

THE PROVINCE OF THE NORTHERN CAPE
DIE PROVINSIE NOORD-KAAP

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PROCLAMATION • PROKLAMASIE

PROCLAMATION

by the

Johannesburg Bar Library
Premier of the Northern Cape

PROVINCE OF THE NORTHERN CAPE

No. 1, 1999

COMING INTO OPERATION OF THE NORTHERN CAPE TOURISM ACT, 1998 (ACT No. 5 OF 1998)

In terms of section 28 of the Northern Cape Tourism Act, 1998 (Act No. 5 of 1998), I hereby determine **18 January 1999** as the date on which the said Act shall come into operation.

Thus done under my Hand at Kimberley on this Twelfth day of January, One thousand Nine hundred and Ninety-nine.

E. M. DIPICO

Premier

PROKLAMASIE

deur die

Premier van die Noord-Kaap

PROVINSIE NOORD-KAAP

No. 1, 1999

INWERKINGTREDING VAN DIE NOORD-KAAPSE WET OP TOERISME, 1998 (WET No. 5 VAN 1998)

Onder artikel 28 van die Noord-Kaapse Wet op Toerisme, 1998 (Wet No. 5 van 1998), bepaal ek hiermee **18 Januarie 1999** as die datum waarop die gemelde Wet in werking sal tree.

Gegee onder my Hand op die hede die Twaalfde dag van Januarie Eenduisend Negehonderd Nege-en-negentig.

E. M. DIPICO

Premier

PREMIER'S NOTICE • PREMIERSKENNISGEWING

OFFICE OF THE PREMIER

No. 1

15 January 1999

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

No. 5 of 1998: Northern Cape Tourism Act, 1998.

KANTOOR VAN DIE PREMIER

No. 1

15 Januarie 1999

Hierby word bekendgemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby vir algemene kennisname gepubliseer word:

No. 5 van 1998: Noord-Kaapse Wet op Toerisme, 1998.

ACT

To provide for the establishment of structures to develop, promote and market tourism and develop and operate tourist services in provincial reserves in the Northern Cape within the framework of government policy and to provide for matters incidental thereto

(English text signed by the Premier)
(Assented to on 18 December 1998)

BE IT ENACTED BY the Legislature of the Province of the Northern Cape as follows:—

Definitions

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

“**Authority**” means the Northern Cape Tourism Authority;

“**Premier**” means the Premier of the Province;

“**Cabinet**” means the Executive Council of the Provincial Legislature of Northern Cape Province;

“**Responsible Member**” means the Member of the Executive Council of the Province whose portfolio includes responsibility for the promotion, development and regulation of tourism within the Northern Cape;

“**Department**” means the Department of Economic Affairs and Tourism of the Provincial Administration of the Northern Cape whose functions include that of the promotion, development and regulation of tourism;

“**Organised Business**” means that body or those bodies which jointly or individually are representative of a substantial proportion of the commercial and business enterprises in the Northern Cape Province which are or are likely to be directly or indirectly affected by tourism in the Northern Cape Province;

“**Organised Labour**” means that body or those bodies which jointly or individually are representative of a substantial proportion of the labour force in the Northern Cape which is or is likely to be directly or indirectly affected by tourism in the Northern Cape;

“**Portfolio Committee**” means that standing committee of the Northern Cape Provincial Legislature whose terms of reference include tourism in the Northern Cape Province;

“**Province**” means the Northern Cape Province.

Establishment of a Tourism Authority

2. (1) There is hereby established a tourism Authority for the Northern Cape which shall be called Northern Cape Tourism Authority, but for marketing purposes may be referred to as Tourism Northern Cape.

(2) The authority shall be a juristic person constituted as provided in section 3 (1) hereinafter and shall consist of no fewer than two and not more than 20 members.

(3) The members of the authority shall be appointed by the Premier in Cabinet on the advice of the responsible member and MEC responsible for Nature Conservation and shall maintain the following balance of interests:

- (i) Two persons representing the Department of Economic Affairs and Tourism;
- (ii) six persons representing the Local Authorities and/or the District Councils in the Province;
- (iii) four persons representing the interests of organised business;
- (iv) one person representing the interests of communities which are directly or indirectly involved in the Tourism industry;
- (v) one person representing the interests of organised labour;
- (vi) one person representing the Department of Education, Arts and Culture;
- (vii) two persons representing the Department of Agriculture, Land Affairs and Nature Conservation.

(4) The members of the Authority shall, at its first meeting, elect a person as Chairperson of the Authority and another as Deputy Chairperson.

