

KwaZulu-Natal, South Africa

Kwa-Zulu Natal Amafa and Research Institute Act, 2018

Kwa-Zulu Natal Amafa and Research Institute Regulations, 2018

Provincial Notice 137 of 2018

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Kwa-Zulu Natal Amafa and Research Institute Regulations, 2018

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KwaZulu-Natal South Africa

Kwa-Zulu Natal Amafa and Research Institute Act, 2018

Kwa-Zulu Natal Amafa and Research Institute Regulations, 2018 Provincial Notice 137 of 2018

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Commenced on 14 December 2018

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In terms of section 23 of the National Heritage Resources Act, 1999 ([Act No. 25 of 1999](#)), read with section 26 thereof, I hereby make the Regulations contained in the Schedule hereto to regulate-

(a) the establishment of the provincial heritage resources authority to be known as the KwaZulu-Natal Amafa and Research Institute; and

(b) the constitution, composition and functioning of the Council of the Institute, as required by the National Heritage Resources Act, 1999 ([Act No. 25 of 1999](#)).

Given under my Hand at Pietermaritzburg, this 21st day of November, Two thousand and Eighteen.

Mr TW Mchunu, MPL

Premier of the Province of KwaZulu-Natal responsible for heritage matters

1. Definitions

In these Regulations, “the Act” means the KwaZulu-Natal Amafa and Research Institute Act, 2018 ([Act No. 5 of 2018](#)), and any word or expression to which a meaning is assigned in the Act bears the meaning so assigned to it, and, unless the context indicates otherwise-

“**Council**” means the Council referred to in regulation 2(3); and

“**Institute**” means the KwaZulu-Natal Amafa and Research Institute established in terms of regulation 2(1).

2. Establishment of KwaZulu-Natal Amafa and Research Institute

- (1) An Institute to be known as the KwaZulu-Natal Amafa and Research Institute is hereby established.
- (2) The Institute is a body corporate.
- (3) The Institute is governed by, and acts through, a Council to be known as the KwaZulu-Natal Amafa and Research Council constituted and composed as contemplated in regulation 3(1), which takes all decisions for the performance of its functions and obligations, except the decisions taken in consequence of a delegation in terms of regulation 12.
- (4) The Council is the accounting authority of KwaZulu-Natal Amafa and Research Institute in terms of section 49(2)(a) of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), and is subject to the provisions of the Public Finance Management Act, 1999.

- (5) The Council is responsible for-
 - (a) the management, including the safe-guarding, of the assets and for the management of the revenue, expenditure and liabilities of the Institute; and
 - (b) the submission by the Institute of all reports, returns, notices and other information to the Provincial Legislature and to the responsible Member of the Executive Council or the Provincial Treasury, as may be required by the KwaZulu-Natal Amafa and Research Institute Act, 2018 ([Act No. 5 of 2018](#)), or any other law.
- (6) A member of the Council may not-
 - (a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)); or
 - (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of the Council, for personal gain or to improperly benefit another person.
- (7) If the Institute is unable to comply with any of its responsibilities in terms of the KwaZulu-Natal Amafa and Research Institute Act, 2018 ([Act No. 5 of 2018](#)), or any other law, the Council must promptly report the inability, together with reasons, to the responsible Member of the Executive Council and the Provincial Treasury.

3. Constitution and composition of Council

- (1) The responsible Member of the Executive Council-
 - (a) must, based on nominations received in terms of regulation 5(1) and recommendations by the selection panel contemplated in regulation 5(3), appoint not less than seven and not more than nine persons as members of the Council; and
 - (b) must designate one such member to be the Chairperson of the Council to preside at the meetings of the Council and perform other duties related thereto.
- (2) At the first meeting of the Council referred to in regulation 10(1) the members of the Council must elect a Deputy Chairperson from amongst its members.
- (3) The members of the Council contemplated in subregulation (1) must-
 - (a) include persons with applicable and proven research expertise;
 - (b) include persons who have qualifications or special competence, experience and interest in the field of heritage resources;
 - (c) include at least one person possessing proven knowledge or experience in the field of financial management;
 - (d) include at least one person possessing proven legal knowledge and expertise;
 - (e) include at least one person registered as an architect with the South African Council for the Architectural Profession and domiciled in KwaZulu-Natal; and
 - (f) be representative of the relevant sectoral interests and the cultural demographic characteristics of the people of the Province.
- (4) The members contemplated in subregulation (1) must be fit and proper persons characterised by their independence, impartiality and fairness.
- (5) A person is disqualified from being appointed to the Council or from remaining on the Council, by reason that he or she-
 - (a) is or becomes an unrehabilitated insolvent;

- (b) is or has been declared by a competent court to be of unsound mind;
- (c) is a person under curatorship;
- (d) has, at any time, been removed from an office of trust on account of misconduct involving theft or fraud;
- (e) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon a person who is nominated for appointment disclosing full details of an offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the [Constitution of the Republic of South Africa, 1996](#): Provided that a disqualification in terms of this subregulation ends five years after the sentence has been completed;
- (f) fails to disclose an interest in accordance with regulation 6 or attended or participated in the proceedings of the Council while having an interest contemplated in that section; or
- (g) is a political office bearer.

