

NORTH-WEST PROVINCIAL SERVICE COMMISSION ACT**NO. 2 OF 1994**

[ASSENTED TO 24 JUNE, 1994] [DATE OF COMMENCEMENT: 24 JUNE, 1994]

(English text signed by the Premier)

ACT

To provide for the establishment of a Provincial Service Commission, the powers and functions of the Commission, the appointment, tenure of office, remuneration and other conditions of service of members of the Commission, the removal from office of, and the vacation of office by those members, the exercising, performance and delegation of the powers and functions of the Commission, the appointment and duties of staff of the Commission and matters connected therewith.

1. Definitions.—In this Act, unless the context indicates otherwise—

"calendar month" means a period extending from a day in one month to the day preceding the day corresponding numerically to that day in the following month, both days inclusive;

"Commission" means the Provincial Service Commission for the Province of North West established by section 2 (1) and, in relation to any power or function conferred upon, assigned to or imposed upon the Commission by or in terms of the Constitution or this Act or any other law, includes any member or members of the Commission or any officer or officers to whom the exercise of such power or the performance of such function has been delegated by the Commission in terms of section 5 (2);

"Constitution" means the Constitution of the Republic of South Africa, 1993;

"employee" means a person referred to in section 7 (1) (c) of the Public Service Act;

"fixed establishment" means the fixed establishment as defined in section 1 (1) of the Public Service Act;

"head of department" means the officer who is the incumbent of a post on the fixed establishment designated by the name set forth in the second column of the First Schedule to the Public Service Act with regard to the Provincial Administration;

"member of the Executive Council" means the Premier or a member of the Executive Council of the Province of North West appointed by the Premier, as contemplated by section 149 (1) of the Constitution;

"month" means a period extending from the first to the last day, both days inclusive, of any one of the twelve months of the year;

"officer" means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post referred to in section 7 (1) (a) of the Public Service Act, and includes a person referred to in section 7 (1) (b) or 7 (3) (c) of that Act;

"Premier" means the Premier of the Province of North West as contemplated by section 145 (1) of the Constitution;

"Province" means the Province of North West as contemplated by section 124 (1) of the Constitution;

"Provincial Administration" means the Administration of the Province of North West encompassing all

departments and offices of the said Province;

"Provincial Legislature" means the legislature authority of the Province of North West contemplated by section 125 (2) of the Constitution;

"Public Service Act" means the Public Service Act, 1994;

"public service" means the public service as contemplated by section 7 of the Public Service Act;

"Public Service Commission" means the Public Service Commission as contemplated by section 209 (1) of the Constitution.

2. Establishment of Provincial Service Commission.—(1) There is hereby established a Provincial Service Commission for the Province of the North West, as contemplated in section 213 of the Constitution, which Commission shall exercise and perform the powers, rights, functions and duties prescribed by this Act or any other law as well as any power or function which the President may assign to it proclamation in the *Gazette*.

(2) The Provincial Service Commission shall, in respect of the exercise and performance of its powers and functions be accountable to the Provincial Legislature.

3. Composition of the Provincial Service Commission, remuneration and tenure of office.—(1) The Provincial Service Commission shall comprise of not fewer than three members, and not more than five appointed by the Premier, one of whom shall be designated as the Chairperson of the Commission by the Premier.

(2) The Premier shall designate one of the remaining members as vice-chairperson of the Commission to act as and to exercise and perform the powers, rights, functions and duties of the chairperson of the Commission in the circumstances contemplated in subsection (7) (a).

(3) Subject to the provisions of subsections (11) and (12), a member of the Provincial Service Commission shall hold office for such period as may be determined by the Premier but which shall not be in excess of three years, and any such member may, on expiration of his term of office, be reappointed.

(4) The Provincial Legislature shall in accordance with a Provincial Law, determine the salaries and conditions of service of members of the Provincial Service Commission: Provided that the salary of a member shall not be reduced during his tenure of office, except by an Act of the Provincial Legislature.

(5) A member of the Provincial Service Commission shall not hold office in any political organization.

(6) A member of the Provincial Service Commission shall not without the permission of the Premier, perform or engage himself to perform any remunerative work outside the duties of his office.

