

PROVINCE OF THE EASTERN CAPE

**EASTERN CAPE PARKS AND TOURISM
AGENCY ACT, 2010 (EASTERN CAPE)**

ACT NO. 2 OF 2010

ACT

To provide for the establishment of the Eastern Cape Parks and Tourism Agency in order to develop and manage protected areas and to promote and facilitate the development of tourism in the Province and to confer powers, functions and duties upon that Agency; to provide for the management thereof by a Board and the appointment of members thereof; to establish the Eastern Cape Tourism Development Fund and the Eastern Cape Biodiversity Conservation and Development Fund; to provide for the registration of certain persons and amenities involved in tourism; to provide for the collection of levies in respect of registered persons and amenities; to provide for the inspection of premises; to provide for transitional arrangements; and to provide for matters incidental thereto.

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CHAPTER 1 DEFINITIONS

1 Definitions

In this Act, unless the context otherwise indicates-

"Agency" means the Eastern Cape Parks and Tourism Agency established under section 10;

“biodiversity” has the same meaning assigned to it in section 1 of the National Environmental Management: Biodiversity Act, 2004 (Act No.10 of 2004);

"Board" means the Eastern Cape Parks and Tourism Board referred to in section 15;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Department" means the Department responsible for tourism and environmental affairs in the Province;

“Eastern Cape Parks Board” means the Eastern Cape Parks Board established under section 6 of the Provincial Parks Board Act (Eastern Cape), 2003 (Act No.12 of 2003);

“Eastern Cape Tourism Board” means the Eastern Cape Tourism Board established under section 3 of the Eastern Cape Tourism Act, 2003 (Act No. 8 of 2003);

"Gazette" means the Provincial Gazette of the Province;

"HOD" means the Head of the Department;

"management" in relation to a protected area, includes the administration, control, development, maintenance and other activities necessary for the protection, rehabilitation, conservation and sustainable use of biodiversity and heritage resources of the area;

"management authority" in relation to a protected area, is the management authority contemplated in the Protected Areas Act;

"MEC" means the Member of the Executive Council responsible for tourism and environmental matters in the Province;

"municipality" means a municipality established under the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"prescribe" means prescribe by the MEC by regulation in *Gazette*;

“protected area” means –

- (a) any nature reserve established under section 6 of the Nature and Environmental Conservation Ordinance, 1974 (Ordinance No. 19 of 1974), section 27 of the Transkei Environmental Conservation Decree, 1992 (Decree No. 9 of 1992) or section 23 the Ciskei Nature Conservation Act, 1987 (Act 10 of 1987) which is, at the time of commencement of this Act, listed as a Provincial park in the register of provincial parks or managed by the Eastern Cape Parks Board in section 33 or section 8(1)(a) read with section 60(1)(d)(iii) of the Provincial Parks Board Act (Eastern Cape), 2003, irrespective of whether the MEC declared such a Provincial park or assigned the management thereof as required in terms of section 33 or 41 of that Act or in terms of the Transkei Environmental Conservation Decree, 1992 or the Ciskei Nature Conservation Act, 1987;
- (b) a National protected area, a Provincial protected area or a Local protected area as contemplated in section 9 of the Protected Areas Act which is, at the time of commencement of this Act, managed by the Eastern Cape Parks Board as management authority under an assignment made by the Cabinet member responsible for national environmental management or forests or the MEC under section 38(1) or (2) of that Act or managed in terms of an agreement with the organ of state responsible for environmental affairs;
- (c) any nature reserve established after the commencement of this Act under any applicable provincial legislation and assigned to the Agency by the MEC under the Protected Areas Act;
- (d) any protected area contemplated in section 9 of the Protected Areas Act and for which the Agency is the management authority under an assignment made by the Cabinet member responsible for national environmental management or the MEC in terms of section 38(1) or (2) of that Act; and
- (e) any land acquired by the Eastern Cape Parks Board in terms of the Provincial Parks Board Act, 2003 and managed as a or part of a protected

area, any land assigned to the Eastern Cape Parks Board by any organ of state to manage as a protected area or land that is or will be managed by the Eastern Cape Parks Board or the Agency in terms of an agreement with the owner of that land and which is or becomes listed in the register referred to in section 12(7)(b);

“Protected Areas Act” means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

"Province" means the Province of the Eastern Cape established by section 103 of the Constitution;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"regulation" means a regulation made by the MEC hereunder;

“SMME” means a small enterprise defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

"this Act" includes any regulations made hereunder.

CHAPTER 2

DEPARTMENTAL OVERSIGHT AND EXECUTIVE AUTHORITY

2 Executive authority

(1) The MEC is the executive authority for the Agency as contemplated in the Public Finance Management Act.

(2) The MEC -

- (a) must appoint the members of the Board and determine their remuneration in consultation with the Member of the Executive Council responsible for Finance;
- (b) must second the Provincial Registrar for Tourist Guides appointed by him or her as contemplated in section 21 of the Tourism Act, 1993 (Act No. 72 of 1993) to the Agency;

- (c) must establish and maintain clear channels of communication between him or her and the Agency;
- (d) must monitor and annually review the performance of the Agency;
- (e) must every third year, facilitate the review of the Agency's performance in relation to its objectives, by an external evaluation panel, appointed in a manner ensuring transparency and openness and drawn from the public and the private sector and comprising at least -
 - (i) of persons with sound knowledge of and experience in tourism, marketing, conservation management and commercialisation; and
 - (ii) a person with sound knowledge and experience in public entity management;
- (f) may issue directives to the Agency to ensure that it operates effectively and economically efficient in achieving the strategic objectives of national and provincial government; and
- (g) if the performance of the Agency is found lacking after a review contemplated in paragraph (d) or (e), may, notwithstanding the provisions of this Act, intervene by instructing the Agency to relinquish the function to the Department and must exercise and perform that function on behalf of the Agency.

3 Provincial guidelines

(1) The MEC may issue guidelines on matters applicable to the tourism and biodiversity management sectors, which are consistent with the objects of this Act and related legislation in relation to -

- (a) mechanisms to promote the participation of previously disadvantaged individuals, communities or SMME's in the tourism and environmental management sectors;
- (b) the promotion of service provision by the Agency;
- (c) guidelines for the determination of fees and levies by the Board;

(d) the application of new technologies; or

(e) any other policy which may be necessary for the application of this Act or related legislation.

(2) The Agency, in exercising its powers and performing its duties in terms of this Act and the related legislation must consider guidelines issued by the MEC in terms of subsection (1).

4 Investigation and exercise and performance of Departmental power and duty by Agency

(1) The MEC may, at any time,–

(a) after consultation with the Agency, request the Agency to investigate any matter pertaining to biodiversity management or tourism as he or she considers necessary;

(b) after consultation with the Agency, request the Agency to exercise or perform a power or duty of the Department or other organs of state pertaining to tourism or biodiversity management on behalf of the Department or organ of state; or

(c) investigate the affairs or financial position of the Agency.

(2) Any reasonable cost incurred by the –

(a) Agency as a result of an investigation or the exercise or performance of a power or a duty contemplated in subsection (1)(a) or (b) may be recovered from the Department;

(b) Department as a result of an investigation contemplated in subsection (1)(c) may be recovered from the Agency.

5 Regulations

(1) The MEC may, by notice in the *Gazette*, make regulations consistent with this Act regarding-

(a) any matter that is required or permitted to be prescribed in terms of this Act;

- (b) a code of conduct for members of the Board;
- (c) any matter relating to the functioning of the Agency or the Board that is necessary to ensure the Agency's efficiency or to promote good order; or
- (d) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

(2) Before the MEC makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment, in writing, within a period stated in the notice, which period may not be less than 14 days from the date of publication of the notice.

(3) If the MEC alters the draft regulations, as a result of any comment received, he or she need not publish those alterations before making the regulations.

6 Delegation by MEC

The MEC may delegate any of his or her powers in terms of this Act, excluding the power to make regulations and the power to appoint the members of the Board, to any official of the Department.

7 Declaration of provincial protected area

The MEC may declare any kind of provincial protected area in accordance with the provisions of the Protected Areas Act and any other applicable provincial legislation and may assign the management of that area to the Agency, if appropriate.