4. Term of office of member of Council

- (1) A member of the Council holds office for a period not exceeding three years, and may be reappointed.
- (2) No member may be appointed for more than two consecutive terms.

5. Nominations for membership of Council

- (1) The responsible Member of the Executive Council must, by notice in the *Gazette* and in at least two newspapers circulating in the Province, invite the nomination of persons for appointment to the Council.
- (2) The invitation for nominations in terms of subregulation (1) must specify-
 - (a) the nomination procedure;
 - (b) the requirements for nomination; and
 - (c) the date by which a nomination must be received by the responsible Member of the Executive Council.
- (3) The responsible Member of the Executive Council must appoint a selection panel comprising of-
 - (a) no more than two Departmental senior officials; and
 - (b) no more than three persons with experience in heritage or research matters, to review all nominations and make recommendations regarding the nominees.
- (4) The responsible Member of the Executive Council must ensure that members of the first Council are appointed within 90 days of the coming into operation of these Regulations.

6. Declaration of financial or other interests by nominees to Council

- (1) A nominee for appointment to the Council must-
 - (a) within ten days of accepting the nomination, submit to the responsible Member of the Executive Council a written declaration of any and all financial or other interests in the heritage sector or related sectors, which could be related to or may be in conflict with an appointment as a member of the Council, which declaration must include relevant information about any conviction for a Schedule 2 offence in terms of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#));

- (b) in the declaration referred to in paragraph (a) include financial and other interests in the heritage sector or related sectors of family members or close associates, which could be related to or may be in conflict with an appointment as a member of the Council; and
 - (c) not be considered for the position of a member of the Council where it is found that the nominee deliberately withheld information pertaining to financial or other interests contemplated in this section.
- (2) Where a member of the Council or family member or close associate experiences a change in financial or any other circumstances or acquires an interest in the heritage sector or related sectors, the member of the Council must, within 10 days of the date of the changed circumstances, submit a written declaration of the change in financial or other interests to the responsible Member of the Executive Council.
- (3) The responsible Member of the Executive Council must-
 - (a) keep a register of the interests of members of the Council disclosed in terms of this section; and
 - (b) update that register from time to time.

7. Failure of member of Council to declare financial or other interests

- (1) A member of the Council who fails to make a declaration envisaged in regulation 6 commits an offence.
- (2) The Member of the Executive Council, on becoming aware that a member of the Council has failed to comply with the provisions of regulation 6, must investigate the matter and consider appropriate disciplinary action.

8. Recusal of member of Council

- (1) A member of the Council must recuse himself or herself from any matter or proceeding where he or she, a family member or close associate has, or reasonably could be expected to have, a financial or other interest in the outcome of a decision by the Council.
- (2) Any person may make an application, upon oral or written request, for a member of the Council to recuse himself or herself where that person has reason to believe that the member of the Council, a family member or close associate has, or could reasonably be expected to have, a financial or other conflict of interest in the outcome of a decision by the member of the Council.
- (3) A person making an application referred to in subregulation (2) must give reasons for his or her request.
- (4) In the event of an application referred to in subregulation (2), the Chairperson of the Council must decide on the matter, save that in cases where the application concerns the Chairperson of the Council, the matter must be decided on by the Deputy Chairperson.

9. Vacancies, removal and resignation from office of member of Council

- (1) A member of the Council must vacate office if he or she becomes subject to a disqualification contemplated in regulation 5.
- (2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in the sole discretion of the Member of the Executive Council, there are justifiable and cogent reasons for doing so.
- (3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Council, from two consecutive meetings of the Council for which reasonable notice was given to that member personally or by post.

- (4) A member may resign from office, in writing, by giving not less than 30 days' notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice if such waiver would not be detrimental to the efficient functioning of the Council.
- (5) Whenever a vacancy occurs in the Council, the responsible Member of the Executive Council must, subject to regulation 5, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

10. Meetings of Council

- (1)
 - (a) The first meeting of the Council must be held at a venue, on a date and at a time determined by the responsible Member of the Executive Council, whereafter all future meetings must be as determined by the Chairperson.
 - (b) The Council must meet at least three times in any given financial year.
- (2) Every member of the Council must be notified of each meeting, in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.
- (3) In the event that the Chairperson of the Council is absent from any meeting of the Council, the members present at that meeting may elect one of their members to preside at that meeting.
- (4) A special meeting of the Council may be called at the request of-
 - (a) the Chairperson; or
 - (b) two-thirds of the members of the Council, by written petition, whereupon the Chairperson must, in writing, notify every member of the Council of the place, date and time of the special meeting.
- (5) A quorum for a meeting of the Council is a majority of its members.
- (6) Any decision of the Council must be taken by resolution of the majority of the members present at any meeting of the Council and, in the event of an equality of votes on any matter, the member presiding at the meeting in question will have a casting vote in addition to his or her deliberative vote as a member of the Council.
- (7) The proceedings of all meetings of the Council must be duly recorded and minuted.
- (8)
 - (a) The minutes of the previous meeting must be read at the commencement of each meeting.
 - (b) The minutes may be regarded as read if copies thereof were furnished to the members of the Council prior to the meeting.
 - (c) The Chairperson may only sign the minutes once objections or corrections have been dealt with.
- (9) The Chairperson must decide on questions of order or procedure: Provided that if any member objects to any such decision, the question must be put to the vote and the decision of the majority of the members is final and binding on the Council.
- (10) A member of the Council who has an interest in relation to any matter to be discussed at a meeting of the Council, which reasonably considered, may preclude him or her from performing his or her duties in a fair, unbiased and proper manner, must recuse himself or herself from such meeting.
- (11) A member of staff of the Institute may, on invitation by the Council, attend a meeting of the Council.

