



**URhulumente
weNtshona Koloni**

Isbe leMfundo leNtshona Koloni
ICandelo lezoBudlelane eMsebenzini

**IMIGAQO ENGOKULAWULWA NOKUNIKWA KWENGXELO NGOKUZIPHATHA KAKUBI
NGOKWEZESONDO**

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1. **lingcaciso-magama**

Kule migaqo, naliphi na igama okanye ibinzana elinikwe intsingiselo liya kuba naloo ntsingiselo liyinikeyo apha ngezantsi yaye, ngaphandle kokuba umxholo walatha okunye, ukuthi—

“umenzi-bubi otyholwayo” kuthetha umntu okanye umqeshwa otyholwa **ngokuziphatha kakubi ngokwezesondo**;

“ukuxela okukhuselekileyo” kuthetha ukuxela okuqulethe ingcaciso ngendlela yokuziphatha engekhomthethweni nengalunganga, eyenziwe ngokunyanisekileyo kumntu okanye kwiqumrhu elibekileyo ngokoMgaqo-nkqubo i-*Western Cape Government (WCG) Whistle-blowing Policy, 2021* kunye/okanye uMthetho i-*Protected Disclosures Act, 2000 (Act 26 of-2000)*;

“ukuxhatshazwa ngokwezesondo” ngokwecandelo 1 loMthetho i-*Children's Act, 2005 (Act 38 of 2005)*, ngokunxulumene nomntwana kuthetha —

- (a) ukonzakaliswa komntwana ngokwezesondo okanye ukuvumela ukuba umntwana onzakaliswe ngokwezesondo;
- (b) ukumkhuthaza, ukumenza abenomdla wezesondo okanye ukumnyanzela umntwana ukuba asetyenziselwe ukwanelisa omnye umntu ngokwezesondo;
- (c) ukusebenzisa umntwana okanye ukumbonisa ngabom izenzo zezesondo okanye imifanekiso yamanyala (*pornography*) okanye
- (d) ukuthenga okanye ukuvumela ukuba umntwana athengelwe iinjongo zokuxhatshazwa ngokwezesondo okanye ngayo nayiphi na indlela yokuthatha inxaxheba okanye yokuncedisa kwizenzo zezoshishino ngabantwana ngenjongo yokubaxhaphaza ngokwesondo abantwana,

“ukungcungcuthekiswa ngokwezesondo” kunokuquka indlela yokuziphatha ekukudibana ngomzimba okungamkelekanga, isenzo sokuthetha ngomlomo okanye ukwenza ungathethi, indlela yokuziphatha ecalucalulayo okanye ekhubekisayo ngokusekelwe kwisini okanye ukuzazi nokubanomdla wokwabelana ngesondo nesini esithile komntu, kungaphelelanga kwiimeko apho kukho ukungalingani ngamandla obudlelwane phakathi kwamaqela abandakanyekayo yaye kunokwenziwa kuye nawuphi na umntu kungajongwanga isini, ubuni okanye ukuzazi kwakhe nokubanomdla wokwabelana ngesondo nesini esithile ngobhekiselele kuMthetho i-*Protection from Harassment Act, 2011 (Act 17 of 2011)*, ukungcungcuthekiswa ngokwezesondo kuthetha —

- (a) ukunikwa ingqwalasela ngokwezesondo okungamkelekanga okuvela kumntu owaziyo okanye ofanele ukwazi ngokusezingqondweni ukuba ukunika ingqwalasela elolu hlobo akwamkelekanga;
- (b) indlela yokuziphatha engamkelekanga ecacileyo nengafihlisiyo, iingcebiso, imiyalezo okanye izimvo ezivezwayo ezayamene nezesondo ezineziphumo zokukhubekisa, ukoyikisa okanye ukuthoba isidima sommangali okanye umntu onxulumene noko

kwiimeko ezilolu hlobo, apho umntu osezinqondweni ngokunxulumene nezi meko ebenokulindela ukuba ummangali okanye umntu onxulumene nemeko elolu hlobo ebenokukhubeka, kuthotywe isidima sakhe okanye oyikiswe yile meko;

- (c) isithembiso esirheshayo okanye esichaziweyo sokunikwa okuthile/umvuzo ngenxa yokuthobela isicelo esimalunga nokubanomdla wokwabelana ngesondo nesini esithile; okanye
- (d) isoyikiso esirheshayo okanye esichaziweyo sempindezelo okanye impindezelo yokwenyani ngokwala ukuthobela isicelo somdla wokwabelana ngesondo nesini esithile kuqukwa ukuxhatshazwa okusekelwe kwisini;