8 Consolidation and expansion of provincial protected areas

(1) The MEC may, for purposes of consolidating and expanding the provincial protected area network, acquire land, enter into an agreement with an owner of land and assign public or state land.

(2) The MEC may, acting with the concurrence of the Executive Council, acquire private land, or any right in or to private land, which has been or is proposed to be declared as a protected area, by-

- (a) purchasing the land or right;

(b) exchanging the land for other land; or

(c) expropriating the land or right, if no agreement is reached with the owner or holder of the right.

(3) The Expropriation Act, 1975 (Act No. 63 of 1975), applies with respect to any acquisition of land or right in or to land in terms of subsection (2)(c).

(4) The MEC may, in the prescribed manner, conclude an agreement with any owner of land for purposes of jointly undertaking biodiversity management on that land,

(5) The MEC may assign the management of any public or state land from a provincial department or other provincial organ of state, in consultation with that provincial department or other provincial organ of state, to the Agency.

9 Extension of period of time

The MEC may, if reasonable grounds exist, on application for an extension, extend any period of time prescribed in relation to anything provided for in this Act.

CHAPTER 3

ESTABLISHMENT, OBJECTIVES AND POWERS AND DUTIES OF AGENCY

10 Establishment of Eastern Cape Parks and Tourism Agency

The Eastern Cape Parks and Tourism Agency is hereby established as a juristic person.

11 Objects of Agency

(1) The objects of the Agency are to -

(a) manage biodiversity in protected areas located in the Province;

(b) manage tourism in the Province;

(c) ensure the effective implementation of its biodiversity management and tourism and powers and duties granted in terms of this Act and any other law; and

- (d) ensure excellence in the business and resource management of the Agency.

(2) In pursuing its objects the Agency must, amongst others –

- (a) facilitate strategic leadership in biodiversity management and tourism through the development of the necessary strategic perspectives;
- (b) contribute to other strategic frameworks of government to ensure intergovernmental coordination and focused financial and natural resource utilisation;
- (c) promote innovation and best practice in relation to biodiversity management and tourism;
- (d) provide for effective biodiversity management in the protected areas, in accordance with, amongst others, applicable national legislation;
- (e) optimise the linkages between biodiversity management and the socio-economic benefits to be derived therefrom;
- (f) undertake infrastructure management in the protected areas;
- (g) market, promote and develop tourism in the Province;
- (h) promote socio-economic growth and transformation within the biodiversity management sector and tourism industry, thereby creating economic and employment opportunities for previously disadvantaged individuals and local communities in the Province;
- (i) facilitate the promotion of investment in the biodiversity management sector and tourism industry; and
- (j) adhere to the good corporate governance principles and resource management requirements contemplated in this Act, the Public Finance Management Act and other applicable laws.

(3) In achieving its objects, the Agency must endeavour to –

- (a) progressively increase its own revenue generation and collection; and

- (b) maintain a system of internal policies, planning and decision making which integrate the objectives and functions relating to biodiversity management and tourism towards development and in accordance with the national and provincial strategic objectives.

12 Powers and duties of Agency relating to protected area management

(1) The Agency is responsible for biodiversity conservation through the effective management of the protected areas in accordance with applicable national and provincial environmental legislation.

(2) The Agency, in addition to any other power or duty provided for in this Act or applicable national and provincial legislation, must, amongst others -

- (a) control, manage and maintain the protected areas so as to exercise supervision and control of the protected areas and to study wild animals and plant life and may, subject to the applicable environmental authorisations, construct or erect any infrastructure, other works and facilities as it may consider necessary to control, manage and maintain the protected areas and must manage and maintain such infrastructure, other works and facilities;
- (b) make inventories, assess, monitor and protect natural resources in the protected areas including natural systems, biodiversity and ecological functions and processes and carrying out of such research and other scientific activities as may be necessary for purposes of this section;
- (c) take the necessary steps to ensure the security of animal and plant life in the protected area;
- (d) take the necessary steps to ensure appropriate ecological management of the protected area;
- (e) perform the duties and functions required of and may exercise the powers granted to the management authority of a protected area in terms of the relevant national legislation and in addition to the management plans required in terms of the Protected Areas Act, prepare and submit to the MEC for his or her approval, management plans for those protected areas

referred to in sections 13, 14, 15 and 16 of the Protected Areas Act that are not part of a nature reserve as contemplated in that Act and paragraph (e) of the definition of “protected area” in the prescribed manner;

- (f) lead and facilitate the development of public private partnerships and community public private partnerships as part of the co-management processes in the protected areas;
- (g) undertake investigative and law enforcement activities in the protected areas;
- (h) manage and control the numbers and spread of alien and invasive species and of damage causing animals in the protected areas; and
- (i) participate in relevant public participation programmes to consolidate and expand the protected area system.

(3) The Agency may make recommendations to the MEC regarding any matter relating to a protected area, including land use and the expansion of a protected area.

(4) Notwithstanding the provisions of subsections (1) and (2), the Agency may, outside the protected areas -

- (a) carry out research and other scientific activities in protected areas or other areas to support the inventorying, assessment, monitoring and research of natural resources within the protected areas as contemplated in subsection (2)(b);
- (b) develop biodiversity stewardship programmes in the prescribed manner and enter into agreements with land owners and the MEC;
- (c) participate in relevant public participation programmes to increase the protected area system throughout the province and facilitate the co-management in the areas adjacent to, and beyond the boundaries of the protected areas;

(d) undertake investigative and law enforcement activities, if the activities relate to offences or infringements committed within the protected areas; or

(e) take any action it considers necessary in order to manage and control the numbers and spread of alien and invasive species and problem animals that could impact on the protected areas.

(5) The Agency must, subject to subsection (6), prior to the exercise or performance of any power or function referred to in subsection (4)(a), (b), (c), (d) or (e) inform the Department of its intention to do so and the Department may, in agreement with the Agency, participate in any of the activities referred to therein.

(6) Notwithstanding the provisions of subsection (5), the Agency may, in an emergency, undertake the activities referred to in subsection (4)(d) without informing the Department of its intention to do so, but must as soon as practicable inform the Department thereof.

(7) In order to effectively exercise and perform its power and duties as contemplated in this section, the Agency must, amongst others –

(a) develop and maintain appropriate research and information management systems;

(b) develop and submit to the MEC, within 24 months from the date of commencement of this Act, a register identifying all the protected areas that the Eastern Cape Parks Board managed when this Act commenced and any other protected area assigned to the Agency after commencement of this Act in terms of the applicable national and provincial legislation, together with a description of the land and must maintain and annually update the register.

(c) request Provincial Treasury to allocate funds from the Eastern Cape Biodiversity Conservation and Development Fund contemplated in section 39 in accordance with the implementation plan referred to in section 39(3) and the objectives of that Fund.

13 Powers and duties of Agency relating to tourism

(1) The Agency is responsible for the marketing, promotion and development of tourism in the Province and the transformation of the tourism industry.

