1) Whenever the Premier has, before or after the commencement of this Act, appointed a commission for the purpose of investigating a matter of public concern (hereinafter referred to as a commission) in terms of section 147 (1) (d) of the Constitution of the Republic of South Africa Act, 1993 the provisions of this Act shall, subject to the provisions of subsection (2), apply in relation to such commission.

(2) Whenever a commission has been appointed as contemplated by subsection (1), the Premier may, by proclamation in the *Provincial Gazette*—

(a) declare that the application of this Act in terms of subsection (1) shall, in relation to the commission in question, be subject to such modifications and/or exceptions as he or she may specify in the proclamation;

(b) declare that the provisions of this Act shall not apply in relation to the commission in question, whether wholly or to such extent as may be specified in such proclamation;

(c) make regulations in relation to such commission—

(i) conferring additional powers on the commission;

(ii) providing for the manner of holding or the procedure to be followed at the investigation or for the preservation of secrecy;

(iii) which he or she may deem or expedient to prevent the commission or a member of the commission from being insulted, disparaged or belittled or to prevent the findings of the commission from being prejudiced, influenced or anticipated;

(iv) providing generally for all matters which he or she considers expedient to prescribe for the purposes of the investigation.

(3) Any regulation made under subsection 2 (3) (c) may prescribe penalties for any contravention thereof or failure to comply therewith, by way of—

(a) in the case of a regulation referred to in subparagraph (i), (ii) or (iv) of subsection (2) (c), a fine not exceeding two thousand rand or imprisonment for a period not exceeding six months;

(b) in the case of a regulation referred to in subparagraph (iii), of subsection (2) (c), a fine not

exceeding four thousand two hundred rand or imprisonment for a period not exceeding one year.

(4) Notwithstanding any provisions to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by regulation referred to in subsection (3).

2. Sittings of commissions.—A commission may sit at any place within the Province for the purposes of conducting its investigations and hearing evidence or addresses or of deliberating.

3. Powers of commissions as to witnesses.—(1) For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the Province have the same powers *mutatis mutandis*, as a Provincial Division of the Supreme Court of South Africa to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents, films, recordings, materials, equipment, substances and objects (whether in solid or liquid form) in their possession or custody. or under their control.

(2) A summons for the attendance of a witness or for the production of any books, documents, films, recordings, materials, equipment, substances and objects before a commission shall be signed and issued by the secretary of the commission in a form prescribed by the chairperson of the commission and shall be served *mutatis mutandis* in the same manner as a summons for the attendance of a witness at a criminal trial in a Provincial Division of the Supreme Court of South Africa at the place where the attendance or production is to take place.

(3) If required to do so by the chairperson of the commission a witness shall, before giving evidence or being examined, take an oath or make an affirmation, which oath or affirmation shall be administered by the chairperson of the commission or such official of the commission as the chairperson may designate.

(4) Any person who has been summoned to attend any sitting of a commission as a witness or who has been examined by or given evidence before a commission. shall be entitled to the same witness fees from public funds as if he or she had been summoned to attend or had given evidence at a criminal trial in a Provincial division of the Supreme Court of South Africa held at the place of such sitting, and in connection with the giving of any evidence or the production of anything referred to in subsection (1) before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in that Court, shall *mutatis mutandis* apply.

4. Sittings of commission to be public except in certain circumstances.—The evidence and addresses heard and the examinations conducted by a commission shall be heard and conducted in public: Provided that the chairperson of the commission may, in his or her discretion, exclude from the place where such evidence is to be given or such address is to be delivered or such examination is to be conducted any class of person or all persons whose presence at the hearing of such evidence or address or the conduct of such examination is in his or her opinion not necessary or desirable.

5. Specific offences in relation to members of commissions, and in relation to the interruption, disturbance, hindering or obstruction of commission.—(1) Any person who insults, disparages or belittles any member of a commission or the secretary thereof or wilfully interrupts the proceedings of a commission or otherwise wilfully disturbs the good order of its proceedings, or who wilfully hinders or obstructs a commission in the exercise and performance of its powers, functions and duties, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

(2) Without derogating from the provisions of subsection (1) , the chairperson of a commission may order the person contemplated by that subsection, to be removed and detained in custody until the rising of the commission.

6. Offences by witnesses.—(1) Any person summoned to attend and give evidence before or to be examined by a commission, who, without sufficient cause (the onus of proof whereof shall rest upon him or her)—

(a) fails to attend at the time and place specified in the summons or to remain in attendance until the conclusion of the inquiry or until he or she is excused by the chairperson of the commission from further attendance; or

(b) having attended, refuses to take the oath or to make an affirmation as a witness after he or she has been required by the chairperson of the commission to do so; or

(c) after having taken the oath or having made an affirmation, fails or refuses to answer fully and to the satisfaction of the commission, to the best of his or her knowledge, any question lawfully put to him or her in the course of the inquiry; or

(d) fails to produce any book, document, film, recording, material, equipment, substance or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce in terms of section 3 (2),

shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

(2) Any person who after having taken the oath or having made an affirmation, makes a false statement or gives false evidence before a commission on any matter, knowing such statement or evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