“IGosa loQhagamshelwano elijongene neMiba yoKuziphatha kakubi ngokwezeSondo” kuthetha umqeshwa otyunjwe liSebe leMfundo leNtshona Koloni (WCED) ngenjongo yokuba kunikwe ingxelo kuye nodlala indima yokucebisa malunga nokujongana namatyala nokuwadlulisela kwiCandelo lezoBudlelane eMsebenzini;

“indawo yokusebenza” iquka onke amasango eSebe i-WCED, kwakunye nazo naziphi na iindawo/indawo apho kwenziwe isityholo sesenzo sokuxhatshazwa ngokwezesondo okanye ukungcungcuthekiswa ngumqeshwa weSebe i-WCED okanye umboneleli-nkonzo weSebe i-WCED ngethuba lokwenziwa kwemisebenzi emiselweyo yaseburhulumenteni.

2. Isikhokelo semithetho esebenzayo

Isikhokelo semithetho esebenzayo kule migaqo yile ilandelayo:

- (a) UMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996
Amacandelo 9(3)– (4) acacisa ukuba ayingoRhulumente yaye ingenguye nawuphi na umntu onako ukucalucalula nabani na ngokungenabulungisa ngokuthe ngqo okanye ngokungathanga ngqo ngesizathu okanye ngezizathu ezininzi kwezi zidwelisiweyo.
ICandelo 12(2)(b) licacisa ukuba wonke umntu unelungelo lokukhuseleko nelokulawula inkululeko yesiqu sakhe nangokwasengqondweni, okuquka ilungelo lokhuseleko nelokulawula umzimba wabo.
ICandelo 28(2) licacisa nokuba iimeko ezilungiselela ngeyona ndlela ibhetele umntwana ongaphantsi kweminyaka eyi-18 yeyona nto iphambili ebalulekileyo kuyo yonke imibandela echaphazela umntwana.
- (b) UMthetho i-*Labour Relations Act, 1995 (Act 66 of 1995)*
Lo mthetho ngokommiselo ulungiselea amalungelo abaqeshwa kwimiba neenkqubo zengqesho ezahlukeneyo.
- (c) UMthetho i-*Employment Equity Act, 1998 (Act 55 of 1998)*
Lo Mthetho ubonelela ngoMgaqo woKuziphatha oyi-*Code of Good Practice* oqulunqwe ngokuthe ngqo nokhutshelwe ukujongana nezezelo zokungcungcuthekiswa ngokwezesondo kwindawo yokusebenza. ISebe lezeNgqesho neMisebenzi (*Department of Employment and Labour*) likhuphe uxwebhu i-*Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace*, olupapashwe kwiGazethi kaRhulumente No. 46056 ngowe-18 Matshi 2022.
- (d) UMthetho i-*Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007)*
Injongo yalo Mthetho kukufakela izilungiso kuzo zonke iinkalo zomthetho nokuwuphumeza ngakumbi umthetho onxulumene namatyala ezesondo, nokujongana namanyathelo omthetho anxulumene namatyala ezesondo kumthetho owisiweyo omnye. Lo mmiselo uba ngofanelekileyo kwinkqubo yokugaya nokukhetha abasebenzi kangangokuba umgqatswa oqeshiweyo kufuneka kwenziwe inkqubo yokutshelakiswa nokungqinisiswa kweenkcukacha nesimo sakhe ngokwalo Mthetho kunye ne-*Children's Act, 2005 (Act 38 of 2005)*. Ukuba igama lomgqatswa ololu hlobo liyavela kwenye yezi rejista zikazwelonke, isicelo somsebenzi sakhe sinokwaliwa.
- (e) UMthetho *Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021 (Act 13 of 2021)*
Injongo yalo Mthetho kukulawula ukufakelwa kweenkcukacha zabantu kwi-*National Register for Sex Offenders* yaye ubonelela ngomsebenzi wokunika ingxelo ukwenzela

abantu abanolwazi ngezenzo zokuziphatha kakubi ngokwezesondo ezenziwe ngakubantu abasemngciphekweni phakathi kwezinye izinto.