(2) The Agency, in addition to any other power or function provided for in this Act, must -

(a) market the Province as a preferred destination for international, regional and domestic tourists by, amongst others -

- (i) developing and implementing marketing strategies that target international, regional and domestic tourists; and
- (ii) participating in tourism marketing initiatives and strategies of the Department or other organs of state;

(b) promote tourism in the Province by, amongst others –

- (i) advertising or making known the tourist attractions of the Province, including the tourism products in its protected areas, in any manner it deems fit;
- (ii) producing, publishing, printing and selling, and by circulating and distributing, with or without charge, travel or tourist books or guides, maps, posters, placards, brochures and bills and publications of any nature calculated to be useful to tourists within the Province, or otherwise calculated to promote the achievement of its objects, whether directly or indirectly;
- (iii) producing and distributing, with or without charge, motion pictures, photographs or other pictorial material (including video and digital material), and by sponsoring, arranging or organising displays, broadcasts, telecasts, talks and public lectures, relating to the tourism industry within the Province;

(c) develop tourism in the Province by, amongst others –

- (i) identifying tourism development opportunities and implementing appropriate initiatives and programmes to exploit it;

- (ii) implementing effective measures to facilitate the enhancement of the level of standards of tourism products and services being offered in the Province;
 - (iii) identifying tourism training needs and facilitating tourism training initiatives;
 - (iv) assisting with and participating in the development and implementation of a national system of standards, classification and grading for tourist accommodation, establishments, products and services;
 - (v) facilitating tourism investment and potential tourism investment opportunities in the Eastern Cape, in cooperation with organs of state or entities responsible for investment promotion or promoting investment in the Province; and
- (d) facilitate the transformation of the tourism industry by encouraging the alignment of current supply chain processes of the government departments of the Province when procuring accommodation, establishments, products and services in the Province.
- (3) In order to effectively exercise and perform its powers and duties as contemplated in this section, the Agency must, amongst others –
- (a) develop and maintain appropriate research and information management systems for the purposes of tracking tourism activity and its economic contribution in the Province;
 - (b) develop and maintain a database of all tourism attractions, facilities, infrastructure, services, natural and cultural attractions and their location in the Province;
 - (c) provide the secretariat for the Provincial Registrar of Tourist Guides who is appointed by the MEC in terms of section 21 of the Tourism Act, 1993 and seconded to the Agency in terms of this Act;
 - (d) register any tourist amenity and person conducting or operating a tourist service as contemplated in chapter 6; and

- (e) request Provincial Treasury to allocate funds from the Provincial Tourism Development Fund contemplated in section 38 in accordance with the implementation plan referred to in section 38(3) and the objectives of that fund.

14 General powers and duties of Board

The Board may-

- (a) after consultation with the MEC, determine the staff establishment of the Agency, including the secretariat to the Provincial Registrar for Tourist Guides contemplated in section 21 of the Tourism Act, 1993 and appoint the executive management and other employees as contemplated in section 28;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to immovable property subject to the approval of the MEC, or acquire or dispose of any right in or to movable property and hire or let any property;
- (d) open and operate a bank account;
- (e) invest any funds of the Agency;
- (f) borrow money, subject to the Public Finance Management Act;
- (g) charge fees for any work performed or services rendered by it or collect royalties resulting from any discoveries, inventions or computer programmes;
- (h) insure against-
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act;
- (i) insure members of the Board and staff members in respect of bodily injury, disablement or death resulting solely and directly from an accident occurring in the course of the performance of their duties; and

- (j) perform legal acts, including acts in association with or on behalf of any other person or organ of state.

CHAPTER 4

GENERAL GOVERNANCE OF AGENCY

15 Role of Board

(1) The Agency is managed by a Board that -

- (a) gives strategic direction to the Agency;
- (b) is responsible for the performance of the Agency;
- (c) is accountable to the MEC for the performance of the Agency; and
- (d) is supported by a chief executive officer and other employees.

(2) The Agency communicates with the MEC through the chairperson of the Board.

16 Constitution of Board

(1) The Board consists of not less than seven and not more than nine members appointed by the MEC from applications and nominations received as contemplated in section 17 of whom at least -

- (a) one must be an official employed by the Department to serve as an *ex officio* member;
- (b) one must have skills and experience in tourism;
- (c) one must have skills and experience in biodiversity conservation and management;
- (d) one must have skills and experience in business management;
- (e) one must have skills and experience in financial management;
- (f) one must have skills and experience in tourism marketing and development; and
- (g) one must represent the public.

(2) The Board must be broadly representative of the population of the Province.

17 Nomination procedure

(1) The MEC must, at least 90 days before the expiry of every term of office of the members of the Board, invite applications or nominations for persons to be appointed to the ensuing term of office of the Board by notice in the *Gazette* and an advertisement in a leading newspaper in the Province.

(2) The invitation for applications or nominations referred to in subsection (1) must provide for the applications or nominations to be submitted within 30 days from the date of the invitation or the date of publication of the notice.

(3) Any application or nomination made pursuant to a notice or an advertisement in terms of subsection (1) must be made in the form determined by the MEC and accompanied by-

- (a) the personal details of the applicant or nominee;
- (b) particulars of the applicant's or nominee's qualifications or experience in the matters listed in section 16(1);
- (c) in the case of a nomination, a letter of acceptance of nomination by the nominee;
- (d) a sworn declaration by the applicant or nominee that he or she is not disqualified in terms of section 18;
- (e) a disclosure of the information contemplated in section 22; and
- (f) permission by the applicant or nominee to verify the information provided by him or her.

(4) The MEC must, within 30 days from the expiry of the date specified in the notice and the advertisement, evaluate the applications and nominations received by him or her and appoint the members of the Board for the ensuing term of office of the Board.

(5) When evaluating the nominations the MEC must take into consideration—

- (a) the applicant's or nominee's knowledge and experience of the matters referred to in section 16(1);
- (b) the need for appointing persons disadvantaged by unfair discrimination;
- (c) the geographic spread in the Province;
- (d) the need to ensure that the Board is composed of persons covering a broad range of appropriate experience and expertise; and
- (e) the Agency's objectives.

(6) If insufficient, unsuitable or no applications and nominations are received within the period specified in the invitations or the notice the MEC may appoint to the Board the required number of persons who, but for the fact that they did not apply or were not nominated in terms of the procedure contemplated in this section, qualify to be appointed in terms of this Act.

(7) The MEC must, as soon as practicable after the appointment of the members of the Board, publish by notice in the *Gazette*-

- (a) the name of every person appointed;
- (b) the date from which the appointment takes effect; and
- (c) the term of office referred to in section 24.

18 Disqualification from appointment to or remaining as member of Board

A person is disqualified from being appointed or remaining a member of the Board if that person-

- (a) is or becomes a Member of the National Assembly or National Council of Provinces, any provincial legislature, municipality or is in the full-time employ of an organ of state with the exception of the representative of the Department contemplated in section 16(1);
- (b) is not a South African citizen or a permanent resident who is ordinarily resident in the Republic;

- (c) is or becomes subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 (Act No.24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (d) is declared by the High Court to be of unsound mind or suffers a mental illness or has a severe or profound intellectual disability as contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (e) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act No. 61 of 1973), or of contravening this Act, and sentenced to imprisonment irrespective of whether such imprisonment was wholly or partly suspended or not;
- (f) has been convicted of an offence, other than an offence contemplated in paragraph (e) and sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not;
- (g) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board; or
- (h) fails to disclose an interest as contemplated in section 22(1).

19 Resignation of member and vacation of office

(1) A Member of the Board may at any time resign from the Board by giving one month's written notice tendered to the chairperson who must immediately inform the MEC, the Board and the chief executive officer accordingly.

(2) A member of the Board who resigns as contemplated in subsection (1) must vacate his or her office at the end of the notice period contemplated therein.

(3) A member of the Board ceases to be a member and must vacate his or her office with immediate effect if he or she-

(a) is no longer eligible in terms of section 18 to be a member; or

(b) is removed from office by the MEC in terms of section 20.

20 Removal of member of Board, dissolution of Board and appointment of interim Board

(1) The MEC may, after due inquiry, or on recommendation of the Board after due enquiry, remove, with immediate effect, a member of the Board from office on account of any or all of the following:

(a) Misconduct;

(b) inability to perform the duties of his or her office efficiently;

(c) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown; or

(d) failure to disclose an interest in terms of section 22 or voting or attendance at, or participation in, proceedings of the Board while having an interest contemplated in section 22.

(2) The MEC may, after due inquiry, dissolve the Board with immediate effect, if it fails in any or all of the following:

(a) Discharging its fiduciary duties;

(b) achieving its objectives in terms of this Act; or

(c) carrying out its duties.

(3) Upon the dissolution of the Board contemplated in subsection (2), the MEC must appoint an interim Board consisting of not less than seven and not more than nine members and he or she does not have to follow the nomination and appointment procedure contemplated in section 17.

(4) The MEC must appoint the interim Board within 30 days after the dissolution of the Board and the term of office of the interim Board is a period not exceeding six months.

(5) The MEC may only appoint the Board, the interim Board or dissolve the Board after consultation with the Legislature's Portfolio Committee responsible for Parks and Tourism in the Province

(6) The Portfolio Committee must table a report on the consultation process to the Legislature.