Incorporation and Board

3. (1) For purposes of establishing the Authority it may be incorporated as a company in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), of the Republic of South Africa. However, the decision on any other legal form of the Authority will be at the discretion of the Provincial Cabinet.

(2) Members of the Authority may also be appointed to the Board of Directors as may be required in pursuance of the establishment of the company provided that a member who ceases to be a member of the Authority shall cease to be a member of the Board.

(3) The establishment documents of the Authority so formed shall not be inconsistent with this Act.

(4) The operational structure of the Authority shall be determined by the Board of Directors and may, with the concurrence of the Responsible Member of Tourism and the Member of the Executive Council for Nature Conservation, also be organised in such a manner so as to facilitate the development and operation of tourist services in provincial nature reserves.

Objects, powers, duties and functions of the Authority

4. (1) The main object of the Authority is Tourism Promotion and Development in the Northern Cape Province, including the development and operation of tourist services in Provincial Nature Reserves and providing support to Community Based Tourism initiatives.

(2) The Authority shall have the power—

- (a) to investigate and make recommendations to the Responsible Member on any matter relating directly or indirectly to the promotion, development or marketing of tourism for the Northern Cape;
- (b) to initiate and implement media activities intended to promote, develop and market tourism for the Province as a whole or specific areas or venues within the Province;
- (c) to co-ordinate, advise and guide other bodies, organisations or institutions whose activities or aims could have an impact on the promotion, development or marketing of tourism in the Province;
- (d) to employ or use the services of agents, contractors and consultants;
- (e) to employ the services of professional, technical, administrative or other categories of staff on a full-time or part-time basis;
- (f) to provide, subject to the approval of the responsible member, for its staff medical aid, retirement and any other benefits, whether by—
 - (i) establishing and operating schemes or funds, or
 - (ii) providing the facilities whereby staff have access to such schemes or funds, or
 - (iii) a combination of both (i) and (ii);
- (g) for the purposes of promoting, developing and marketing tourism for the Province—
 - (i) to enter into agreements and contracts or joint ventures with any institution, body, organisation or person anywhere in the world subject to the provisions of section 22;
 - (ii) to grant recognition to those tour operators, tour guides, restaurants, hotels, accommodation establishments, resorts, reserves and other similar persons or bodies who meet requirements determined from time to time by the responsible member;
 - (iii) to facilitate the establishment of a Provincial Tourism Forum and Regional Tourism Forums;
 - (iv) raise revenues by means of licensing, registration fees and other levies from all establishments directly or indirectly associated with the tourism industry in the Northern Cape as determined by the responsible member after consultation with organised business;

- (h) to undertake research, obtain advice, conditional and unconditional donations and sponsorships, provided that conditions in respect of conditional funds shall not be inconsistent with the Authorities' essential functions;
- (i) support the development of community based tourism projects;
- (j) develop and operate tourism facilities in the Provincial Nature Reserves subject to the discretion of the responsible member of the Executive Council for Nature Conservation and subject to the provision of the Cape Province Nature and Environmental Ordinance, No. 19 of 1974;
- (k) to initiate, develop and promote Cultural Tourism in the various traditional communities of the province;
- (l) to take any other action which is necessary to assist the Authority in carrying out any of the activities contemplated in paragraphs (a) to (k) inclusive.

Invitation of nominations for members of the Authority

5. (1) The responsible member shall from time to time and in a manner which will in his or her opinion reach the greatest number of residents of the Province invite the submission to him or her of the names of persons who could be taken into consideration when appointing members to the Authority.

(2) An invitation contemplated in subsection (1) shall specify the manner of submission and a date by which such nominations are to reach the responsible member.

Disqualification of appointment to membership of Authority

6. No person shall be appointed as a member of the Authority or if so appointed, shall immediately cease to be a member if 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) from the date on which this Act came into effect, is or has been convicted of an offence and sentenced to a term of imprisonment greater than twelve months without the option of a fine provided that convictions against persons for political offences in pursuance of democracy in South Africa shall not be deemed to be offences for purposes of this Act;
- (d) on becoming directly or indirectly interested in any contract with the company and fails to declare to the board the nature of such interest;
- (e) assumes an office of profit under the company without the written consent of the board.

Appointment may be full-time or part-time

7. An appointment contemplated in section 2(3) may be made on a full-time or part-time basis provided that—

- (a) where a member is appointed on a full-time basis, he or she shall not without the prior written permission of the responsible member, perform or engage himself or herself to perform any remunerative work outside the duties of his or her office;
- (b) where a member is appointed on a part-time basis, he or she may perform or engage himself or herself to perform remunerative work outside the duties of his or her office provided that such work does not interfere with, derogate from or result in a conflict of interest with his or her duties as a member.

