

# MPUMALANGA ARTS AND CULTURE COUNCIL ACT NO. 2 OF 1999

[ASSENTED TO 22 OCTOBER, 1999]

[DATE OF COMMENCEMENT: 1 NOVEMBER, 1999]

*(English text signed by the Premier)*

## ACT

To establish a body corporate to be known as the Mpumalanga Arts and Culture Council; to regulate its financial affairs; to determine its objectives; to develop and promote the arts and culture; to address historical imbalances in respect of the arts and culture; to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of Mpumalanga, as follows—

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

“arts” includes all forms of music, dance, drama, theatre, music theatre, craft, visual arts, literature and community art;

“Chairperson” refers to the person elected in terms of section 3 (5) as chairperson of the Council;

“Council” means the Arts and Culture Council established in terms of section 2;

“culture” includes traditional, indigenous activities and practices, heritage, events and commemorations;

“Department” means the Department of Sport, Recreation, Arts and Culture;

“financial year” means the period from 1 April in any year to 31 March in the following year;

“prescribe” means prescribe by regulation;

“Province” means the province of Mpumalanga as contemplated in section 103 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“Provincial Legislature” means the Provincial Legislature of the Province;

“Public Service” means the public service as contemplated in section 8 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“regulation” means a regulation made under this Act;

“responsible Member” means the Member of the Executive Council responsible for Sport, Recreation, Arts and Culture; and

“this Act” includes the regulations.

2. Establishment and objectives of the Council.—(1) There is hereby established a body corporate to be known as the Mpumalanga Arts and Culture Council.

(2) The objectives of the Council are—

- (a) to develop and promote arts and culture in the Province;
- (b) to promote and facilitate provincial, national and international liaison between individuals and institutions in respect of the arts and culture;
- (c) to support the development of and access to the arts and culture, particularly among disadvantaged communities and individuals;
- (d) to preserve, foster and extend the arts and culture in the region for which they are established in accordance with a policy determined by the responsible Member.

3. Composition of the Council.—(1) The Council shall consist of not more than 10 persons, appointed by the responsible Member, subject to section 8, from a short-list of not more than 15 names.

(2) Nominations for inclusion in the short-list shall be obtained from the public by means of a notice in the *Provincial Gazette*, inviting such nominations to be forwarded within a specified period, to the responsible Member or any other person designated by the responsible Member.

(3) An independent panel, appointed by the responsible Member, shall compile a short-list consisting of 15 names from the nominations received pursuant to subsection (2), which short-list shall be submitted to the Executive Council of the Province within reasonable time, for its consideration and subsequent rejection or approval: Provided that in the instance of the Executive Council rejecting more than five names, the responsible Member may request the independent panel to compile a further short-list from the nominations received, which short-list shall consist of double the number of vacancies to be filled.

(4) The composition of the Council shall be broadly representative of gender, language, race and disability and when viewed collectively, shall reflect the various art disciplines in and cultural aspects of the Province.

(5) The Council shall elect from among its members a Chairperson and Deputy Chairperson of the Council, who shall hold office as such for a period determined by the Council, or until his or her removal is unanimously requested by all the other members.

(6) When the Chairperson of the Council is absent or unable to perform his or her functions as Chairperson, the Deputy Chairperson shall act as chairperson and when so acting, the Deputy Chairperson shall have all the powers and perform all the functions of the Chairperson.

(7) If both the Chairperson and Deputy Chairperson of the Council are absent from a meeting of the Council or unable to perform the functions of the Chairperson, the members of the Council present at the meeting shall designate one of their members, other than the member referred to in subsection (9), to preside at that meeting.

(8) If the Chairperson or Deputy Chairperson of the Council ceases to hold office as member of the Council, the Council shall, subject to subsection (5), elect another member as the Chairperson or Deputy Chairperson, as the case may be.

(9) The Secretary appointed in terms of section 6 shall be an *ex officio* member of the Council but is not eligible for election as chairperson or deputy chairperson of the Council, and shall not be eligible to

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vote.

4. Meetings of the Council.—(1) The Council shall meet at least four times per year, and the meetings shall be held at such times and place as the Chairperson may determine.

(2) The Chairperson may at any time, on his or her own initiative, or on a written request by at least half of the members of the Council, convene a special meeting of the Council which shall be held at such time and place as the Chairperson may direct.

(3) The quorum for a meeting of the Council shall be a majority of its members.

(4) A decision of the Council shall be taken by resolution of the majority of the members present at such meeting of the Council.

(5) The Chairperson of the Council, or in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, the member designated in terms of section 3 (7), shall, apart from his or her deliberating vote, also have a casting vote.

(6) Should any member of the Council have either directly or indirectly a financial interest in the case at hand, such member shall recuse himself or herself from the discussion for the duration of the case.

