

GENERAL NOTICE

NOTICE 244 OF 2001

It is hereby notified that the Premier has assented to the following Act which is hereby Published for general Information.

Act No. 5 of 2001: N.W.P. Council on Aids Act, 2001.

PROVINCIAL COUNCIL ON AIDS ACT

To provide for the establishment of Provincial Council on AIDS for purposes of addressing the HIV/AIDS epidemic in the Province; to enable the Council to manage and to co-ordinate HIV/AIDS programmes; and to provide for incidental matters. (English text signed by the Premier on 23rd October 2001)

PREAMBLE

Whereas the prevalence of HIV/AIDS epidemic in the North West Province and the whole country is a very serious issue;

Whereas the HIV/AIDS epidemic poses a serious danger to the fabric and well being of the populace.

Whereas numerous strategies and campaigns have been embarked upon to curb the epidemic.

Whereas it is necessary to mobilize all resources in the whole of the Province to combat the epidemic.

AND WHEREAS it is expedient to pass legislation for the establishment of a Provincial Council on AIDS.

NOW THEREFORE BE IT ENACTED by the Legislature of the North West Province as follows;

1 Definitions: In this Act, the following shall have the meanings assigned to them;

"AIDS" means Acquired immune Deficiency Syndrome

"Committee" means the Management Committee appointed in terms of Section 10 of this Act.

"Chief Executive Officer" means an officer appointed in terms of Section 15(1)(a) of this Act

"Council" or "PCA" means the North West Provincial Council on AIDS established In terms of section 2 of this Act.

"District AIDS Council" means council established in terms of Section 18 of this Act

"Government" means the government of the North West Province

"House of Traditional Leaders" means the House of Traditional Leaders established in terms of the House of Traditional Leaders for the Province of the North West Act, 1994 (Act 12 of 1994).

"HIV" means the I lumen Immunodeficiency virus

"Legislature" means the North West Legislature established in terms of

Section 104 of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996).

"Local AIDS Council" means Council established in terms of Section 18 of this Act.

"Organised Local Government" means an association established in terms of the Local Government: Municipal Structures Act, 1998 (Act 108 of 1998).

"PFAMA" means the Public Finance Management Act, 1999 (Act 1 of 1999) as amended.

"Premier" means the premier of North West Province.

"Province" means the North West Province established in terms of Section 103(1) of the Constitution Act, 1996 (Act 108 of 1996)

"STD' s" means Sexually Transmitted Infections; and STD' s shall have corresponding meaning

"This Act" includes any regulation made under this Act.

"Youth Commission" means the North West Youth Commission constituted in terms of the North West Youth Commission Act, 1994 (Act 14 of 1994) as amended.

## 2. Establishment of the Provincial Council on AIDS (PCA)

(1) There is hereby established a juristic person to be known as the North West Provincial Council on Aids (PCA) which shall under that name be a body corporate, and for the purpose of exercising and performing its powers, functions and duties under this Act, be capable in law to sue and to be sued; to acquire and hold and alienate movable and immovable property: and to performing any other acts and doing such other things as bodies corporate may by law do and perform, subject to the provisions of this Act.

## 3. Functions of the Council

(1) The functions of the Council shall be to:

- (a) advise the Government on HIV/AIDS/STD' s and related matters;
- (b) guide and monitor activities of District and local AIDS Council;
- (c) monitor and coordinate implementation programmes and strategies of the Provincial multi-sectoral response to the epidemic;
- (d) provide overall guidance on the implementation of the National HIV/AIDS/STIs strategic plan and other related matters;
- (e) ensure periodic review of the Provinces HIV/ AIDS/STIs strategic plan and other related matters;
- (f) mobilise resources for the implementation of HIV/AIDS programmes and strategies in the Province at community level; and
- (g) recommend appropriate research around HIV/AIDS

(2) In carrying out the objectives set out in (1) above, the PCA shall, where reasonably practically possible, involve all sectors of society in the:

- (a) implementation of response programmes and strategies for the prevention of HIV/AIDS; and
- (b) minimising of the impact of HIV/AIDS on me Province.

#### 4. Composition of the Council

(1) (a) The Council shall consist of not less than thirty (30) and not more than forty (40) persons who shall be appointed by the Premier on such terms and conditions as shall be decided by him or her.