(7) The MEC must appoint the chairperson and deputy chairperson of the interim Board.

(8) The provisions of this Act regarding the Board apply to the interim Board.

21 Appointment of member to vacant seat

(1) When a seat on the Board becomes vacant as a result of any action referred to in section 19, or if a Board member dies before the expiration of his or her term of office the Board must, as soon as is practicable after the seat becomes vacant notify the MEC that the seat has become vacant.

(2) The MEC must, as soon as is practicable after the receipt of the notification from the Board -

- (a) in an open and transparent manner, invite applications or nominations for a person to be appointed to the vacant seat;
- (b) evaluate the applications and nominations received; and
- (c) appoint a nominee or candidate to the vacant seat.

(3) If insufficient, unsuitable or no nominations are received as contemplated in subsection (2)(b), the MEC may appoint to the vacant seat on the Board any person who, but for the fact that he or she was not nominated or did not apply in terms of the procedure contemplated in subsection (2), qualify to be appointed in terms of this Act.

(4) The MEC must, as soon as practicable after the appointment of the member to the vacant seat on the Board, publish by notice in the *Gazette* -

- (a) the name of the person appointed;
- (b) the date from which the appointment takes effect; and
- (c) the period for which the appointment is made as contemplated in subsection (5).

(5) The person who is appointed to the vacant seat on the Board fills the vacancy for the unexpired portion of the period of office of the vacating member.

22 Disclosure of interest

(1) A person may only be appointed to the Board, if he or she has made the following disclosure:

- (a) whether, directly or indirectly, personally or through his or her spouse, partner or associate, he or she has an interest in the tourism or biodiversity conservation industry and stipulate the nature and extent of that interest; or
- (b) whether, his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).

(2) If, at any stage during the course of any proceedings before the Board, it appears that any Board member has or may have an interest which may cause a conflict of interest -

- (a) that Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether that Board member is precluded from participating in that meeting by reason of a conflict of interest; and

(b) the disclosure of interest by that member and the decision taken by the remaining Board members regarding the matter, must be recorded in the minutes of the meeting in question.

(3) If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.

23 Chairperson and deputy chairperson

(1) The MEC must appoint a chairperson and a deputy chairperson for every newly constituted Board.

(2) The deputy chairperson must, if the chairperson is for any reason unable to act as chairperson, perform all the functions of the chairperson and may exercise all the powers of the chairperson.

(3) If both the chairperson and the deputy chairperson are for any reason unable to preside at a Board meeting, the members present must elect one of the members to preside at that meeting and the person elected may perform all the functions and exercise all the powers of the chairperson.

(4) A chairperson or deputy chairperson may vacate office as such, and such vacation does not terminate his or her membership of the Board and if the chairperson or deputy chairperson has vacated office, the MEC must appoint a chairperson or deputy chairperson from the Board members for the remaining term of office of the Board.

24 Term of office

(1) A Board member holds office for a period of three years calculated from the date that his or her appointment takes effect and may be eligible for re-appointment for one additional term not exceeding three years.

(2) Despite subsection (1), the MEC may, by notice in the *Gazette*, after consultation with the Board, extend the term of office of all the Board members for a

period of six months, but he or she may only extend the term of office of the Board twice.

(3) Despite the duration of office referred to in subsection (1), Board members continue in office until the succeeding Board is duly constituted by the MEC.

25 Meetings of Board

(1) The MEC must, as soon as is practicable after the appointment of the Board for the first term of office, determine the time and place of its first meeting.

(2) The Board must determine the time and place of any future meetings for the first and subsequent terms of office of the Board.

(3) The Board meets as often as circumstances require, but at least four times in every financial year.

(4) A majority of Board members constitutes a quorum at a meeting.

(5) Every Board member, including the chairperson, has one vote and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

(6) Subject to the approval of the Board, any person who is not a Board member may attend or take part, but may not vote, in a meeting of the Board.

(7) The Board must adopt governance rules which provides for the conduct of proceedings at meetings and recording of the proceedings and including the governance rules for special meetings.

26 Decisions of Board

(1) A decision of the majority of Board members present at any duly constituted meeting constitutes a decision of the Board.

(2) No decision taken by or act performed under the authority of the Board is invalid only by reason of -

- (a) a vacancy on the Board at the time the decision was taken or the act was authorised; or

- (b) the fact that any person who was not entitled to sit as a Board member, participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present at the time followed the required procedure for decisions.

27 Duties of Board

(1) In addition to the duties and responsibilities as accounting authority of the Agency provided for in the Public Finance Management Act, the Board must -

- (a) provide effective, transparent and accountable corporate governance and conduct effective oversight of the affairs of the Agency, by adopting governance rules in accordance with subsection (2);
- (b) comply with all applicable legislation and agreements; and
- (c) at all times act in accordance with the code of conduct for members of the Board as may be prescribed by the MEC.

(2) The Board must adopt governance rules that substantially comply with the principles of good governance for a public entity and which provides for at least the following:

- (a) The role and meetings of the Board;
- (b) the role of the chairperson of the Board;
- (c) performance assessment of Board members ;
- (d) the role of the chief executive officer;
- (e) performance assessment of the chief executive officer;
- (f) the composition and procedures for and conduct of meetings of committees of the Board;
- (g) the financial management of the Agency as contemplated in the Public Finance Management Act;
- (h) a procurement policy; and

- (i) a remuneration policy for employees of the Agency, developed in consultation with the MEC and the MEC responsible for Finance in the Province.

28 Executive management and employees

(1) The Board must –

- (a) appoint a chief executive officer;
- (b) determine the period of office of the chief executive officer provided that the period may not exceed 5 years; and
- (c) determine the conditions of appointment of the chief executive officer.

(2) The chief executive officer must enter into a performance agreement with the Board on acceptance of his or her appointment and he or she is accountable to the Board.

(3) The chief executive officer is the head of the Agency's administration and, subject to directives from the Board, the functions of the chief executive officer are, amongst others, to -

- (a) manage the affairs of the Agency;
- (b) implement the policies and decisions of the Board;
- (c) manage and recruit employees to perform the work necessary to achieve the objects of the Agency; and
- (d) develop efficient, transparent and cost-effective administrative systems.

(4) The Agency must determine the conditions of service for its employees, including remuneration which must be determined in accordance with the remuneration policy referred to in section 27(2)(i) .

(5) The chief executive officer may delegate any original or delegated duty or power to any employee appointed in terms of subsection (3)(c) in accordance with section 31(1)(c).

29 Committees

(1) The Board may, subject to subsection (2), establish any committee to assist it in the performance of its functions and appoint members to that committee, and it may at any time dissolve or reconstitute any such committee.

(2) The Board may co-opt any person outside the Board to assist on any of its committees if the person concerned has specific expertise provided that he or she does not have voting rights.

(3) The Board must, at least, establish the following permanent committees:

- (a) An executive committee;
- (b) an audit committee;
- (c) a remuneration committee; and
- (d) a disciplinary appeals committee.

(4) The Board must determine, subject to any applicable legislation, the number of members and the terms of reference of each committee.

(5) The Board may appoint to any of its committees people who are not members of the Board provided that they will serve in an advisory capacity and have no voting rights.

(6) The Board may summarily terminate the membership of a member of a committee if -

- (a) the performance by the member of the powers and functions of that committee is unsatisfactory;
- (b) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
- (c) the member has failed to comply with or breached any legislation regulating the conduct of members.

(7) If this Act or the Board does not designate a chairperson for a committee, the committee may elect a chairperson from among its members.

30 Executive committee

(1) The executive committee established under section 29 consists of the chairperson of the Board who must act as chairperson of the executive committee, one other member of the Board elected by the Board, the chief executive officer and any other appropriate executive manager of the Agency.

(2) The purpose of the executive committee is to oversee the day-to-day activities of the Agency in order to ensure that the strategic decisions of the Board are implemented effectively and timeously and that the Agency complies with the provisions of this Act, the Public Finance Management Act and any other applicable law.