(7) (a) Whenever the office of the chairperson is vacant or the chairperson is absent or incapacitated or refuses or fails to act, the powers, rights, functions and duties of the chairperson conferred and imposed on him or her by or in terms of this Act or any other law or by resolution of the Provincial Service Commission, shall be exercised and performed by the vice-chairperson.

(b) The Premier may, if he or she deems it necessary or expedient, appoint any person or persons who, in his or her opinion are suitable thereto, to act as a member or members of the Provincial Service Commission during any period when any member or members of the Provincial Service Commission is or are absent, and any person so appointed shall during the period of his or her appointment for all purposes be deemed to be a member of the said Commission.

(c) Whenever the offices of both chairperson and vice-chairperson are vacant or both the chairperson and vice-chairperson are absent or incapacitated or refuse or fail to act, the powers, rights, functions and duties conferred and imposed, as contemplated by paragraph (a), on the chairperson and vice-chairperson, shall be exercised and performed by such other member or such acting member of the Provincial Service Commission as may be designated by the Premier.

(8) A member of the Provincial Service Commission shall be qualified to be appointed to the Commission if he or she—

(a) is a South African citizen; and

(b) is a person who has sufficient knowledge of or experience in the administration, management, or rendering of public services.

(9) If an officer or employee is appointed to the Commission—

(a) the period of his or her service as such member shall be reckoned as part of and continuous with his or her employment in the public service for the purposes of leave and pension and any other condition of service, and the provisions of any pension law applicable to him or her as such officer or employee or, after his or her death, to his or her dependents, and which are not in conflict with the provisions of this Act, shall *mutatis mutandis* apply; and

(b) such member shall retain the same right to vacate his or her office and to retire as he or she would have had on the attainment of an age prescribed by the Public Service Act or any other law, had he or she remained in the public service.

(10) A member of the Provincial Service Commission shall not be suspended or removed from office except in accordance with the provisions of subsections (11), (12) and (13).

(11) (a) The Premier may, subject to the provisions of this subsection, remove a member of the Provincial Service Commission from office—

(i) on account of continued ill-health;

(ii) for misconduct;

(iii) for unfitness for duties of his or her office or incapacity to carry them out efficiently; or

(iv) if for reasons other than his or her own unfitness or incapacity his or her removal from office will promote efficiency or economy.

(b) The Premier may require a member of the Commission to absent himself or herself temporarily from his or her duties in order to afford the Premier the opportunity to consider the possible removal of such member from office in terms of paragraph (a).

(c) Every removal of a member of the Commission and the reason therefor shall be submitted by the Premier to the Provincial Legislature within fourteen days after such removal, or, if the Provincial Legislature is not then in session, within fourteen days after the commencement of its next ensuing session.

(12) The Premier may, if a member becomes afflicted with a permanent infirmity of mind or body which disables him or her from the proper discharge of the duties of his or her office—

(a) allow him or her to vacate his or her office; or

(b) remove him or her from office on the ground of incapacity.

(13) If a member referred to in subsection (9)—

(a) is allowed to vacate his or her office in terms of subsection (11) (a) (i), his or her services shall be deemed to have been terminated on the grounds of ill-health and he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to if

his or her services had been terminated on the grounds of ill-health without the member being instrumental in causing his or her own ill-health; or

(b) is allowed to vacate his or her office in terms of subsection (11) (a) (ii), during his or her first period of office, he or she shall be deemed to have vacated his or her office in terms of subsection (11) (a) (iv) or to have been retired in terms of section 15 (4) of the Public Service Act, as the Premier may direct and he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to if he or she had vacated his or her office or had been so retired; or

(c) is allowed to vacate his or her office in terms of subsection (11) (a) (ii), during his or her subsequent period or periods of office, he or she shall be deemed to have vacated his or her office in terms of subsection (11) (a) (iv) and he or she shall be entitled to such pension as contemplated in paragraph (b).