- (f) UMgaqo-nkqubo othi Phantsi ngeMpatho-gadalala yaBantwana weSebe i-WCED (*Abuse No More Protocol*) of the Western Cape Education Department, 2014
Injongo yalo mgaqo-nkqubo kukuncedisa nokunika inkxaso kubo bonke abafundi abangamaxhoba akanye abangabenzi bobubi kumatyala okuxhatshazwa kwabantwana nokungahoywa kwabantwana ngabom, kwakunye nabantwana abangamaxhoba amatyala ezesondo.
- (g) UMgaqo-nkqubo omalunga noKungcungcuthekiswa ngokwezesondo kwiNdawo yokuSebenza kaRhulumente we-WCG, 2022 (*WCG Harassment in the Workplace Policy*, 2011
Injongo yalo mgaqo-nkqubo ubandakanya onke amasebe —
- (i) kukwazisa bonke abaqeshwa bakaRhulumente weNtshona Koloni (WCG) ukuba yintoni na equka ukungcungcuthekiswa kwindawo yokusebenza kunye nemisebenzi eluxanduva lwabo ukuthintela nakulawula izehlo ezilolu hlobo ngokungqinelana nemigqaliselo nemigaqo-nkqubo nemimiselo kazwelonke echaphazelekayo,
 - (ii) kukunika iingcebiso malunga nenkqubo yokujongana nezityholo zokungcungcuthekiswa ngokwezesondo kwindawo yokusebenza; kunye
 - (iii) nemizamo yokwenza indawo yokusebenza ibe yindawo ezingekhoyo kuzo zonke iindidi zezenzo zokungcungcuthekiswa nokuxhatshazwa ngokwezesondo.
- (h) ISigqibo soThetha-thethwano neMibutho yaBasebenzi seBhunga lezeMfundo lezoBudlelwane eMsebenzini (*Education Labour Relations Council (ELRC) Collective Agreement 3 ka-2018*, somhla we-25 Septemba 2018
Injongo yesi sivumelwano kukukhusela abantwana abangaphantsi kweminyaka eyi-18 ekubeni behlelwe zizehlo zokonzakala ngokwasengqondweni okungaphaya kunye/okanye ukubabeka esichengeni somothuko omkhulu owonzakalisayo ngokuphindaphindiweyo kunye/okanye ukunikezelwa kweenkcazo ezibubungqina kunye/okanye ubungqina kwiiforam zoluleko ezahlukeneyo. Esi sigqibo siyalela amaqela achaphazelekayo ukuba athathe amanyathelo eenkqubo zomthetho, apho kutyholwa utitshala ngokuba ngumenzi-bubi, aqalise inkqubo yokuba kufunyanwe ingcaciso ngokwenziwa kophando ngumlamli onyuliweyo liBhunga i-ELRC.
- (i) ISetyhula 0011/2019, yomhla we-09 Matshi 2019
Injongo yale setyhula kukunika isikhokelo sokuncedisa iinqununu ekunikeni ingxelo nokulawulwa kwezityholo zokuziphatha kakubi kwakunye nendima yabo ngethuba lengxoxo zoluleko neempikiswano malunga nokugxothwa ngokungafanelekanga, ezivela kwiinkqubo ezilolu hlobo.

- (j) ISetyhula 0008/2021, yomhla we-26 Februwari 2021
Injongo yale setyhula kukwazisa abaqeshwa ngokuthethwa sisenzo sokungcungcuthekiswa ngokwezesondo kwindawo yokusebenza nenkqubo emayilandelwe xa kunikwe ingxelo ngesehlo sokungcungcuthekiswa ngokwezesondo ngabaqeshwa, kwakunye nokukhuthazwa kwentlonipho nolwazi ngamalungelo abaqeshwa, ngakumbi amalungelo okhuseleko, ukhuseleko lwesiqu, ilungelo lokhuseleko lomzimba wakho nokuphathwa ngokulinganayo.
- (k) ISetyhula 0035/2021, yomhla we-23 Juni 2021
Le setyhula icacisa imiqathango yokuthintelwa kokuqeshwa kwakhona kootitshala nabaqeshwa bethuba langaphambili abakhutshiweyo okanye abathathwa njengabakhutshiweyo kwisistim ngenxa yokuziphatha kakubi okanye abathathwa njengabalahlayo enkonzweni.
- (l) ISetyhula 0001/2023, yomhla we-03 Matshi 2023
Injongo yale setyhula kukucacisa inkqubo efakelwe izilungiso yokutshekishwa nokungqiniswa kweenkcukacha nesimo sawo onke amagosa adibana nabafundi kuthelekiswa neRejista yaBanamatyala ezeSondo kaZwelonke (*National Register for Sex Offenders*) ukuqinisekisa iindawo ezikhuselekileyo nezikhuselweyo kuye wonke umntu nokomeleza indlela amagosa aziphatha ngayo emsebenzini nobume babo bonke abasebenzi benkonzo karhulumente nabasebenzi abangootitshala kwisikolo ngasinye nakwi-ofisi nganye nakwi-ofisi nganye.