31 Delegations by Board

(1) The Board must develop a system of delegation to maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system may -

- (a) in writing delegate appropriate powers, excluding the power to establish a committee, prescribe governance rules for a committee and appropriating funds, to a committee, the chief executive officer, a member of the Board or an employee of the Agency;
- (b) assign the performance of any of its functions to a committee, the chief executive officer a member of the Board, executive manager or an employee of the Agency; and
- (c) approve the delegation and assignment of any of the powers or functions delegated or assigned to the chief executive officer by the Board or granted to him or her under this Act, to any employee of the Agency.

(2) A delegation or assignment in terms of subsection (1)-

- (a) is subject to such limitations and conditions as the Board may impose;
- (b) may authorise subdelegation; or
- (c) does not divest the Board or the chief executive officer in the event of a delegation or assignment in terms of subsection (1)(c) of the delegated power or the performance of the assigned duty.

(3) The Board may confirm, vary or revoke any decision taken by a committee, the chief executive officer, a member of the Board or an employee of the Agency as a result of a delegation or assignment in terms of subsection (1).

CHAPTER 5

FINANCIAL MATTERS AND REPORTING

32 Financial year

The financial year of the Agency is from 1 April to 31 March.

33 Revenue of Agency

The revenue of the Agency consist of-

- (a) fees, levies and other moneys received or raised by it under the provisions of this Act or any other law;
- (b) income derived by it from the performance of its functions;
- (c) money appropriated by the Legislature;
- (d) grants received from organs of state;
- (e) voluntary contributions, donations and bequests received by it;
- (f) money borrowed by it in terms of this Act;
- (g) income derived by it from investments;
- (h) penalties, fines and proceeds from sales of forfeited items received or recovered and allocated to the Agency under the provisions of this Act or any other law; and
- (i) money accrued to the Agency from any other source.

34 Annual budget of Agency

(1) The Agency must, no later than 30 September in each financial year or any other period agreed to between the MEC and the Agency, submit, through the HOD, to the MEC, a budget of its estimated revenue and expenditure for the ensuing

financial year for approval by him or her as contemplated in the Public Finance Management Act.

(2) The Agency may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the Provincial Treasury has been obtained.

(3) The Board is responsible for ensuring that the expenditure of the Agency is in accordance with the approved budget.

35 Contents of strategic plan

(1) The Agency must, no later than 30 September in each financial year or any other period agreed to between the MEC and the Agency, submit, through the HOD, to the MEC a strategic plan to the MEC for approval by him or her as contemplated in the Public Finance Management Act.

(2) The strategic plan must –

- (a) cover a period of at least three years;
- (b) be updated annually on a rolling basis; and
- (c) form the basis for the annual reports of the Agency.

(3) In addition to the requirements of the Public Finance Management Act and any objectives and outcomes that the MEC may determine, the strategic plan of the Agency must provide for the manner in which the Agency intends to give effect to its objects as stated in section 11, inclusive of strategies, including an intergovernmental coordination strategy and an own revenue generation strategy and preliminary action plans.

(4) The MEC and the Agency must develop and agree on a framework of acceptable levels of materiality and significance of the matters that must be contained in its annual report and financial statements as contemplated in section 55(2) of the Public Finance Management Act.

36 Preparation and submission of annual report and financial statements of Agency

(1) The Board is the accounting authority for the Agency and must prepare the annual report and the financial statements in terms of section 55 of the Public Finance Management Act and, together with the report of the auditor on the financial statements, submit it to the Provincial Treasury, the MEC and the Auditor-General, if the Auditor-General did not audit the financial statements.

(2) For purposes of section 55(3) of the Public Finance Management Act, the Board must submit the annual report and the financial statements through the HOD, to the MEC, for tabling in the Legislature.

(3) The MEC must, within 20 days of receipt of the annual report and financial statements of the Agency, table it in the Provincial Legislature.

37 Quarterly reporting

(1) The Board must submit to the MEC quarterly reports, in strict compliance with the applicable provisions of the Public Finance Management Act and the Treasury Regulations issued in terms thereof.

(2) Each quarterly report of the Agency must deal with the state of affairs, the activities, the operations, and the financial position of the Agency, including-

- (a) the extent to which the Agency has achieved or advanced its objects during the financial quarter concerned;
- (b) the relevant performance information regarding the economic, efficient and effective utilisation of resources;
- (c) the amount of money, if any, received from the state or any other source and any other financial commitment furnished to the Agency; and
- (d) the detailed staff establishment and composition of the Agency.

(3) Notwithstanding the provisions of subsection (1), the MEC may, at any time, request the Board to submit to him or her, within a period determined by the MEC, an interim report pertaining to the state of affairs, the activities, the operations, and

the financial position of the Agency or pertaining to any specific matter identified by the MEC.

(4) The Board must establish procedures for quarterly reporting to the MEC in terms of the Public Finance Management Act and this chapter, in order to facilitate effective performance monitoring, evaluation and corrective action.

38 Establishment of Eastern Cape Tourism Development Fund

(1) The Eastern Cape Tourism Development Fund is hereby established as an account in the Provincial Treasury and the Member of the Executive Council responsible for finance in the Province is the executive authority of the Eastern Cape Tourism Development Fund for purposes of the Public Finance Management Act.

(2) The purpose of the Eastern Cape Tourism Development Fund is to empower and develop previously disadvantaged individuals, youth and women in the tourism sector.

(3) The Agency must, in consultation with the MEC, develop an implementation plan for the operationalisation of the Eastern Cape Tourism Development Fund.

(4) The Eastern Cape Tourism Development Fund may consist of –

- (a) a percentage of appropriated Agency funds from the Legislature;
- (b) any donation or bequest given for a specific tourism development activity;
- (c) a provincial tourism development levy contemplated in section 41; or
- (d) any other funding mechanism that is identified by the Agency and approved by the MEC prior to the utilisation of that funding mechanism by the Agency.

(5) Any money, assets or investment in the Eastern Cape Tourism Development Fund at the end of a financial year must be dealt with in terms of the PFMA.

39 Establishment of Eastern Cape Biodiversity Conservation and Development Fund

(1) The Eastern Cape Biodiversity Conservation and Development Fund is hereby established as an account in Provincial Treasury and the member of the

Executive Council responsible for finance in the Province is the executive authority of the Eastern Cape Biodiversity Conservation and Development Fund for purposes of the Public Finance Management Act.

(2) The purpose of the Eastern Cape Biodiversity Conservation and Development Fund is to empower and develop previously disadvantaged individuals, youth and women and to promote biodiversity conservation within the protected areas.

(3) The Agency must, in consultation with the MEC, develop an implementation plan for the operationalisation of the Eastern Cape Biodiversity Conservation and Development Fund.

(4) The Eastern Cape Biodiversity Conservation and Development Fund may consist of –

- (a) a percentage of appropriated Agency funds from the Legislature;
- (b) any donation or bequest given for a specific biodiversity conservation activity; or
- (c) any other funding mechanism that is identified by the Agency and approved by the MEC prior to the utilisation of that funding mechanism by the Agency, including the levying of prescribed entrance fees, fines and assets seized by an environmental officer, environmental management inspector or compliance officer in a protected area and forfeited as a result of an offence committed in that protected area.

(5) Any money, assets or investment in the Eastern Cape Biodiversity Conservation and Development Fund at the end of a financial year must be must be dealt with in terms of the PFMA.

40 Allocation and utilisation of the Eastern Cape Tourism Development Fund and the Eastern Cape Biodiversity Conservation and Development Fund

(1) The Provincial Treasury administers the money, assets and investments in both the Eastern Cape Tourism Development Fund and the Eastern Cape Biodiversity Conservation and Development Fund and must allocate funds in

accordance with the implementation plans referred to in section 38(3) and 39(3) and the developmental objectives of the Agency.

(2) The Eastern Cape Tourism Development Fund and the Eastern Cape Biodiversity Conservation and Development Fund may be used -

- (a) for the development and training of SMME's and historically disadvantaged individuals and communities, youth and women in tourism and biodiversity conservation;
- (b) to undertake or promote any research on tourism in the Province;
- (c) to undertake or promote any research on biodiversity conservation or any matter which is of material importance to biodiversity conservation in a protected area in the Province;
- (d) to make grants of money to any person or body conducting the research referred to in paragraph (b) or (c), in the Province or elsewhere;
- (e) to foster the education and training of -
 - (i) any person; or
 - (ii) employees of the Agency, whether by grants, study loans and bursaries; or
- (f) to foster an awareness of the importance of biodiversity conservation in the Province.