Period of office

8. (1) A person contemplated in section 2(3) shall be appointed as director to the Authority for a period not exceeding three years. Different periods of office may be determined for different appointments. On the expiry of this or her term of office, a member shall be eligible for re-appointment. A person may not serve on the Board of the Authority for more than two consecutive terms of office. Cabinet may waive this provision if sufficient reason exists for the reappointment of any person.

(2) Notwithstanding the period of office and the provisions of section 13 it shall be competent for the Cabinet to terminate the appointment of any member.

Chairperson and Deputy Chairperson

9. (1) In the event of the office of Chairperson being vacant or the Chairperson being absent, incapacitated or refuses or fails to act as Chairperson of the Authority, the Deputy Chairperson shall be empowered to exercise all the powers, rights, functions and duties of the Chairperson during the period of such vacancy, absence, incapacity, refusal or failure.

(2) In the event of—

- (a) the offices of both Chairperson and Deputy Chairperson being vacant; or
- (b) both the Chairperson and Deputy Chairperson being absent or incapacitated or refusing or failing to undertake the duties of Chairperson,

then, until the positions are filled as provided for in this Act, the members shall appoint another of the members to act as Chairperson during the period of such vacancy, absence, incapacity, refusal or failure.

Filling of vacancies

10. In the event of a vacancy in the ranks of the members occurring for any reason, the Premier must, subject to the provisions of section 2(3), appoint a person or persons to fill such vacancy or vacancies for the unexpired portion of a member's term of office or for such other period as may be determined by the Premier when making such appointments.

Publication of appointment

11. When appointing a member of the Authority the responsible member shall cause a notice to be published in the *Provincial Gazette* as soon as is practical after such appointment notifying of the name of the appointee, the office held, the effective date and period of such appointment.

Resignation of appointment

12. The Chairperson, Deputy Chairperson or a member may at any time and upon giving not less than thirty days written notice to the responsible member, resign his or her appointment as the Chairperson, Deputy Chairperson or member, or both, provided that in appropriate cases the responsible member may agree to a shorter notice.

Termination of appointment

13. Notwithstanding the provisions of section 6 and section 12, the Premier, on the advice of the responsible member, may prior to the date on which a Chairperson or member's period of office would otherwise terminate, withdraw such appointment on one or more of the following grounds.

- (a) infirmity of mind or body which prevents him or her from the proper discharge of the duties of his or her office;
- (b) conduct which, in the opinion of the Premier, brings or could bring the office of Chairperson or member or the activities of the Authority into disrepute;
- (c) failure, refusal, neglect or incompetence to carry out the duties and functions of the Chairperson or a member to the best of his or her ability.

Temporary suspension of a Chairperson or member

14. The Premier may suspend the Chairperson or a member from the execution of his or her duties whilst the responsible member is investigating and considering allegations which if proved to be correct or substantially correct, could result in the member's appointment being terminated in terms of section 13.

Remuneration and conditions of appointment

15. The responsible member shall, in consultation with cabinet, from time to time determine the allowances, if any, and conditions of appointment of chairpersons and members of the Authority.

Meetings of the Authority

16. The Authority shall conduct meetings as prescribed in the founding documents of the Authority as envisaged in section 3(1) the frequency of such meetings and matters pertaining to quorums shall be detailed in the regulations.

Establishment of Committees

17. The Authority may from time to time establish committees as prescribed in its founding documents as envisaged in section 3(1).

Minutes of proceedings

18. (1) The Authority shall cause minutes to be compiled of the proceedings of every meeting of the Authority and of any committee established by the Authority and cause copies of such minutes to be circulated to all the members.

(2) The minutes prepared in terms of subsection (1), when adopted and signed at a subsequent meeting of the Authority by the Chairperson, shall in the absence of proof of error therein be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law, tribunal or commission of inquiry, constitute prima facie evidence of the proceedings of the Authority and the matters they purport to minute.

Disclosure of conflicting interests

19. (1) Subject to the provisions of subsection (2), where, in relation to a matter being investigated, considered or voted upon by the Authority, a member has any interest which precludes or could preclude him or her from performing his or her functions as a member in a fair, unbiased and proper manner, he or she shall not participate in such investigation, consideration or vote and shall absent himself or herself from the room or other venue in which such investigations, considerations or voting is taking place.

(2) (a) If at any stage during the course of any proceedings before the Authority it appears that a member who is present at that meeting has or may have an interest contemplated in subsection (1), such member shall forthwith disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member must comply with subsection (1);

(b) any disclosure and determination contemplated in paragraph (a) shall be recorded in the minutes of the meeting in question.