(b) One official from each of the provincial departments of a rank not lower than a Deputy Director and designated by the member of me Executive Council responsible for that Department, shall be a member.

(c) The following persons shall be ex-officio members of the council:

- (i) the chairperson of the Youth Commission;
- (ii) a representative from, organized local government;
- (iii) a representative of the House of Traditional Leaders;
- (iv) a representative from each of the political parties represented in the legislature; and
- (v) the Chief Executive Officer

(d) a representative from each of the category of members of the community as shall be determined by the Premier.

(2) The Premier shall cause the name of every person appointed as a member of the Council and the period for which he or she has been appointed to serve in the Council to be published in the Provincial Government Gazette, and/or any electronic or print media that are widely available in the Province.

#### 5. Appointment of members of the Council

(1) Representatives mentioned in section 4(1)(d) shall be appointed by the Premier from nominees made by members of the category determined by the Premier in terms of that section.

(2) The Premier shall, by notice in the provincial gazette and/or any electronic and print media that are widely available in the Province, as soon as reasonably practically possible after:

- (a) the commencement of this Act;
- (b) the expiry of the term of office of me representatives appointed in terms of section 4(1)(a); or
- (c) one or more vacancies in the Council have arisen; call for the nominations of persons for the purpose of appointing a member or members, as the case may be, to the Council.

(3) Any notice in terms of section 5(2) shall:

- (a) state the number of persons to be appointed, and the maximum number of nominations to be received from persons entitled to make the nominations;
- (b) determine the qualifications, conditions, procedures and form of

any nominations;

(c) specify the name and address of any person entitled to receive nominations on behalf of the Premier; and

(d) state the last day upon which nominations are to be received

#### 6. Disqualification of membership and vacation of office

(1) No person shall be appointed as a member of the Council if he or she;

(a) is an unrehabilitated insolvent.

(b) is mentally incompetent

(c) does not permanently reside in the Province.

(d) has been convicted of any criminal offence, and has been sentenced for imprisonment term of not less than twelve months without the option of a fine during the last three years.

(2) Notwithstanding the provisions of section 6(1)(c), the Premier may allow any person to become a member of the Council if in his or her opinion there exists good and sufficient reasons for doing so.

(3) A member of the Council shall vacate his or her office if he or she,

(a) becomes subject to any disqualification in terms of sub-section (1)

(b) by written notice resigns as a member.

(c) is discharged from his or her office by the Premier in terms of Section 7(2), or

(d) is designated as a member of national parliament, provincial legislature or local government.

#### 7. Termination of membership

(1) A member shall vacate his or her office if he or she ceases to hold any qualification for his appointment, or is removed from office in terms of subsection (2)

(2) The Premier may, after consultation with the Council, terminate the membership of any member of the Council if in his or her opinion there exists good and sufficient reasons for doing so.

(3) If the office of any member becomes vacant before the expiry of his or her term of office, the vacancy so arising shall be filled by the appointment, by the Premier, of a member, for the unexpired period of the vacating member's term of office.

#### B. Term of office of members of the Council

(1) The term of office for a member of the Council appointed in terms of section 4(1)(d) shall be two years subject to possible extension for a further term.

(2) Any extension of tenure of office in terms of sub-section (1) shall be made by the Premier, if in his or her opinion there exist good and sufficient reasons for doing so, for such period as is necessary to ensure

continuity and efficacy of the Council.

#### 9. Chairperson of the Council

(1) The Premier shall, from amongst the members appointed in terms of section 4(1), designate one of them as chairperson of the Council.

(2) The chairperson may delegate in writing any of his or her functions to any member of the Management Committee of the Council.

(3) The chairperson shall ensure that the Council prepares and submits a quarterly report to the Premier on all its activities.

#### 10. Management Committee of the Council

(1) The Premier shall, within thirty (30) days from the first meeting of the Council, and on the recommendations of the Council, determine the number of persons who shall constitute the Management Committee of the Council, which number shall not be less than five and not more than ten.

(2) The Committee envisaged Under sub-section (1) shall consist, amongst others, of a member from organized local government, a senior official from provincial Department of Health and a medical practitioner dealing with the clinical management of HIV/AIDS cases.