(3) All money, assets or investments in the Eastern Cape Tourism Development Fund or the Eastern Cape Biodiversity Conservation and Development Fund, which accrued by way of any donation or bequests, must be used in accordance with the conditions, if any, of such donation or bequest.

41 Provincial tourism development levy

- (1) The Agency may, in consultation with the MEC and by notice in the *Gazette*, -

- (a) institute a provincial tourism development levy payable by a person conducting or operating a tourist amenity or tourist service and registered as such in terms of this Act;
- (b) annually determine a surcharge, which must be added to the price of services rendered by the person conducting or operating a tourist amenity or service; or
- (c) annually fix a levy calculated at the rate determined in the notice.

(2) If the Agency institutes a provincial tourism development levy in accordance with this section, it may, by civil action in a competent court, recover the amount of levy which is due in terms of this section, from a person liable for payment.

CHAPTER 6

REGISTRATION OF TOURIST AMENITIES OR PERSONS CONDUCTING OR OPERATING TOURIST SERVICES

42 Register of tourist amenities and tourist services in the Province

(1) In addition to the register of tourist guides contemplated in section 21 of the Tourism Act, 1993, the Agency must develop and maintain a register of all tourist amenities and persons conducting or operating a tourist service in the Province.

(2) For purposes of this chapter, a person is conducting or operating a tourist service if that person is a tour operator, courier, travel agent, vehicle rental operator, activity operator or a tourism or biodiversity management training provider and an amenity is a tourist amenity if that amenity is a hotel, lodge, guesthouse, bed and breakfast establishment, conference centre or restaurant.

(3) The Agency may, in consultation with the MEC, by notice in the *Gazette* designate any other type of amenity as a tourist amenity or tourist service for purposes of this Act.

43 Registration of tourist amenity and tourist service in the Province

(1) Any tourist guide must register with the Provincial Registrar of Tourist Guides in accordance with the provisions of the Tourism Act, 1993 and the provisions of that Act apply to tourist guides.

(2) Any tourist amenity or person who conducts or operates a tourist service in the Province must register as such with the Agency, with effect from a date fixed by the Agency in consultation with the MEC by notice in the *Gazette*, and no person may conduct or operate a tourist amenity or tourist service after that date unless so registered.

(3) The Agency must, in consultation with the MEC and by notice in the *Gazette*, determine the requirements which are to be complied with before any tourist amenity or tourist service may be registered.

44 Application for registration as tourist amenity or tourist service

(1) Any tourist amenity, person who conducts or operates a tourist service or person who intends to conduct or operate a tourist amenity or tourist service, must apply to the Agency for the registration of the tourist amenity or tourist service.

(2) An application referred to in subsection (1) must be made in the manner determined by the Agency and accompanied by -

- (a) the fee determined by the Agency in consultation with the MEC, by notice in the *Gazette*;
- (b) any plans, documents and other information or particulars relating to the tourist amenity or tourist service; or
- (c) any additional documentation or information that may be required by the Agency.

45 Powers of Agency in relation to registration

(1) The Agency may, if in its opinion, the requirements for the registration of a tourist amenity or tourist service -

- (a) have been or will be complied with, register the tourist amenity or tourist service or intended tourist amenity or tourist service; or
- (b) have not been complied with or will not be complied with, refuse to register the tourist amenity or tourist service or intended tourist amenity or tourist service.

(2) Before registering a tourist amenity or tourist service, the Agency -

- (a) must inspect the tourist amenity or tourist service or cause it to be inspected; or
- (b) may conduct further investigation in regard to the tourist amenity or tourist service.

46 Certificate of registration

(1) The Agency must issue to the tourist amenity or person conducting or operating the tourist service, a certificate of registration in the prescribed form.

(2) If any tourist amenity or person conducting or operating the tourist service ceases to be registered or if any person ceases to conduct or operate a tourist amenity or tourist service, that tourist amenity or person must forthwith, return the certificate of registration to the Agency.

47 Publication of list of registered tourist amenities and tourist services

The Agency must publish periodically, in such manner as it may determine, a list and particulars of registered tourist amenities and tourist services together with particulars of such tourist amenities and tourist services.

48 Cancellation of registration of tourist amenity and tourist service

(1) The Agency may, if a registration requirement of a tourist amenity or a person conducting or operating a tourist service has not been complied with, give notice to that tourist amenity or person to satisfy that requirement within three months from the date of notice, failing which the Agency may withdraw the registration.

(2) The Agency may if it considers it necessary, extend the period referred to in subsection (1).

(3) The tourist amenity or the person conducting or operating the tourist service in respect of which or to whom a notice has been given, may before the lapse of the period of three months or any period so extended, make representations in writing to the Agency in regard to the proposed withdrawal of the registration of the tourist amenity or tourist service.

(4) If, upon the lapse of the period of three months or extended period, the Agency considers that the requirement concerned has not been complied with, the Agency may withdraw the registration and must give notice thereof to the tourist amenity or the person conducting or operating the tourist service.

49 Period of validity of registration and renewal

(1) Any registration in terms of this Act is valid for a period of one year calculated from the date of issue of the registration certificate.

(2) The tourist amenity or person conducting or operating the tourist service must, at least 60 days before the expiry of the registration, apply to the Agency for the renewal of the registration.

(3) An application referred to in subsection (2) must be -

(a) made in the manner determined by the Agency; and

(b) accompanied by the renewal fee determined by the Agency in consultation with the MEC and by notice in the *Gazette*.

(4) The Agency may, before renewing the registration of a tourist amenity or tourist service, -

(a) inspect the tourist amenity or tourist service or cause it to be inspected; or

(b) conduct further investigation in regard to the tourist amenity or tourist service.

50 Appeal against decision of Agency

(1) Any person who is aggrieved by any decision of the Agency with regard to-

(a) refusal of an application for registration;

(b) withdrawal of any registration; or

(c) cancellation of any registration,

may, in the prescribed manner, appeal to the MEC.

(2) The MEC may require the Agency to furnish him or her with the written reasons for its decision and a record of the proceedings.

(3) When an appeal is noted-

(a) the decision of the Agency must be suspended, until the appeal is finalised; or

(b) against the refusal to renew any registration, the MEC may extend the validity of such registration, until the appeal is finalised.

(4) The MEC must, after considering the representation and reasons furnished by the Agency for its decision-

(a) uphold the decision of the Agency; or

(b) set aside such decision,

and if he or she decides to set the decision aside, substitute it with a proper decision.

(5) The decision of the MEC is final.

CHAPTER 7

INSPECTORS, ENVIRONMENTAL OFFICERS, ENVIRONMENTAL MANAGEMENT INSPECTORS, COMPLIANCE OFFICERS AND INSPECTION OF PREMISES

51 Appointment or designation of inspector, environmental officer, environmental management inspector and compliance officer

(1) The Agency may appoint or designate any employee of the Agency as an inspector for purposes of enforcing any tourism related matter contemplated in this Act and any reference to an inspector in this chapter excludes an environmental officer, environmental management inspector or a compliance officer referred to in subsections (2) and (3).

(2) The Agency may appoint or designate any employee of the Agency as an environmental officer for purposes of enforcing any provision relating to the powers of the Agency contemplated in section 12 or any rules that the Agency may make in accordance with the Protected Areas Act.

(3) The MEC may designate any employee of the Agency as an environmental management inspector in terms of section 31C of the National Environment Management Act, 1998 or a compliance officer in terms of applicable provincial legislation

(4) In addition to the powers set out in this Part, an inspector and an environmental officer is regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) in order to enforce the provisions of this Act and any rules that the Agency may make in accordance with the Protected Areas Act within the protected areas and under the circumstances contemplated in section 12(4)(d).

(5) A certificate of appointment or designation, in the prescribed form, issued by the Agency certifying that a person has been appointed or designated as an inspector or an environmental officer is *prima facie* proof of the appointment or designation.