(3) If any member fails to comply with subsections (1) or (2)(a), as applicable, the relevant proceedings of the Authority may be declared to be null and void from inception by the responsible member.

Reports

20. The Authority shall, by not later than 31 July (or by such extended date agreed to by the responsible member) of each year, submit a full report to the responsible member on the activities of the Authority for the preceding twelve (12) month period ending on 31 March, which report shall be tabled in the Provincial Legislature by the responsible member not later than 30 November of each year provided that the responsible member may additionally request reports from time to time on any matter.

Administrative support to the Authority

21. On establishment of the Authority, the responsible member shall take whatever steps that may be necessary to provide the Authority with such secretarial and administrative support as may be necessary. Any such support shall be withdrawn once the Authority has itself appropriate professional, technical and administrative staff, provided that such withdrawal may be effected on a phased basis over a period of time.

Funds of the Authority

- 22.** The activities of the Authority shall be funded by means of—
- (a) funds voted from the Provincial Revenue Fund for that purpose by the Provincial Legislature;
 - (b) contributions from the District Councils in the Province;
 - (c) funds raised by the Authority from sources other than funds voted for by the Provincial Legislature as stipulated in (a) above;
 - (d) any other source approved by the responsible member;
 - (e) any combination of the sources of funding contemplated in paragraphs (a), (b), (c) or (d).

Annual financial statements

23. (1) The books of account and other financial records of the Authority shall be audited annually, at the expense of the Authority, by the Auditor-General.

(2) Financial statements shall be submitted to the Auditor-General within three months after the end of the financial year.

(3) When submitting the annual report contemplated in section 20, the Authority shall also submit Annual Financial Statements, duly audited as contemplated in subsection 23(1).

Establishment of a Provincial Tourism Forum

24. (1) The Authority shall as soon as practical but within 12 months of its establishment convene a meeting of stakeholders with a view of establishing a Provincial Tourism Forum.

(2) The Authority shall act as the secretariat of the forum and shall within its budget make provision for the workings of the forum provided that participating parties may be required to make contributions.

(3) The forum shall be convened at least once a year and thereafter as regularly as is deemed necessary provided that the costs of holding more than four meetings shall not be from the budget of the Authority.

(4) As its first meeting the forum shall elect a Chairperson and Deputy Chairperson who shall hold office until the next annual meeting of the forum.

(5) The Authority may also establish Regional Tourism Forums as substructures to the Provincial Tourism Forum.

Members of the Forum

25. (1) The forum shall be constituted from all organised groups or bodies active in Tourism Development and shall as far as practical consist of at least representatives from each of the following organisations of sectors:

- (i) organised business;
- (ii) organised labour;
- (iii) community based organisations;
- (iv) the six District Councils;
- (v) the various Local Authorities;
- (vi) Provincial Government departments of Economic Affairs and Tourism, Agriculture, Nature Conservation and Land Reform, and Education, Arts and Culture;
- (vii) Non-Governmental Organisations (NGO's) such as publicity associations, tourism bureau's;
- (viii) the Portfolio Committee of the Legislature dealing with tourism matters;
- (ix) such other groups or individuals whose presence and participation will add value to the Forum.

(2) The criteria for membership of the Provincial Tourism Forum will be determined by regulation.

(3) It shall be competent for the members of the forum by a simple majority decision to admit new members.

Purpose and function of the Forum

26. Without limiting the generality of its functions, the forum shall serve as a platform for participants to discuss, debate and influence current and/or future government policy on the promotion, development and marketing of tourism as well as strategies for the implementation thereof by the Authority.

Regulations

27. (1) The responsible member may, from time to time and by notice in the *Provincial Gazette*, make regulations relating to—

- (a) invitation of nominations for possible appointments to the Authority;
- (b) the use of agents, contractors and consultations;
- (c) the determination and payment of the fees and allowances payable to the Chairperson and members of the Authority;
- (d) the payment to the Authority of fees and charges arising directly or indirectly from any of the services provided by or recognition granted by the Authority;
- (e) the procedure to be followed when convening the initial meeting of interested parties with a view to the establishment of a provincial tourism forum and regional tourism forums;
- (f) any matter which is incidental to any of the powers, duties or functions of the Authority or of a provincial tourism forum.

(2) Prior to publication of the said regulations the responsible member shall refer them to the Portfolio Committee to the Legislature dealing with tourism matters for consideration.

Short title and date of commencement

28. This Act shall be called the Northern Cape Tourism Act, 1998, and shall come into operation on a date to be determined by proclamation in the *Provincial Gazette* by the Premier.