(3) The Chief Executive Officer and the Chairperson of the Council shall be members of the Management Committee.

(4) The Chairperson of the Council shall also serve as chairperson of the Management Committee.

(5) The members of the Management Committee, other than any member who is in the full-time service of the State shall, in connection with the performance of their functions and duties as members of the Management Committee, be paid such remuneration and allowances and be entitled to such perquisites as the Premier, in consultation with the Member of the Executive Council responsible for Finance, may from time to time determine: Provided that a member shall be compensated on a basis determined by the Premier for all travelling and other expenses necessarily incurred in connection with the business of the Council and meetings of the Committee.

(6) The Premier shall, after consultation with the Council, determine the conditions of service of the appointed members of the Management Committee

(7) The Management Committee shall:

(a) determine its own procedures and frequency of the meetings;

(b) guide the Chief Executive Officer in carrying out his or her duties as set out in section 16.

#### 11. Meetings of the Council

(1) The meetings of the Council shall be held quarterly and at such place and time as shall be determined by the Management Committee.

(2) Notwithstanding the provisions of subsection (1), the first meeting of the Council shall be held within sixty (60) days after the passing of this Act and at such place and time as shall be determined by the Premier.

(3) (a) The chairperson may:

- (i) at any time; and
- (ii) upon written request of two-thirds (2/3) majority of the members of the Council call for an extraordinary meeting of the Council, if in his or her opinion it is justified by the prevailing circumstances to do so; Provided that he or she obtains a written Consent of the Premier to convene such a meeting.

(4) The Chairperson shall prescribe the procedure of meetings of the Council.

(5) The quorum for any meeting of the Council shall be fifty percent plus one (50 % +1) of the number of the serving members: Provided however that for any resolution or decision to be taken, simple majority (fifty percent plus one) of the members of the Council present at the meeting shall suffice.

#### 12. Committees of the Council and co-option of persons

(1) The Council may, with the consent of the Premier, divide itself into as many committees as it deems necessary for the execution of its functions in terms of this Act

(2) If the Council is of the opinion that a particular person or persons can assist the Council in the consideration of a particular matter. the Council may co-opt that person or persons for such a purpose.

(3) A co-opted person or persons shall not be entitled to vote at any meetings of the Council.

(4) Any committee constituted in terms of sub-section (1) shall:

(a) be convened and chaired by a person appointed by the Council;

(b) determine frequency of its meetings in consultation with the Chairperson of the Council;

(c) have at its meetings as a quorum, half the total number of its members: and

(d) make recommendations and proposals which shall be submitted for consideration and adoption by the Council as its resolutions

#### 13 Patronage of the Council

(1) The Premier and the Member of the Executive Council responsible for Health matters shall be patrons of the Council and the Premier may further, after consultation with the Council, designate goodwill ambassadors for the Council at provincial level.

(2) The chairpersons of the District Councils and Executive Mayors and Mayors shall be patrons at district and local government levels

(3) The patrons shall attend the meetings of the Council at its invitation and may address the Council but shall not participate in the deliberations, nor he entitled to vote at any such meetings.

#### 14. Allowances of members of the Council

A member of the Council who is not a member by virtue of his or her ex officio capacity shall be entitled to such allowances for traveling and subsistence expenses incurred by him or her in the performance of his or

her functions and duties under this Act, as the Premier In consultation with the Member of the Executive Council responsible for Finance, may from time to time determine.

#### 15. Staff of the Council

(1) The Council shall, in the exercise of its powers and performance of its functions be assisted by:

- (a) the Chief Executive Officer who shall be appointed by the Premier, on the basis of his or her professional, technical, special or other qualifications, expertise or experience, and on such terms and such conditions as the Premier, after consultation with the Council, may determine;
- (b) such other persons as the Management Committee, in consultation with the Premier, shall deem required for the carrying out of the functions and duties in terms of the provisions of this Act, and
- (c) officers or employees of State placed at the disposal of the Council in accordance with section 15(3) (a) of the Public Service Act 1994 (Act 103 of 1994) as amended.