3. Injongo neenjongo ezilinganisekayo

3.1 Injongo yale migaqo—

- kukunika imigaqo yokusebenza emiselweyo ukwenzela ukunika ingxelo nokulawula izityholo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo;
- kukwazisa bonke abaqeshwa beSebe i-WCED; ukuba yintoni na equka ukungcungcuthekiswa nokuxhatshazwa ngokwezesondo endaweni yokusebenza nemisebenzi eluxanduva lwabo ukuthintela nokulawula izehlo ezilolu hlobo ngokungqinelana nemigqaliselo nemigaqo-nkqubo kazwelonke echaphazelekayo;
- kukunika iingcebiso ngenkqubo eyenzelwe ukujongana nezityholo okanye izikhalazo zokungcungcuthekisa nokuxhatshazwa ngokwezesondo kwindawo yokusebenza;
- nokuzama ukwenza indawo yokusebenza ibe yindawo engenazo zonke iindidi zokungcungcuthekiswa nokuxhatshazwa kwabantu ngokwezesondo.

3.2 Injongo ezilinganisekayo zale migaqo zezi:—

- kukunika intsingiselo nesigama esichaza oku kulawulwa kokuxhatshazwa nokungcungcuthekiswa ngokwezesondo kwiziko lezemfundo;
- kukucacisa inkqubo yokulawula nokujongana nezityholo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo;
- kukwenza nokugcina isikolo nendawo yokusebenza njengeendawo ezihlonipha isidima nelungelo zokuzithemba kwiziqu zabo abafundi nabaqeshwa kwakunye

nendawo engenako ukuxhatshazwa nokungcungcuthekiswa ngokwezesondo ngokuphunyezwa nokusetyenziswa kwale migaqo;

- (d) kukuqinisekisa ulawulo lwabantu ngempumelelo ngokuqalisa iinkqubo zabasebenzi neenkqubo zokutshakishwa nokungqiniswa kweenkcukacha nesimo somntu eziyimpumelelo; kunye
- (e) nokuxhobisa iinqununu/iisuphavayiza/abaphathi nokuxhasa ukuthathwa kwamanyathelo aza notshintsho ekulawuleni nasekunikeri ingxelo ngokuxhatshazwa nokungcungcuthekiswa ngokwezesondo.

4. **Iinkalo eziza kufikelelwa**

Le migaqo isebenza ukususela kuloo mhla iyasinwe ngayo yiNtloko yeSebe yaye isebenza kubo bonke abaqeshwa abakwizikolo zikarhulumente nakumaziko azii-ofisi zeSebe i-WCED. Bonke abaqeshwa abakhoyo nabasanda kuqeshwa kufuneka baziswe ngokupheleleyo ngokuqulethwe yile migaqo.

5. **Intshayelelo**

- 5.1 Izenzo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo ezijoliswe kubafundi nakubaqeshwa zibohlutha ilungelo lendalo lokulingana nabanye abantu nelokuba nesidima komntu kwakunye nelokufumana indawo ekhuselekileyo nenempilo njengoko kumiselwe kuMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996. Lo mgaqo-nkqubo uqaphela ukuba wonke umntu kwicandelo lezemfundo unendima ayidlalayo ukukhusela abafundi nabaqeshwa kwindawo yokusebenza ngokuqinisekisa ukunika impendulo ngexesha elifanelekileyo kuzo zonke izityholo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo.
- 5.2 ISebe i-WCED lithwele uxanduva lokuphendula ngokuqhubekayo ukulawula izityholo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo kwindawo yokusebenza yaye liyazamkela iimfundiso ezisisiseko zomgaqo-siseko zesidima somntu, ilungelo lokukhuseleko nelokulawula inkululeko yesiqu sakhe, ukulingana nemithetho nemigaqo-nkqubo esebenzayo nekufuneka iSebe lisebenze ngokungqinelana nayo.