52 Powers and duties of environmental officer, environmental management inspector, compliance officer and inspector

(1) An environmental officer has all the powers and duties and may exercise all the functions granted to a nature and environmental conservation officer under the Nature and Environmental Conservation Ordinance, 1974, within the protected areas and under the circumstances contemplated in section 12(4)(d).

(2) An environmental management inspector has all the powers and duties and may exercise all the functions granted to an environmental management inspector in terms of the National Environmental Management Act, 1998 within the protected areas and under the circumstances contemplated in section 12(4)(d).

(3) A compliance officer has all the powers and duties and may exercise all the functions granted to a compliance officer in terms of applicable provincial legislation and under the circumstances contemplated in section 12(4)(d).

(4) An inspector may conduct an inspection and monitor and enforce compliance with this Act or any other law which authorises him or her to conduct an inspection or monitor or enforce compliance of any tourism related matter.

(5) Subject to any other law, an inspector who conducts an inspection may-

- (a) question any person present on any land or premises in respect of any matter which may be relevant to the inspection;
- (b) question any person whom the inspector believes may have information relevant to the inspection;
- (c) inspect any document that a person is required to maintain in terms of this Act or any other law or that may be relevant to any tourism related inspection;
- (d) copy any document referred to in paragraph (c), or if necessary, remove the document in order to copy it;
- (e) take photographs or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises;
- (f) issue compliance notices in terms of section 59 or close down premises in terms of section 60; and
- (g) do anything necessary for conducting the inspection.

(6) An inspector who removes anything from land or premises being inspected, must-

- (a) issue a receipt for it to the owner of or person in control of the land or premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

53 Entry with warrant

(1) An inspector may enter any land or premises if a judicial officer has issued a warrant in accordance with subsection (2) to enter or inspect the land or premises, and the warrant is still valid.

(2) A judicial officer may issue a warrant to enter and inspect any land or premises, if, from information in writing on oath, the judicial officer has reason to believe that-

- (a) it is necessary to obtain information, in the interest of the public, that cannot be obtained without entering the land or those premises; or
- (b) there is non-compliance with this Act.

(3) A warrant in terms of subsection (2) may be issued at any time and must specifically-

- (a) identify the land or premises that may be entered and inspected; and
- (b) authorise the inspector to enter and inspect the land or premises and to do anything contemplated in section 52.

(4) A warrant in terms of subsection (2) is valid until-

- (a) it is executed;
- (b) it is cancelled by the judicial officer who issued it or, in his or her absence, by another judicial officer;
- (c) the purpose for which it was issued has lapsed; or
- (d) 90 days have passed since the date it was issued.

(5) Before commencing any inspection, an inspector who carries out a warrant must-

- (a) if the owner of or a person apparently in control of the land or premises is present-
 - (i) identify himself or herself and explain his or her authority to that person or furnish proof of his or her appointment or designation; and
 - (ii) hand a copy of the warrant to that person or a person named in it; or
- (b) if the owner or person apparently in control of the land or premises is absent or refuses to accept a copy, attach a copy of the warrant to the land or premises in a prominent and visible place.

54 Entry with permission

(1) An inspector who does not have a warrant in his or her possession may enter and inspect any land or premises with the consent of the owner or person apparently in control of the land or those premises if that person appears to be above the age of 18 years.

(2) In addition to the entry permitted in terms of subsection (1), an inspector may enter any land or premises without a warrant-

(a) if authorised to do so by any other law; or

(b) in respect of which there is an outstanding compliance notice issued in terms of section 59, for purposes of determining whether that notice has been complied with.

(3) Before commencing an inspection on any land or premises in terms of this section, an inspector must identify himself or herself and explain his or her authority or furnish proof of his or her appointment or designation to the person apparently in control of the land or premises or the person who gave permission to enter.

(4) Any entry and inspection of any land or premises without a warrant must be carried out between sunrise and sunset.

55 Resistance against entry or inspection

(1) An inspector carrying out a warrant in terms of section 53 may overcome any resistance to entry or inspection by using force that is reasonably necessary in the circumstances to overcome the resistance against such entry or inspection, including breaking a lock, door or window of the land or premises to be entered.

(2) Before using force, the person carrying out the warrant must audibly demand admission and must announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with, any object or document that is the object of the inspection.

(3) Force may not be used to effect an entry or to conduct an inspection in terms of section 54, unless permitted in terms of any other law or in the case of an emergency.

56 Inspector may be accompanied

An inspector may be accompanied during an inspection by a member of the South African Police Services, or any other person reasonably required to assist in conducting the inspection.

57 Duty to produce document

Any person who is in possession of any document relevant to an inspection, must produce it at the request of an inspector.

58 Duty to answer questions and assist inspector

(1) Any person who is questioned by an inspector in terms of this chapter must first be informed of his or her constitutional rights before any questioning commences and any voluntary answer thereafter by that person must be truthful and to the best of his or her ability.

(2) An answer or explanation given to an inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to-

- (a) the administration or taking of an oath;
- (b) the making of false statements; or
- (c) the failure to answer a lawful question fully and satisfactorily.

(3) An owner or occupier of any land or premises must provide any facility and assistance that is reasonably required by an inspector to perform his or her functions effectively.

59 Compliance notice

(1) An inspector who is of the opinion that any provision of this Act has not been complied with, may, subject to subsection (2), issue a compliance notice in the prescribed form to the owner or person apparently in control of the relevant land or premises.

(2) A compliance notice contemplated in subsection (1) must set out-

- (a) the provision that has allegedly not been complied with;

- (b) details of the nature and extent of the alleged non-compliance;
- (c) any steps that are required to be taken and the period within which those steps must be taken; and
- (d) any penalty that may be imposed in terms of chapter 8 in the event of non-compliance with those steps.

(3) A compliance notice must remain in force until an inspector issues a prescribed compliance certificate in respect of that notice.

(4) An inspector who is satisfied that the owner or person apparently in control of any land or premises has satisfied the terms of a compliance notice may issue a prescribed compliance certificate to indicate that compliance.

60 Closing of registered and other premises

An inspector may close down any registered tourist amenity or other premises where-

- (a) the registered owner or person concerned, or his or her manager or agent fails to comply with a compliance notice issued in respect of such tourist amenity or premises in terms of section 59; and
- (b) the owner of an unregistered tourist amenity fails to register such tourist amenity in terms of chapter 6.

CHAPTER 8 OFFENCES AND PENALTIES

61 General offences

(1) A person is guilty of an offence if that person contravenes or fails to comply with any rule of the Agency relating to the access to protected areas or contravenes or fails to comply with or undertakes any prohibited activity defined in national or provincial environmental management legislation.

(2) A person is guilty of an offence if that person wilfully publishes or causes or allows to be published in any manner false or misleading information relating to any tourist amenity or tourist service.

(3) A person is guilty of an offence if that person is responsible to pay, collect or remit any levy in terms of this Act and that person fails or refuses to pay, collect or remit that levy.

(4) A person is guilty of an offence if that person is required to register in terms of this Act and that person carries on a business as a tourist amenity or a tourist service without such registration or contravenes or undertakes any activity subject to a prohibition in terms of the Tourism Act, 1993.

(5) A person is guilty of an offence if that person contravenes any provision of this Act which is not elsewhere specifically declared to be an offence.

62 Offences relating to Board and Agency

A person is guilty of an offence if that person-

- (a) hinders or interferes with the Board, or a member of the Board or an employee of the Agency, in the execution of official duties;
- (b) wilfully furnishes to the Agency, member of the Board or an employee of the Agency, false or misleading information; or
- (c) falsely professes to be a member of the Board or an employee of the Agency, or the interpreter or assistant of that employee.

