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No. **19406**

OFFICE OF THE PRESIDENT

No. 1386. 28 October 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 82 of 1998: Executive Members' Ethics Act, 1998

KANTOOR VAN **DIE PRESIDENT**

No. 1386. 28 Oktober 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 82 van 1998: Wet op die Etiek van Lede van die Uitvoerende Gesag, 1998.

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(English text signed by the President.)
(Assented to 20 October 1998.)

ACT

To provide for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils; and to provide for matters connected therewith.

BE IT **ENACTED** by the Parliament of the Republic of South Africa. as follows:—

Definitions

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

(i) "Cabinet" means the Cabinet referred to in section 91(1) of the Constitution; (ii)

(ii) "Cabinet member" includes the President: (iii)

(iii) "code of ethics" means the code of ethics contemplated in section 2; (i)

(iv) "Executive Council" means a provincial Executive Council contemplated in section 132 of the Constitution: (vii)

(v) "government'", in relation to—

(a) a Cabinet member or Deputy Minister, means the national government: and

(b) an **MEC,** means the provincial government of which that MEC is a member: (vi)

(vi) "MEC'" means a member of an Executive Council. and includes the Premier: (iv)

(vii) "Public Protector" means the Public Protector contemplated in section 181 of the Constitution. (v)

Code of ethics

2. (1) The President must. after consultation with Parliament, by proclamation in the *Gazette*, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECS must comply in performing their official responsibilities.

(2) The code of ethics must—

(a) include provisions requiring Cabinet members, Deputy Ministers and MECs—

(i) at all times to act in good faith and in the best interest of good governance: and

(ii) to meet all the obligations imposed on them by law; and

(b) include provisions prohibiting Cabinet members, Deputy Ministers and MECS from—

(i) undertaking any other paid work:

(ii) acting in a way that is inconsistent with their office;

(iii) exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;

(iv) using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person: and

(v) acting in a way that may compromise the credibility or integrity of their office or of the government.

(c) require Cabinet members and Deputy Ministers to disclose to an official in the office of the President designated for this purpose, and MECS to disclose to an official in the office of the Premier concerned designated for this purpose—

(i) all their financial interests when assuming office; and

(ii) any financial interests acquired after their assumption of office, including any gifts, sponsored foreign travel, pensions, hospitality and other benefits of a material nature received by them or by such persons having a family or other relationship with them as may be determined in the code of ethics; and

(d) prescribe that the financial interests to be disclosed in terms of paragraph *(c)* must at least include the information, and be under the same conditions of public access thereto, as is required by members of the National Assembly as determined by that House from time to time, but may prescribe the disclosure of additional information.

(3) The code of ethics may prescribe any matter that may be necessary for the effective implementation of the code of ethics.

Public Protector to investigate breaches

3. (1) The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4.

(2) The Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint—

(a) to the President. if the complaint is against a Cabinet member. Premier or Deputy Minister; and

(b) to the Premier of the province concerned, if the complaint is against an MEC.

(3) If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed.

(4) When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act. 1994 (Act No. 23 of 1994).

(5) *(a)* The President must within a reasonable time, but not later than 14 days after receiving a report on a Cabinet member or Deputy Minister referred to in subsection *2(a),* submit a copy of the report and any comments thereon. together with a report on any action taken or to be taken in regard thereto, to the National Assembly.

(b) The President must within a reasonable time, but not later than 14 days after receiving a report on a Premier referred to in subsection (2)(u). submit a copy of the report and any comments thereon to the National Council of Provinces.

(6) The Premier must within a reasonable time. but not later than 14 days after receiving a report referred to in subsection *2(b).* submit a copy of the report and any comments thereon, together with a report on arty action taken or to be taken in regard thereto. to the provincial legislature.

Complaints

4. (1) The Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by—

(a) the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister: or

(b) the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.

(2) The complaint must be in writing and must contain—

(a) the name and address of the complainant:

(b) full particulars of the alleged conduct of the Cabinet member, Deputy Minister or MEC; and

(c) such other information as may be required by the Public Protector or prescribed in the code of ethics.

(3) Nothing in this section may prevent the Public Protector from investigating any complaint by a member of the public in accordance with the Public Protector Act, 1994 (Act No. 23 of 1994).

Appointment and dismissal of Cabinet members, Deputy Ministers and MECS not affected

5. Nothing in this Act may prevent or delay the appointment or the termination of the appointment of any Cabinet member, Deputy Minister or MEC or the amendment of any determination or allocation of a portfolio in terms of the Constitution.

Criminal prosecutions not affected

6. Nothing in this Act may prevent or delay the prosecution of a Cabinet member. Deputy Minister or MEC in a court.

Short title

7. This Act is called the Executive Members' Ethics Act, 1998.