6. **Ukunika ingxelo nokuxela okunyanzelekileyo**

- 6.1 Kukho umsebenzi oyimbophelelo noyimfanelo oluxanduva lomntu ngamnye onolwazi ngokuziphatha kakubi ngokwezesondo wokuba awuxele ngokukhawuleza umba onjalo kwiSebe i-WCED ngokoMgaqo-nkqubo othi Phantsi ngeMpatho-gadalala yaBantwana weSebe i-WCED, 2014 (*Abuse No More Protocol of the WCED, 2014*), nakwiNkonzo yamaPolisa aseMzantsi Afrika njengoko kuchatshazelwe kwicandelo 54 (1)(a) loMthetho we-Criminal Law (*Sexual Offences and Related Matters*) Amendment Act, 2007 (Act 32 of 2007), ofakelwe izilungiso licandelo 26 loMthetho, we-Criminal Law (*Sexual Offences and Related Matters*) Amendment Act Amendment Act, 2021 (Act 13 of 2021).

- 6.2 Bonke abaqeshwa beSebe i-WCED bayakhunjuzwa ngokungaphezulu ukuba ukungathotyelwa komthetho ochatshazelwe kumacandelo 54(1)(b) no-54(2)(b) oMthetho *Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007)*, njengoko ufakelwe izilungiso licandelo 26 loMthetho, *Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021 (Act 13 of 2021)*, kunganeziphumo zezenzo zolwaphulo-mthetho ezinesohlwayo ngokungathotyelwa komthetho ngomalunga nokunika ingxelo ngesehlo.
- 6.3 Nawuphi na umqeshwa ofunyaniswa enetyala lokungawuthobeli umthetho unako ukoahlwaywa ngesohlwayo esiyimali ehlawulwayo okanye ngokuvalelwa entolongweni iminyaka emihlanu okanye ukunikwa zozibini izohlwayo.
- 6.4 ISebe i-WCED, njengomqeshi, liya kuqalisa amanyathelo oluleko angamanye kuye nawuphi na umqeshwa apho kukho ubungqina bokuba umqeshwa okhankanyiweyo ubenolwazi kwangaphambili okanye kukho izizathu ezifanelekileyo zokumkrokreleka ukuba wenze isenzo sokuziphatha kakubi ngokwezesondo yaye akwanikwa ngxelo ngesenzo sokuziphatha kakubi esikhankanyiweyo.
- 6.5 Zonke iingxelo/izenzo zokuxelwa kwezehlo mazenziwe ngezizathu ezamkelekileyo nangokunyanisekileyo. Kunyanzelekile ukuba ukuxela kujongwane nako ngenkathalo enkulu, ngendlela enovelwano neyimfihlo ukuqinisekisa ukuba amaxhoba akhuselekile kuko nakuphi na ukonzakala komothuko omkhulu ngokweemvakalelo ongaphezulu, nasekubeni axhatshazwe nokuba ancinwe ngemibuzo ngokungeyomfuneko kumalunga nobunyani bezityholo.
- 6.6 "IGosa loQhagamshelwano elijongene neMilba yoKuziphatha kakubi ngokwezeSondo eliqeshwe kwaNdlunkulu namaGosa ezoBudlelwane eMsebenzini (*Labour Relations Officers*) kwii-ofisi zezithili ezahlukeneyo kufunekaancedise ekunikweni kwengxelo nokuxelwa kokuxhatshazwa nokungcungcuthekiswa ngokwezesondo.
- 6.7 Ukuxelwa kwesehlo okukhuselekileyo kunokwenzeka kwezinye iimeko ezivumela ukuxela okuqulethe ingcaciso emalunga nendlela yokuziphatha engekho mthethweni okanye engalunganga, okwenziwa ngokunyanisekileyo kumntu okanye kwiqumrhu elifanelekileyo ngokoMgaqo-nkqubo i-WCG *Whistle-blowing Policy, 2021* kunye/okanye noMthetho i-*Protected Disclosures Act, 2000 (Act 26 of 2000)*.

7. Imisebenzi eyimbophelelo yomqeshi

- 7.1 ISebe i-WCED, njengomqeshi, kufuneka lithathe la manyathelo alandelayo:
- (a) Lithathe amanyathelo ayimfuneko ukuphelisa izehlo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo.
 - (b) Licebise ummangali ngenkqubo (ngeenkqubo) emiselweyo kunye okanye engamiselwanga esebenzayo kwizehlo zokungcungcuthekiswa ngokwezesondo nakwimeko yokuxhatshazwa ngokwezesondo, lijongane nezityholo ngokwenkqubo emiselweyo, ngokuxhomekeke kwiimeko zokufaneleka kwesehlo eso.