11. Committees of Council

- (1) The Council may appoint one or more committees not limited to its own members to assist it in the exercise of its powers and the performance of its duties and functions.
- (2) A committee contemplated in subregulation (1) must perform such duties and functions of the Council as the Council may determine.
- (3) The Council may, at any time, dissolve or reconstitute such a committee.
- (4) The Council-
 - (a) may delegate any of its powers or assign any of its duties or functions to a committee appointed in terms of subregulation (1);
 - (b) is not absolved from exercising or performing any power, duty or function so delegated or assigned; and
 - (c) may amend, review or rescind any decision of a committee.
- (5) Any delegated or assigned power, duty or function exercised or performed by the committee is regarded to have been exercised or performed by the Council.
- (6) A member of staff of the Institute may, on invitation by the relevant committee, attend a meeting of that committee.

12. Delegation of powers and assignment of duties by Council

- (1) When necessary for the proper performance of its functions, the Council may delegate any of its powers or assign any of its duties, excluding those mentioned in subregulation (2), to-
 - (a) a member of the Council;
 - (b) a committee established in terms of regulation 11; or
 - (c) the Head of Secretariat and Administration of the Institute.
- (2) The Council may not delegate or assign the following powers and functions-
 - (a) the determination of the employment policy, financial limits or terms and conditions;
 - (b) the financial management responsibilities assigned to the Council; and
 - (c) the approval of the budget.
- (3) A delegation or assignment in terms of subregulation (1)-
 - (a) must be in writing;
 - (b) is subject to such limitations, conditions and directions as the Council may impose;
 - (c) does not divest the Council of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty; and
 - (d) does not prevent the exercise of the assigned power or the performance of the assigned duty by the Council.
- (4) All delegations and assignments in terms of subregulation (1) must be maintained in an updated register.
- (5) The Council may confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this regulation, subject to any rights that may have accrued to a person as a result of the decision.

13. Administrative and secretarial work of Council

The administrative and secretarial work incidental to the performance of the functions of the Council or its committees must be performed by members of staff of the Institute as may be designated by the Head of Secretariat and Administration of the Institute.

14. Remuneration of members of Council and reimbursement of expenses incurred by members of Council and committees of Council

- (1)
 - (a) A member of the Council may be paid such remuneration or allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.
 - (b) A member of the Council who receives remuneration, allowances or other benefits by virtue of his or her post or employment in-
 - (i) the national government;
 - (ii) a provincial government;
 - (iii) a municipality;
 - (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest; or
 - (v) a public entity, a national government business enterprise or a provincial government business enterprise as defined in section 1 of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), and who continues to receive such remuneration, allowances or other benefits while serving as a member of the Council, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position in which he or she would have been were it not for such post or employment.
- (2)
 - (a) A member of the Council and a member of a committee of the Council may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Council or a committee of the Council.
 - (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

15. Amendment or substitution of Schedule

The responsible Member of the Executive Council, after consultation with the Council, may by notice in the *Gazette* and with effect from a date specified in such notice-

- (a) amend; or
 - (b) substitute,
- this Schedule.

16. Application of Regulations

- (1) These Regulations must be read and implemented in conjunction with the KwaZulu-Natal Amafa and Research Institute Act, 2018 ([Act No. 5 of 2018](#)), the National Heritage Resources Act, 1999 ([Act No. 25 of 1999](#)), and the National Heritage Institute Act, 1999 ([Act No. 11 of 1999](#)).

- (2) Where these Regulations do not regulate a matter pertaining to the Institute as the provincial heritage resources authority for the Province or the protection or management of heritage resources in the Province, the provisions of the KwaZulu-Natal Amafa and Research Institute Act, 2018 ([Act No. 5 of 2018](#)), the National Heritage Resources Act, 1999 ([Act No. 25 of 1999](#)), and the National Heritage Institute Act, 1999 ([Act No. 11 of 1999](#)), apply in the Province and any reference to “provincial heritage resources authority” in the National Heritage Resources Act, 1999, must, unless clearly inappropriate, be construed as a reference to the Institute.

17. Short title and commencement

- (1) These Regulations are called the KwaZulu-Natal Amafa and Research Institute Regulations, 2018.
- (2) These Regulations take effect on the date of coming into operation of the KwaZulu-Natal Amafa and Research Institute Act, 2018 ([Act No. 5 of 2018](#)).