(14) A member of the Commission who—

(a) immediately prior to his or her appointment as such was an officer in the public service;

(b) at the expiry of his or her period of office as a member of the Commission is not reappointed thereto; and

(c) on the expiry date of his or her term of office, has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission,

shall have the right to retire, or may be required by the Premier to retire, and if he or she so retires or is so required to retire, he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to, if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

(15) If a member of the Commission who immediately prior to his or her appointment as such was an officer or employee in the public service, is appointed under an Act of Parliament or a provincial law and with his or her consent to an office to which the provisions of this Act or the Public Service Act do not apply, he or she shall as from the date on which he or she is so appointed, cease to be a member of the Commission, and if at that date he or she has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire, he or she shall, subject to the provisions of section 4 (3) of the Auditor-General Act, 1989 (Act No. 52 of 1989), in the case of the appointment of a member as Auditor-General, be deemed to have retired on that date and he or she shall, subject to the said provisions, be entitled to, such pension as he or she would under the pension law applicable to him or her have been entitled to, had he or she been compelled to retire the public service owing to the abolition of his or her post.

4. Exercise and delegation of powers and functions of the Commission.—(1) (a) A recommendation or direction in respect of any matter made or given by or at least two, if the Commission consists of three members, and three if the Commission consists of more than three members, shall, subject to the provisions of subsection (2), be deemed for the purposes of this Act or any other law to be a recommendation or direction of the Commission.

(b) The Commission shall decide on any matter by written consent of every member who is present to perform his or her duties, or by a majority of votes cast by the members present at a meeting of the Commission.

(c) In the event of an equality of votes on any matter considered by the Commission at a meeting thereof, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(2) (a) The Commission may, subject to the conditions determined by it, delegate any power conferred upon it or any function entrusted to it under this Act or the Public Service Act or any other law, except the powers conferred upon it by this subsection or by section 8 (1) of this Act, or by section 3 (2) (a) and (i) or section 3 (4) (a) (ii), or section 6 (3), or section 11 or section 13 (2) (c) (ii), or section 15 (5) (a), or section 16 (2) (d), or section 17, or section 18, or section 20E, or section 21 of the Public Service Act, to—

- (i) one or more of its members, or
- (ii) an officer or officers.

(b) The Premier may, notwithstanding paragraph (a), on the recommendation of the Commission and by proclamation in the *Provincial Gazette* exclude any power referred to in that paragraph from the restrictive operation of that paragraph, but a power which has been thus excluded may be delegated only to a member or members of the Commission.

(3) The Commission may designate one or more of its members or an officer or officers to conduct an inquiry into any matter in respect of which in terms of this Act or the Public Service Act or any other law it may make a recommendation or give a direction.

(4) Any delegation or designation made by the Commission in terms of subsection (2) or (3), may at any time be amended or revoked by the Commission.

5. Powers and functions of the Commission.—(1) The Commission may exercise powers and perform the functions expressly mentioned in this Act and in the Public Service Act, as well as the powers and functions entrusted to it under a provision of this Act or the Public Service Act or under any other law.

(2) (a) When so requested, the Commission may advise the Premier or a member of the Executive Council in regard to any matter relating to Public Service in the province or in relation to the employment, remuneration or other conditions of service of functionaries employed by any institution or body in the Province which receives fund wholly or partly appropriated by Parliament or a provincial legislature.

(b) If a matter referred to in paragraph (a) has been referred to the Commission for advice in terms of that paragraph, the Commission, or the officer or officers in the office of the Commission designated by the Commission for this purpose, shall have the power to inspect all such official documents and records and to obtain all such information from the functionary or the head of the department concerned, or of the executive head of the institution or body concerned, as in its opinion may be necessary to inspect or to obtain in order to advise the Premier or the relevant member of the Executive Council.

(3) The Commission shall exercise such other powers and perform such other functions of the Public Service Commission assigned to it on recommendation of the Public Service Commission, by the President by proclamation in the *Gazette*, with the approval of the Premier.