5. Establishment of advisory forums.—(1) The Council may at any time, in consultation with the responsible Member, establish one or more advisory forums consisting of not more than five members, on such terms, conditions, powers and functions as the Council, in consultation with the respective Member, may determine upon establishment: Provided that such forums shall not at any time exceed three in total.

(2) Members of an advisory forum shall be appointed by the responsible Member in a democratic and transparent process prescribed by the responsible Member, and shall hold office for a period not exceeding 12 months as the responsible Member may determine upon such appointment: Provided that a member whose term has expired, shall be eligible for re-appointment: Provided further that the total period served by a member shall not exceed three years.

6. The Secretary.—(1) The responsible Member may designate an employee of the Department of any other person to be the Secretary for the funds of the Council, for such period as the responsible Member may determine upon appointment.

(2) The Secretary appointed under subsection (1), shall also be responsible for the management of the affairs of the Council, and shall report on those affairs to the Council as may be required by the Council.

(3) The Council shall, in the performance of its functions, be assisted by a support staff on a staff establishment approved by the responsible Member and appointed in terms of the Public Service Act, 1994: Provided that the responsible Member may designate employees of the Department to assist the Council in the performance of its functions, in lieu of any such appointments, or in addition to any appointments made.

(4) The Secretary appointed in terms of subsection (1) shall be paid such reasonable remuneration and allowances as the responsible Member, in consultation with the Member of the Executive Council responsible for financial matters, and with due regard to any directive or guideline laid down by the Executive Council of the Province, may determine: Provided that in the instance of the Secretary being in full-time employment of the Public Service, he or she shall not, in respect of services rendered by him or her as Secretary, be paid any remuneration in addition to his or her salary as an employee of the Public

## Service.

7. Committees of the Council.—(1) The Council may appoint one or more committees to assist it in the performance of its functions.

(2) A committee shall consist of at least three members of the Council and such employees of the Council or employees of the Department designated in terms of section 6 (3), if any, as the Council may deem necessary, and the Council may at any time dissolve or reconstitute such committee.

(3) The Council shall designate a member of the Council on a committee to be the chairperson thereof.

(4) A Council may assign any of its functions to a committee with such conditions as the Council may deem necessary, but shall not be divested of any such function and may withdraw or amend any decision of a committee.

(5) All decisions of a committee, except a decision on appeal by the Appeals Committee, are subject to the approval of the Council.

8. Qualifications for appointment and removal from office.—(1) The members of the Council shall be persons who have special knowledge or experience in relation to the arts and culture, or some or other aspect of the Council's functions.

(2) A member of the Council shall not hold office in any political party or political organization.

(3) A person shall not be appointed as a member of the Council if that person—

- (a) is not a South African citizen ordinarily resident in the Province; or
- (b) is an unrehabilitated insolvent; or
- (c) is a member of the National Assembly, the National Council of Provinces, a provincial legislature, or a local government.

(4) A member of the Council shall vacate his or her office if that member—

- (a) becomes disqualified in terms of subsections (2) or (3);
- (b) is mentally ill, as defined in the Mental Health Act, 1973 (Act No. 18 of 1973);
- (c) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (d) has been absent from three consecutive meetings of the Council without valid reason; or
- (e) resigns by written notice addressed to the responsible Member.

9. Term of office.—(1) A member of the Council shall hold office for a period not exceeding three years as determined upon appointment by the responsible Member: Provided that a member whose term has expired shall be eligible for re-appointment: Provided further that the total period served by a member shall not exceed six years.

(2) A member of the Council shall be appointed on a part-time basis and on such conditions, including conditions relating to the payment of remuneration for attending meetings and for services rendered and allowances, as the responsible Member, in consultation with the Member of the Executive Council responsible for financial matters, and with due regard to any directive or guideline laid down by the Executive Council of the Province, may determine.

- (l) conduct workshops in connection with the arts and culture;
- (m) undertake any task assigned to it by the responsible Member in pursuit of its objectives;
- (n) initiate projects which it considers necessary in pursuit of its objectives;
- (o) determine the procedure at meetings of the Council and a code of conduct for the members of the Council, subject to the approval of the responsible Member.

Provided that the Council shall, for the purposes of the procurement of supplies and services, or the hiring or letting of anything or the acquisition or granting of any right, for or on behalf of the Council, and to dispose of property of the Council, utilise the Tender Board established under section 2 of the Tender Board Act (Eastern Transvaal), 1994 (Act No. 2 of 1994), as contemplated in section 4 (4) of the said Act.

(2) Notwithstanding the provisions of subsection (1), all powers and functions of the Council shall be performed with the prior approval of the responsible Member.