- (c) Lithathe amanyathelo afanelekileyo okujongana nesikhalazo ngokungqinelana noxwebhu lwe-Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, olupapashwe kwi-Gazethi kaRhulumente No. 46056 yomhla we-18 Matshi 2022, umgaqo-nkqubo womqeshi osebenzayo kunye nesigqibo sothetha-thethwano (nezigqibo zothetha-thethwano).
- (d) Libonisane ngokunyanisekileyo nayo yonke imibutho echaphazelekayo.

7.2 Ukusilela ukuthatha amanyathelo ngokufanelekileyo okuphelisa ukuziphatha kakubi ngokwezesondo kuya kwenza umqeshi ngokusengqiqweni, athwaliswe uxanduva lwezenzo ezingekho mthethweni ngendlela yokuziphatha komqeshwa ongumenzi wobubi nkqu nakwihlo sakanye sokuxhatshazwa okanye sokungcungcuthekiswa ngokwezesondo.

8. Imisebenzi eluxanduva lweGosa loQhagamshelwano elijongene neMiba yoKuziphatha kakubi ngokwezeSondo.

Imisebenzi yeGosa loQhagamshelwano elijongene neMiba yoKuziphatha kakubi ngokwezeSondo, iya kuquka:

- (a) ukusebenza kunye neCandelo lezoBudlelane eMsebenzini malunga nokunika ingxelo ngezehlo zokuziphatha kakubi nokulungiselela ukunika inkxaso ngokwasengqondweni apho kuyimfuneko;
- (b) ukudibana rhoqo namanye amaGosa oqhagamshelwano ajongana nokuziphatha kakubi ngokwezesondo ukwenzela ukuba baxoxe yaye basombulule imiba efanelekileyo nexhaphakileyo kwindawo yokusebenza nokuthatha amanyathelo aza notshintsho ukuthintela oku; kunye
- (c) nokukhuthaza ukuba nolwazi malunga nokuxhatshazwa nokungcungcuthekiswa ngokwezesondo nobundlobongela obusekelwe kwisini kwindawo yokusebenza.

9. Imisebenzi eluxanduva lwenqununu/lwesuphavayiza/lomphathi/lwabo bonke abaqeshwa

Bonke abaqeshwa beSebe i-WCED (kungajongwanga isikhundla okanye inqanaba)—

- (a) baya kubahlonipha bonke abaqeshwa beSebe i-WCED, kwakunye nabahlali;
- (b) baya kunika inkxaso ephelileyo apho kufuneka kuncediswe ngengcaciso kwimibuzo;
- (c) baya kunika ingxelo ngezenzo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo;
- (d) baya kunononophela ukuzigcina iinkcukacha ziyimfihlo ngawo onke amaxesha ngokungqongqo;
- (e) baya kubonakalisa inkuthalo yokwenza igalelo kwindawo yokusebenza engenazo konke izenzo zokuxhatshazwa nokungcungcuthekiswa ngokwezesondo;
- (f) abayi kuyithatha inxaxheba kwindlela yokuziphatha okanye kwizenzo ezithathwa njengezokuxhaphaza nokungcungcuthekisa ngokwezesondo; yaye
- (g) baya kukhuthaza ukudizwa ngokuyimfihlo kwezenzo zokuhlathazwa, okanye zokungcungcuthekiswa (*whistle-blowing*) ngaphandle kokoyika ukwenziwa amaxhoba.

10. **Ukuba yimfihlo kweenkcukacha**

Ngokungqinelana nemigqaliselo yoMthetho woKhuseleko lweNkcukacha zoMntu, 2013 (*Protection of Personal Information Act, 2013 (Act 4 of 2013)*), zonke izikhalazo kufuneka ziphononongwe yaye, yaye amanyathelo oluleko makalawulwe ngeyona ndlela iyimfihlo ngokungqongqo ngelixa kuqinisekiswa ukuba athathelwa ingqalelo amalungelo omntu ochaphazelekayo (abantu abachaphazelekayo) kunye/okanye ommangali.

11. **Ukunika inkxaso emalunga neemeko ezichaphazela ingqondo nentlalo yomntu**

11.1 Abaqeshwa abafumene okanye abasandul' ukufumana iimeko zokubandezeleka noxinzelelo ngokwasemoyeni, ngokwasemzimbeni okanye ngokwasengqondweni ngenxa yokuxhatshazwa ngokwesondo bayakhuthazwa ukuba baqhagamshelane ne-*Employee Health and Wellness Programme* ukuze bafumane inkxaso kunye noncedo.

