



ORANGE FREE STATE PROVINCE

PROVINCIAL GAZETTE

PROVINSIALE KOERANT

VAN DIE PROVINSIE ORANJE-VRYSTAAT

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OFFICE OF THE PREMIER

KANTOOR VAN DIE PREMIER

No. 4

18 August 1994

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It is hereby notified that the Premier has assentend to the following Act which is hereby published for general information:-

No. 3 of 1994: Provincial Service Commission Act, 1994

Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-

No. 3 van 1994: Wet op die Provinsiale Dienskommissie, 1994

ACT

To provide for the establishment of a Provincial Service Commission, 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, measures to ensure the independence and impartiality of the Commission, and matters connected therewith. 5

*(Afrikaans text signed by the Premier.)
(Assented to 17 August 1994)* 10

BE IT ENACTED by the provincial legislature of the Orange Free State Province, as follows:- 15

Definitions

1. In this Act, unless the context otherwise indicates - 20

"Commission" means the Provincial Service Commission for the Province 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, 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 213(1)(c) of the Constitution; 25

"Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993); 30

"department" means a department of the Province mentioned in the first column of the Schedule; 35

"employee" means a person referred to in section 8(1)(c) of the Public Service Act;

"head of department" means an officer bearing the designation mentioned in the second column of the Schedule opposite the name of the relevant department; 40

"officer" means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post referred to in section 8(1)(a) of the Public Service Act, and includes a person referred to in section 8(1)(b) or 8(3)(c) of that Act; 45

"Provincial Administration" means the Administration of the Province encompassing all departments and offices of the Province; 50

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

"public service" means the public service as contemplated in section 7 of the Public Service Act. 56

Establishment of Provincial Service Commission

2. (1) There shall be a Provincial Service Commission for the Province which shall have the powers and functions entrusted to it by or in terms of the Constitution. 60

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

Constitution of Commission

3. The Premier shall, subject to the provisions of section 211(1)(a) read with section 213(2) of the Constitution, by proclamation in the Provincial Gazette, from time to time determine the number of members of the Commission.

Remuneration and tenure of office of members

4. (1) Subject to the provisions of subsections (7) and (8), a member of the 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.

(2) The Premier shall determine the salaries and conditions of service of members of the Commission.

(3) A member of the Commission shall not, without the prior written permission of the Premier, perform or engage himself or herself to perform any remunerative work outside the duties of his office.

(4) (a) Whenever the office of the chairperson, appointed in terms section 211(1)(a) read with section 213(2) of the Constitution, is vacant or the chairperson is absent or incapacitated or refuses or fails to act, the powers, rights, functions and duties of the chairperson shall be exercised and performed by the vice-chairperson, elected from its members by the Commission.

(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 Commission during any period when any member or members of the Commission are or may be 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 of the chairperson and vice-chairperson shall be exercised and performed by such other member or such acting member or members of the Commission as may be designated by the Premier.

(5) 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 dependants, and which are not in conflict with the provisions of this Act, shall mutatis mutandis continue to 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 or on any later date on which he or she desires to do so, had he or she remained in the public service. 5
- (6) A member of the Commission shall not be suspended or removed from office except in accordance with the provisions of subsections (7), (8) and (9) or section 9(2)(b). 5
- (7) 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 section 211(1)(e), read with section 213(2) of the Constitution. 10
- (8) 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 - 15
- (a) allow him or her to vacate his or her office; or 20
- (b) remove him or her from office on the ground of incapacity. 20
- (9) If a member referred to in subsection (5) - 25
- (a) is allowed to vacate his or her office on account of continued ill-health, it shall be deemed that his or her services 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; 30
- (b) is removed from his or her office on account of misconduct during his or her first period of office, or for reasons other than his or her own unfitness or incapacity, or if his or her removal from office will promote efficiency or economy, he or she shall be deemed to have been retired in terms of section 16(4) of the Public Service Act, 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 been so retired; or 35
- (c) is removed from his or her office on account of misconduct during his or her subsequent period of office, he or she shall be deemed to have vacated his or her office for reasons other than his or her own unfitness or incapacity or if his or her removal from office will promote efficiency or economy, he or she shall be entitled to such pension as contemplated in paragraph (b). 45
- (10) A member of the Commission who - 55
- (a) immediately prior to his or her appointment as such was an officer in the public service; 55
- (b) at the expiry of his or her period of office as a member of the Commission is not reappointed thereto; and 60
- (c) at such expiry date 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, 65

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.

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(11) 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 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 from the public service owing to the abolition of his or her post.

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Exercise of powers and functions of the Commission

5. (1) (a) A recommendation or direction in respect of any matter made or given by 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 to be a recommendation or direction of the Commission.

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(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.

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(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.

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(2) The Commission shall not delegate the power conferred upon it by section 210(7) read with section 213(2) of the Constitution.

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(3) Any delegation or authorisation made by the Commission in terms of section 213(1)(c) of the Constitution, may at any time be amended or revoked by the Commission.

Commission's power of inquiry

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6. When the Commission conducts an inquiry into any matter in respect of which it may make recommendations or give directions in terms of section 213(1) of the Constitution, it shall have the same powers as to witnesses as a commission appointed in terms of section 2 of the Commission's Ordinance, 1954 (Ordinance No 5 of 1954), has in terms of section 3 of that Ordinance and sections 5 and 6 of that Ordinance shall *mutatis mutandis* apply to an inquiry by the Commission.

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Staff of the Commission

7. (1) 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 a chief official and 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. 5

(2) The chief official 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. 10

Departments of the Province and heads of departments

8. (1) For the purposes of the administration of the Province there shall be the departments of the Province mentioned in the first column of the Schedule. 15

(2) Each department shall have a head of department who as an officer shall be the incumbent of the post on the fixed establishment of the Province bearing the designation mentioned in the second column of the Schedule opposite the name of the relevant department, or the officer who is acting in that post. 20

Measures to ensure the independence and impartiality of the Commission 25

9. (1) Any public servant employed by the Provincial Administration who feels aggrieved by a recommendation or direction of the Commission on the grounds that the Commission did not act independently or impartially when the recommendation was made or the direction was given about which he or she feels aggrieved, may apply to the Supreme Court to set aside such recommendation or direction. 30

(2) When the Court decides the matter, the Court may, over and above any other competent order- 35

(a) replace the recommendation or direction with any other recommendation or direction the Court may deem fair under the circumstances; 40

(b) direct the Premier to remove one or all of the members of the Commission from office; or 45

(c) order that the recommendation or direction be referred back to the Commission for reconsideration after any member or members of the Commission have been removed from office as contemplated in paragraph (b). 50

Short title

10. This Act shall be called the Provincial Service Commission Act, 1994. 55

Schedule**DEPARTMENTS AND HEADS OF DEPARTMENTS**

COLUMN I	COLUMN II
Department of Agriculture and Environment Affairs	Head : Agriculture and Environment Affairs
Department of Economic Affairs	Head : Economic Affairs
Department of Education and Culture	Head : Education and Culture
Department of Finance and Expenditure	Head : Finance and Expenditure
Department of Health and Welfare	Head : Health and Welfare
Department of Housing	Head : Housing
Department of Local Government Management	Head : Local Government Management
Department of Police Services	Head : Police Services
Department of Public Transport	Head : Public Transport
Department of Public Works and Roads	Head : Public Works and Roads
Office of the Premier	Head : Office of the Premier