(2) The staff of the Council who are not in the full-time service of the State shall receive such remuneration, allowance, and other employment benefits out of the funds designated for the Council, and shall be appointed on such terms and conditions and for such periods as the Council may determine.

#### 16 Functions of the Chief Executive Officer

The functions of the Chief Executive Officer shall be to

- (a) manage the funds made available to the Council in pursuance of the objects of this Act.
- (b) raise funds for the Council.
- (c) provide secretarial services to the Council
- (d) assist all sectors in addressing HIV/AIDS issues.
- (e) perform all other functions that may be delegated to him or her by the Council and the Management Committee.
- (f) prepare financial and other reports of the Council.

#### 17. Funds of the Council

(1) The funds of the Council shall consist of moneys transferred from the Office of the Premier and which funds have been budgeted for the achievement of the objects of this Act.

(2) The Council shall, for the purposes of the transfers contemplated in subsection (1), submit to the Accounting Officer of the Office of the Premier, in a prescribed format, a breakdown of the anticipated income and expenditure of the Council for the ensuing financial year.

(3) The Chief Executive Officer shall be the Accounting Officer for the Council and shall perform accounting responsibilities in accordance with the provisions of the PFMA.

(4) Notwithstanding the provisions of sub-section (3), the Council

shall:

- (a) cause to be kept' full proper records of financial affairs in accordance with the generally accepted accounting standards and norms;
  - (b) prepare financial statements for each financial year in accordance with the generally recognized accounting practices;
  - (c) submit an annual report of its activities during that financial year; and
  - (d) cause to be opened with a registered financial institution, an account for deposit of all moneys received in teens of the provisions of this section: Provided that any money which at the close of the Council's financial year stands to the credit of the Council, shall be carried forward to the next financial year
- (5) The Council may accept any moneys or goods donated to the Council by any source and shall deposit those moneys into the banking account of the council
- (6) The Council shall cause to be kept in a register, a record of all non-pecuniary donations and pledges made to the Council.
- (7) The financial year of the Council shall begin on the 1st day April of any year and on the last day of March the following year.

#### 18. District and Local AIDS Councils

(1) The Council may establish District and Local AIDS Councils, whose borders shall be in accordance with the demarcations made in terms of the provisions of the Local Government: Municipal Demarcation Act 1998 (Act 27 of 1998).

(2) District and Local AIDS Councils shall:

- (a) be constituted by such members as may be determined by the Council from time to time.
- (b) carry out activities as may be delegated to them by the Council, and
- (c) have a term of office as may be determined by the Council.

#### 19. Sub-Committees of the District and Local AIDS Councils.

The District and Local AIDS Councils may establish any ad hoc committees that they deem necessary for the execution of duties and functions entrusted to them by the Council in terms of me provisions of this Act.

#### 20. Resolutions and Quorum of District and Local AIDS Councils

The District and Local AIDS Councils shall unless determined otherwise by the Council:

- (1) have at its meetings a quorum of hall the total number of its members; and
- (2) adopt each resolution by simple majority.

#### 21. Annual Report

(1) The Premier shall table a report of the activities of the Council for the previous financial year, at the legislature before the end of September of each year.

(2) Notwithstanding the provisions of sub-sector (1), the Standing Committee of the Legislature may call upon the Chief Executive Officer of the Council or the Accounting Officer of the Department to report on such matters as it may deem necessary.

## 22. Regulations

The Premier may, by notice in the Provincial gazette or any other appropriate print media, make regulations relating to any matter which is required or permitted by this Act.

## 23. Dissolution of the Council

(1) The Council shall be dissolved by a legislative Act.

(2) In the event of the liquidation of the Council, its assets and liabilities, if any, shall accrue to the State.

## 24 Savings

Any act done or performed by the Council since its inception, which was done in pursuance of the objectives of this Act before coming into operation of this Act, shall be deemed to have been done in terms of the provisions of this Act:

Provided that the Council shall, at the meeting referred to in section 11(2), have ratified such act.

## 25. Short title and commencement

1. This Act shall be called the North West Provincial Council on Aids Act, 2001, and comes into operation on a date to be fixed by the Premier in the Provincial Gazette.

2. The Premier may fix different dates for different sections of this Act to come into operation.