11.2 Esikolweni, umfundi uya kunikwa inkxaso ngunontlalontle ovela kwi-ofisi yesithili esichaphazelekayo.

11.3 Amaphulo ongenelelo ngoncedo abonelelwa yi-EHWP nenkxaso ngokwasengqondweni nangokwentlalo kanontlalontle osuka kwisithili aya kujoliswa ekunikeni inkxaso umqeshwa okanye umfundi ekulawuleni nasekuqubisaneni nokuxhatshwazwa nongcungcuthekiswa ngokwezesondo.

12. **Ukupheliswa kwengqesho**

12.1 Ukuziphatha kakubi ngokwezesondo kuthathwa ngokomthetho njengohlobo lokuziphatha kakubi okuxhomisa amehlo yaye lulwaphulo-mthetho olubangela ukuba umqeshwa agxothwe apho umqeshwa efunyaniswe enetyala.

12.2 Abantu abatyholwa ngezenzo zokuziphatha kakubi ngokwezesondo abachatshazelwa yinkqubo yesebe kuphela kodwa banokujongana nenkqubo yokuthathwa kwamanyathelo olwaphulo-mthetho, ukumangalelwa kunye nokuthathelwa amanyathelo liqumrhu lezolawula labasebenzi (*professional body*) okanye libhunga.

12.3 Oofitshala

12.3.1 Oofitshala abafunyenwe benetyala lokuziphatha kakubi ngokwezesondo bohlwaywa ngokweShedyuli 2 yoMthetho wezeNgqesho yooTitshala, 1998 (uMthetho 76 ka-1998), yaye ukuba bafunyenwe benetyala, ngokwesiqendu 17, kusebenza umqathango wokugxothwa okunyanzelekileyo.

12.3.2 Ngokwemimiselo ii-Terms and conditions of employment of educators ngokwe-ned in section 4 of Employment of Educators Act, 1998, epapashwe kwiGazethi kaRhulumente No. 44433 yomhla we-09 Apreli 2021, isenzo sokuziphatha kakubi ngokwesondo ngokumalunga nomqeshwa ofunyenwe enetyala longcungcuthekiso ngokwesondo (ngokumalunga nomnye umqeshwa okanye umntu omdala) sinethuba elimiselweyo lesithintelo sokuphinda aqeshwe kumaziko karhulumente eliyiminyaka **emine**. Nakuba kunjalo, nabani na ofunyenwe enetyala lokwaphula umthetho ngokwezesondo kubantwana nakubantu abakhubazekileyo ngokwasengqondweni, nabanamagama abo avelayo kwiRejista kaZwelonke yoKhuseleko lwaBantwana kunye **neRejista kaZwelonke yaBanamaTyala ezeSondo**, uyathinteleka ukuba aqeshwe de abe ususiwe kwiirejista ezigcinwe liSebe loPhuhliso loLuntu okanye liSebe lezoBulungisa ngokulandelelanayo. Ixesha elimiselweyo lesithintelo sokuphinda uqeshwe kumaziko karhulumente **alichazwanga**.

12.4 Abasebenzi bakarhulumente

12.4.1 Abasebenzi bakarhulumente abafunyenwe benetyala lokuziphatha kakubi ngokwezesondo bohlwaywa ngokwe-*Disciplinary Code and Procedures for the Public Service* echazwe kwi-*Public Service Coordinating Bargaining Council (PSCBC) Resolution 1 of 2003*, yomhla wama-28 Februwari 2003.

12.4.2 ISetyhula 0035/2021, yomhla we-23 Juni 2021, efundwa kunye neSetyhula 08 ka-2022 yeSebe leNkonzo kaRhulumente noLawulo, ecacisa ukuba isenzo sokuziphatha kakubi ngokumalunga nokufunyaniswa komqeshwa enetyala lesenzo sokuziphatha kakubi setyala longcungcuthekiso ngokwezesondo sinexesha elimiselweyo lesithintelo sokuphinda uqeshwe kumaziko karhulumente **esiyiminyaka emine**. Nakuba kunjalo, nabani na ofunyenwe enetyala lokwaphula umthetho ngokwezesondo kubantwana nakubantu abakhubazekileyo ngokwasengqondweni, nabanamagama abo avelayo kwiRejista kaZwelonke yoKhuseleko lwaBantwana kunye neRejista kaZwelonke yaBanamaTyala ezeSondo, uyathinteleka ukuba aqeshwe de abe ususiwe kwiirejista ezigcinwe liSebe loPhuhliso loLuntu okanye liSebe lezoBulungisa ngokulandelelanayo. Ixesha elimiselweyo lesithintelo sokuphinda uqeshwe kumaziko karhulumente **alichazwanga**.