7. Prohibition and offences in regard to matters under investigation by commission.—(1) Until such time as a commission has concluded its investigations, no person shall—

(a) at any meeting open to members of the public or any section thereof;

(b) in any placard, poster, handbill, circular, letter or document directed to members of the public or any section thereof;

(c) in any newspaper, magazine or periodical;

(d) in any broadcast by way of radio or television,

state, express, impart or distribute his or her views, comments or opinions, or those of any other person, organisation or body, in regard to—

(i) any matter pertaining to or relevant in connection with the subject of such investigation;

(ii) the evidence given or placed before the commission, and the reliability of such evidence or the possible or probable effect thereof on the investigations, findings and recommendations of the commission;

(iii) the credibility, attitude or character of any person who has given or placed evidence before the commission or has been or is likely to be called upon or summoned for that purpose or who has requested to give or place evidence before the commission;

(iv) the attitude or character of any member of the commission.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding four thousand two hundred rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Whenever a person who commits an offence in terms of subsection (1), does so in his or her capacity as agent or employee of any other the person (hereinafter referred to as the employer), then, unless the employer proves that—

(a) he or she did not openly permit or approve the act complained of which constitutes such offence; and

(b) he or she took all reasonable measures to prevent an act. of the nature complained of; or

(c) such act did not under any conditions or in any circumstances fall within the scope of the authority or the course of the employment of such agent or employee,

the employer shall be deemed to have performed that act himself and shall be liable to be convicted and sentenced in respect thereof, as contemplated by subsection (2), and for the purposes of paragraph (b) of this subsection, the fact that the employer forbade an act of the nature in question, shall not by itself be regarded as sufficient proof that he or she took all reasonable members to prevent such an act.

(4) The conviction of an agent or employee on account of an offence referred to in subsection (2) shall not preclude the conviction of an employer in terms of subsection (3), and vice versa.

8. Victimisation or threatening of witnesses or prospective witnesses, prohibited and an offence.—(1) No person shall directly or indirectly, whether by himself or herself or through any other person acting on his or her behalf and with his or her authority, and whether verbally or by any act or conduct, victimise or threaten any person on account of—

(a) the fact that the lastmentioned person has given or placed evidence before a commission or has been or is likely to be called upon or summoned for that purpose or has made or requested to make representations to or requested to give or place evidence before the commission; or

(b) the nature or contents of any evidence or representations contemplated by paragraph (a).

(2) For the purposes of subsection (1), "threaten" means the expression of any threat which, should it be executed, will or is likely to endanger the life or physical safety or will or is likely to adversely affect the well-being or patrimony of the addressee, the members of his or her family or those closely associated with him or her or will or is likely to detract from or adversely affect his or her or their reputation or standing in the community.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(4) The provisions of subsection (3) and (4) of section 7 shall *mutatis mutandis* apply in relation to an offence in terms of subsection (3) of this section.

9. Representation of witnesses.—Any person whose conduct is the subject of inquiry by commission, or who is in any way implicated or involved with the matter under investigation, shall be entitled to be represented at the inquiry by an advocate or attorney of the .Supreme Court of South Africa, and any other person who may consider it desirable that he or she should be so represented, may, by leave of the commission, be so represented.

10. Members of commission and its secretary, not civilly or criminally liable.—(1) A member of a commission shall not be civilly or criminally liable in respect of any act performed or anything said or done by him or her in the performance of his or her functions as such a member.

(2) The provisions. of subsection (1) shall *mutatis mutandis* apply in respect of the secretary of a commission in relation to any act performed or anything said or done by him in the performance of his duties as such a secretary.

11. Appointment and proceedings of commission not affected by death, removal from office, etc., of its members or of the Premier.—The appointment of a commission shall not lapse and its proceedings shall not in any way be affected—

(a) by the death, removal from office or resignation of a member of the commission, provided the vacancy arising in the commission is duly filled within fourteen days of the occurrence of such vacancy;

(b) by the death, absence, removal from office or resignation of the Premier who had appointed the commission.

12. Repeal of laws and saving.—(1) Subject to the provisions of subsections (2) and (3), the Commissions Act, 1985 is hereby repealed.

(2) All proclamations and regulations which, immediately prior to the date of commencement of this Act, are of force under any law repealed in terms of subsection (1), shall, notwithstanding such repeal and in so far as they are not inconsistent with the provisions of this Act, continue to be of force as from such date until such time as any such proclamation or regulation is amended, substituted or repealed in terms of this Act or by or in terms of any other law.

(3) In so far as the investigations, inquiries or proceedings of any commission appointed prior to the date of commencement of this Act have not been concluded on such date, any declaration or summons made or signed, issued or served, any power, function and duty exercised and performed and any action taken or thing done, in terms of any law repealed in terms of subsection (1), shall be deemed to have been made, signed, issued, served, exercised, performed, taken or done in terms of the corresponding provisions of this Act.

13. Short title.—This Act shall be called the North West Commissions Act, 1994.