**12. Funds for the Council.—**(1) Funds for the Council shall consist of—

- (a) moneys received from the letting of any property of the Council;
- (b) interests derived from investments;
- (c) moneys received by way of donation, bequest or in trust;
- (d) moneys received for the subsidising or financing of functions, subject to the prior written approval by the responsible Member;
- (e) moneys allocated to the Council by the Provincial Legislature; and
- (f) moneys received from any other source approved by the responsible Member.

(2) The moneys constituting the funds of the Council in terms of subsection (1) and which are not immediately required to meet the current expenditure of the Council may, upon a resolution of the Council adopted for that purpose be invested at any bank or other financial institution registered in the Republic with the prior written approval by the responsible Member after consultation with the Member of the Executive Council responsible for financial matters.

**13. Financial statements.—**The Council shall annually submit its estimates of revenue and expenditure for the ensuing financial year for approval to the responsible Member.

**14. Accounts.—**(1) The Council shall keep complete and accurate accounts of all moneys expended by the Council, and of all its assets, liabilities and financial transactions.

(2) The Council shall submit to the responsible Member monthly financial reports before the end of the ensuing month, which report shall set out the details contemplated in subsection (1) for the month concerned, which report the responsible Member shall submit to the Executive Council within 14 days of receipt thereof.

(3) The Council shall quarterly in each financial year, submit a report on its state of affairs, activities and operations to the responsible Member.

(4) The responsible Member shall cause copies of the quarterly report submitted in terms of subsection (3) to be tabled in the Provincial Legislature within 20 days thereof if the Provincial Legislature is in session, or if the Provincial Legislature is not in session, within 14 days after commencement of its

ensuing session.

(5) The Council shall, within 90 days after every financial year and at the time, and in the manner determined by the responsible Member, submit to the responsible Member in respect of the preceding financial year a statement of revenue, expenditure and a balance sheet, and shall provide the responsible Member with any additional information required by the responsible Member.

15. Appeals Committee.—(1) An Appeals Committee shall be appointed by the Council and shall consist of the Deputy Chairperson of the Council, two other members of the Council and an employee of the Department designated by the responsible Member.

(2) Should any person reasonably believe that his or her application under section 11 (1) (h) was dealt with unfairly or in contravention of this Act by the Council or a committee of the Council, that person may appeal to the Deputy Chairperson in writing within 30 days of receipt of a letter from the Council communicating the decision which is the subject of appeal as well as reasons thereof and shall furnish reasons for the appeal, for the Appeals Committee to consider.

(3) Should a member of the Appeals Committee have either directly or indirectly a personal interest in the case at hand, such member shall recuse himself or herself and shall be replaced by another member of the Council for the duration of the case.

(4) Having considered all the relevant submissions, the Appeals Committee shall, within 30 days of the lodgment of the appeal, make a finding, and shall communicate such finding to the appellant and members of the Council.

(5) If the decision of the Appeals Committee is in favour of the appellant, the appeals committee shall order immediate redress.

(6) Should the Appeals Committee find against the appellant, the appellant shall be informed forthwith of the decision and the reasons thereof in writing.

16. Delegation of powers and assignment of functions.—(1) The responsible Member may, subject to such conditions as the responsible Member may determine, delegate any of his or her powers or assign any of his or her functions under this Act, except the power to make regulations, to any officer of the Department.

(2) A delegation or assignment under subsection (1) shall not prevent the responsible Member from exercising such powers or performing such functions.

17. Expenditure.—Any expenditure by the Council in excess of R10 000 per project or grant shall be approved beforehand by the responsible Member in writing prior to such decision being communicated to anybody or any body.

18. Regulations.—(1) The responsible Member may make regulations regarding—

- (a) the system for accounting for and control of all the moneys, stores and equipment of the Council;
- (b) any matter which the responsible Member may deem necessary or expedient to prescribe in order to achieve the objectives of this Act.

(2) No regulation made under subsection (1) shall be of force and effect until published by the responsible Member in the *Provincial Gazette*.

19. Repeal of law and transitional arrangement.—(1) The Cultural Affairs Act (House of Assembly), 1989 (Act No. 65 of 1989), is hereby repealed to the extent to which the said Act has been assigned to the Province.

(2) Any funds which were paid into the Provincial Revenue Fund of the Province in terms of item 2 of Part 2 of the Schedule to Proclamation No. R.38 of 1995, which are at the commencement of this Act still available, shall be paid into the funds of the Council.

(3) Any assets, liabilities, rights and obligations which vested in the Government of the Province in terms of item 3 of Part 2 of the Schedule to Proclamation No. R.38 of 1995, which at the commencement of this Act still exist, shall vest in the Council.

20. Short title and commencement.—(1) This Act shall be called the Mpumalanga Arts and Culture Council Act, 1999, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.