13. **Ukutshekishwa nokungqiniswa kweenkcukacha nezimo zamagosa**

13.1 ISetyhula 0001/2023, Ukufakelwa kwezilungiso kwNkqubo yoKutshekishwa noKungqiniswa kweenkcukacha nezimo zamagosa kuthelakiswa neRejista i-*National Register for Sexual Offences*, yomhla we-03 Matshi 2023, isebenza kuwo onke amagosa amaziko emfundo akwiSebe i-WCED adibana nabafundi.

13.2 Umthetho ugxininisa imfuneko yokutshekishwa nokungqiniswa kweenkcukacha nezimo zawo onke amagosa adibana nabantwana. Ezi zilandelayo ziindidi ezintathu ezigunyazisa ukufikelela kwiinkcukacha zomntu (*security clearances*) ekufuneka zenziwe kubantu abasebenza nabantwana:

- (a) Inxelo yonyatheliso-minwe i-Fingerprint clearance report yeNkonzo yamaPolisa oMzantsi Afrika
- (b) Ukutsheshiswa kwiRejista kaZwelonke yaBanamaTyala ezeSondo; kunye
- (c) Nokutsheshiswa kwiRejista kaZwelonke yoKhuseleko lwaBantwana.

13.3 Amagama (wording) kuMthetho i-*Protection from Harassment Act, 2011 (Act 17 of 2011)*, ofundwa kunye noMthetho i-*Domestic Violence Act, 1998 (Act 116 of 1998)*, acacisa ukuba, ukuba umenzi-sicelo ofake isicelo sesithuba (sesithuba sonyuselo-sikhundleni) ufunyenwe engumgqatswa okhethiweyo wokugqibela yaye kufunyaniswe ukuba akhange awuxele umyalelo wokhuseleko wethutyana okanye wokugqibela (*interim or final protection order*) isicelo sakhe sinokwaliwa yaye ukuqeshwa kwakhe kunokujongisiswa kwakhona.

13.4 Iinqununu/iisuphavayiza/abaphathi nebhunga lolawulo mabaqinisekise ukuba inkqubo yokutsheshiswa nokungqinisiswa kweenkcukacha nezimo zawo onke amagosa adibana nabafundi iyinxalenye yemfuno ezimiseliweyo ezingundoqo kwinkqubo yokuqeshwa nokuqinisekisa ukuba abantu bathatha inxaxheba ekuqinisekiseni ukuba siyabukhusela ubomi babantwana esiphathiswe bona kwakunye nobabasebenzi bethu.

14. **Ukungathotyelwa kwemigaqo.**

Ukungathotyelwa kwale mimiselo yale migaqo kungajongwana nako ngokwemigaqo yoxwebhu lwe-*Disciplinary Code and Procedures for the Public Service* emiselwe kwiSigqibo se-*Public Service Coordinating Bargaining Council Resolution 1* sango-2003, somhla we-28 Februwari 2003, yoMthetho weNgqesho yooTitshala, 1998 (uMthetho 76 ka-1998) kunye nangokweNcwadana i-*Senior Management Service Handbook*.

15. **Isiphelo**

Olu xwebhu kuye kwaboniswa ngokufanelekileyo ngalo nabo bonke abathathi-nxaxheba kwezemfundo ngenjongo yokuba lube lolothintelo nolokuvelisa iziphumo ezinika ithemba kwiSebe i-WCED ngokuzibophelela kwalo ekudaleni imeko-bume apho zingekhoyo izenzo zokuziphatha kakubi ngokwezesondo.

16. **Ukujongisiswa kwakhona kwemigaqo**

Le migaqo imele ukuqwalaselwa kwakhona xa kukho imfuneko okanye kwiimeko ezitshintshileyo, ezifana nezibhengezo zomthetho kunye/okanye nemimiselo, izilungiso ezifakelweyo kwimigaqo-nkqubo nemiqathango nezithintelo ezinxulumene nohlahlo lwabiwo-mali.

Mna Brent Walters (igama) oyintloko yeSebe leMfundo eNtshona Koloni, ukwenje ndiyayivuma iMigaqo engokulawulwa nokunikwa kwengxelo ngokuziphatha kakubi ngokwezesondo, 2023.

Brent Walters (isignitsha)

18/05/2023 (umhla).