6. Commission's Power or inquiry.—(1) The Commission may—

(a) summon any person who in the opinion of the Commission may be able to give material information concerning the subject of any inquiry held by it in terms of section 5 (3), or who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing upon the subject of the inquiry, to appear before it at the time and place specified in the summons, to be interrogated or to produce that book, document or object, and the Commission may keep any book, document or object thus produced, for the duration of the inquiry;

(b) call and administer an oath to or accept an affirmation, from any person present at the inquiry who was or might have been summoned in terms of paragraph (a), and may interrogate him or her and require him or her to produce any book, document or object in his or her possession or custody or under his or her control which the Commission suspects or believes to have a bearing upon the subject of the inquiry.

(2) Summons of a person to appear before the Commission or to produce a book, document or object, shall be in the form which has been prescribed by the Commission, shall be signed by the chairperson of the Commission or by the person or one of the persons designated under section 4 (3), and shall be served in the manner determined by the Commission from time to time.

(3) (a) If any person, having been summoned under subsection (1) (a), fails without sufficient cause, to attend at the time

and place specified in the summons, or to remain in attendance until excused by the Commission from further attendance, or if any person called in terms of subsection (1) (b), refuses to be sworn or to affirm as a witness, or fails without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her, or to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce, he or she shall, subject to the provisions of paragraph (b), be guilty of an offence and liable upon conviction to a fine not exceeding six hundred rand.

(b) In connection with the interrogation of any such person by or the production of such book, document or object before the Commission, the law relating to privilege, as applicable to a witness summoned to give evidence or to produce any book, document or object before a court of law, shall apply.

(4) Any person who, after having been sworn or after having affirmed a witness, gives a false answer to any question lawfully put to him or her by the Commission, or makes a false statement on any matter, knowing that answer or statement to be false, shall be guilty of an offence and liable upon conviction to the punishment prescribed by law for the crime of perjury.

(5) Any person who hinders or prevents any other person from obeying any summons issued under subsection (1) (a), or from giving any evidence or producing any book, document or object which he or she may be required to give or produce, shall be guilty of an offence and liable upon conviction to a fine not exceeding six hundred rand.

(6) Any person who holds an inquiry in pursuance of a delegation under section 4 (2) (a) (i) or holds an inquiry in pursuance of a designation or an appointment under section 4 (3) of this Act, or section 17 (1), or section 18 (1), or section 20 (3), or section 21 (1) of the Public Service Act, shall for the purposes of the inquiry have all the powers conferred upon the Commission by this section, and in the application of the provisions of this section to any such inquiry every reference therein to the Commission shall be construed as including a reference to such person.

7. Staff of the Commission.—Subject to the provisions of this Act and of the Public Service Act, the Commission shall in terms of the last-mentioned Act, be assisted by as many other officers and employees as may from time to time be necessary to enable the Commission effectively to exercise its powers and to perform its functions.

(2) The officers and employees referred to in subsection (1) shall observe such directions and carry out such duties as may from time to time be given to or imposed upon him or her by the Commission.

8. Reports of the Commission.—(1) The Commission shall as soon as possible after 31 December in each year frame a report on matters which have been dealt with by the Commission during the year that ended on that day, and also from time to time such special reports as may to the Commission seem desirable.

(2) Every report framed by the Commission in pursuance of subsection (1), shall be submitted to the Premier and shall be submitted to the Provincial Legislature within seven days after the Premier has received it if the Provincial Legislature is then in session, or if the Provincial Legislature is not then in session, within seven days after the commencement of its next ensuing session.

9. Limitation of legal proceedings.—(1) No legal proceedings of whatever nature shall be brought against the State or the Province or any body or person in respect of anything done or in respect of any failure to do anything which should have been done in terms of this Act, unless the legal proceedings are brought before the expiry of a period of twelve calendar months after the date upon which the claimant had knowledge, or after the date on which the claimant might reasonably have been expected to have knowledge of the act or omission alleged, whichever is the earlier date.

(2) (a) No such legal proceedings shall be instituted before the expiry of at least one calendar month after written notice as to the intention to bring such proceedings has been served on the defendant.

(b) Such notice shall contain full particulars of the alleged act or omission.

10. Transitional arrangements.—(1) The transitional arrangements set out in section 238 of the Constitution shall apply.

11. Short title.—This Act shall be called the North West Provincial Service Commission Act, 1994.