63 Offences regarding inspections

A person is guilty of an offence if that person-

- (a) refuses to grant an inspector access to premises to which the inspector is duly authorised to have access;
- (b) obstructs, interferes, or hinders an inspector who is exercising a power or performing a duty in terms of this Act;
- (c) refuses to provide an inspector with a document or information that the person is lawfully required to provide in terms of this Act;
- (d) furnishes false or misleading information to an inspector;

- (e) unlawfully prevents the owner of any land or premises, or a person working for that owner, from entering the land or premises in order to comply with a requirement of this Act;
- (f) pretends to be an inspector;
- (g) falsifies an authorisation or a warrant, compliance notice or compliance certificate contemplated in chapter 7;
- (h) fails to comply with a compliance notice issued in terms of section 59;
- (i) enters any land or premises without a warrant in circumstances requiring a warrant;
- (j) acts contrary to a warrant issued in terms of chapter 7;
- (k) without authority enters or inspects land or premises;
- (l) discloses any information relating to the financial or business affairs of any person which was acquired in the exercise of any power or performance of any duty in terms of this Act except-
 - (i) to a person who requires that information in order to exercise a power or perform a duty in terms of this Act;
 - (ii) where the disclosure is ordered by a competent court; or
 - (iii) where the disclosure is in compliance with the provisions of any law.

64 Penalties

Any person who is convicted of an offence under this Act is liable-

- (a) in case of a contravention of the rules referred to in section 61(1) -
 - (i) on a first conviction, to a fine not exceeding R250 000,00 or imprisonment for a period not exceeding 15 years, or to both such a fine and such imprisonment; and
 - (ii) in the case of a second or subsequent conviction for the same, to a fine not exceeding R500 000,00 or imprisonment for a period not exceeding 30 years, or to both such a fine and such imprisonment-;

- (b) in the case of an offence or prohibited activity referred to in section 61(1), other than a contravention of the rules, to the penalty provided for in the national or provincial environmental management legislation concerned;
- (c) in the case of a general offence referred to in 61(2) to (5), other than an offence or activity which is subject to a prohibition under the Tourism Act, 1993, to a fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment:
- (d) in the case of an offence or an activity which is subject to a prohibition under the Tourism Act, 1993, to the penalty provided for in the Tourism Act, 1993:
- (e) in case of an offence referred to in section 62 to a fine not exceeding R5 000,00 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment; and
- (f) in the case of an offence referred to in section 63 to a fine or imprisonment not exceeding two years or to both such fine and imprisonment.

65 Presumptions

(1) When any firearm, live wild animal, carcass of a wild animal, including a fish, or flora is found or is proved to have been in or on any vehicle, vessel, boat, craft, float, aircraft or other conveyance, it is presumed, until the contrary is proved, to have been in the possession of the person in charge of such vehicle, vessel, boat, craft, float, aircraft or other conveyance.

(2) When any person is found, or is proved to have been, in possession of any endangered flora, protected flora or unprotected indigenous flora he or she is, until the contrary is proved, presumed to have picked such flora.

(3) When any person is found or is proved to have been in possession of any live wild animal he or she is, until the contrary is proved, presumed to have been keeping such animal in captivity at the relevant time.

(4) When any person is found removing or is proved to have removed any wild animal or the carcass of a wild animal from a trap, snare, pitfall, net, birdlime or any

other like device or substance he or she is presumed, until the contrary is proved, to have laid or prepared such trap, snare, pitfall, net, birdlime or other like device or substance and to have captured the animal concerned.

(5) Whenever-

- (a) a vehicle, vessel, boat, craft, float, aircraft or other conveyance is being or has been used for the purpose of or in connection with the commission of an offence under this Act;
- (b) (i) any wild animal or the carcass of a wild animal including a fish in respect of which an offence has been committed under this Act; or
- (ii) any weapon, implement, line, poison or any other object that could be used for the hunting or catching of any wild animal including a fish and that is being or was used or formed an element in the commission of an offence under this Act, is found or has been in or on any vehicle, vessel, boat, craft, float, aircraft or other conveyance,

the owner of such a vehicle, vessel, boat, craft, float, aircraft or other conveyance as well as every person thereon or therein at the time of the commission of the offence or at the time when the wild animal, carcass or other object contemplated in paragraphs (a) and (b) is found or was in such vehicle, vessel, boat, craft, float, aircraft or other conveyance, is presumed to have committed the offence concerned and be liable to conviction and sentence in respect thereof unless he or she proves that he or she did not commit such offence and did not take part in and could not prevent the commission of the offence.

(6) Whenever any person is found to have in his or her possession on any public road any fire-arm (other than a pistol or revolver) that is loaded or is not enclosed in such a way that the barrel and the trigger are completely covered, he or she is presumed to be hunting a wild animal on or from such road, until the contrary is proved.

(7) Whenever in any prosecution under this Act it is alleged that an offence has been committed in connection with or in respect of any fauna or flora of the species

stated in the charge, it is presumed, in the absence of evidence to the contrary, that such fauna or flora is of the species stated in the charge.

(8) Whenever in any prosecution under this Act it is alleged in the charge that an act that constitutes an offence under this Act was committed within the boundaries of a protected area that falls within the jurisdiction of the Agency it is presumed, in the absence of evidence to the contrary, that it was committed within the boundaries of that protected area.

(9) Whenever in any prosecution under this Act it is alleged that any fauna or flora that forms an element in the commission of an offence is of a specific dimension or mass, it is presumed, in the absence of evidence to the contrary, that such fauna or flora is of that dimension or mass.

(10) Whenever a person is found shining a spotlight and carrying a firearm he or she is presumed to be hunting with the aid of artificial light.

(11) A wild animal or indigenous plant in or on which an electronic transponder has been fixed is presumed to have originated from the locality in which it was so fixed as recorded in the register kept for the purpose by the Department.

66 Jurisdiction of magistrate's court

A magistrate's court has jurisdiction to impose any punishment provided for in this Act.

CHAPTER 9 TRANSITIONAL PROVISIONS

67 Dissolution of Eastern Cape Parks Board and the Eastern Cape Tourism Board

From the date of commencement of this Act, the Eastern Cape Parks Board and the Eastern Cape Tourism Board are hereby abolished and the Boards appointed in terms of the Provincial Parks Board Act (Eastern Cape), 2003, and the Eastern Cape Tourism Act, 2003 are hereby dissolved.

68 Legal successor

(1) From the date of commencement of this Act, the Agency is, for all purposes in law, the legal successor to the Eastern Cape Parks Board and the Eastern Cape Tourism Board and

- (a) becomes the owner of all movable and immovable property of the Eastern Cape Parks Board and the Eastern Cape Tourism Board;
- (b) is substituted as contracting party for the Eastern Cape Parks Board and the Eastern Cape Tourism Board, in all contracts as if the Agency had been the contracting party at the time of contracting and the contractual rights, obligations and liabilities of the Eastern Cape Parks Board and the Eastern Cape Tourism Board in terms thereof are transferred to the Agency; and
- (c) is deemed to have issued all financial instruments of the Eastern Cape Parks Board and the Eastern Cape Tourism Board.

(2) Any money standing to the credit of the Eastern Cape Parks Board and the Eastern Cape Tourism Board in their bank accounts immediately before the commencement of this Act vests in the Agency and must be transferred to the bank account of the Agency when it is established.

(3) Any reference in any law or document to the Eastern Cape Parks Board and the Eastern Cape Tourism Board must be construed as a reference to the Agency, unless such construction is clearly inappropriate.

69 Interim Board

(1) The MEC must, within seven days from the date of commencement of this Act, appoint such persons as he or she deems fit, to serve as members of the interim Board and must appoint a chairperson and a deputy chairperson.

(2) The term of office of members of the interim Board is six months or until the MEC appoints the members for the first term of office of the Board as contemplated in section 17.

(3) The interim Board may exercise and perform the same powers and duties granted to the Board in terms of this Act.

70 Acting chief executive officer

(1) The MEC must, within seven days from the date of commencement of this Act, appoint such person as he or she deems fit, as acting chief executive officer of the Agency.

(2) The MEC must appoint the acting chief executive officer for a period of six months or until such time as the chief executive officer is appointed by the Board.

(3) The acting chief executive officer may exercise and perform the same powers and duties granted or delegated to the chief executive officer in terms of this Act.

(4) The MEC may pay the acting chief executive officer such remuneration which is not in excess of the range applicable to the chief executive officers of the Eastern Cape Parks Board and the Eastern Cape Tourism Board.

71 Legal proceedings and internal proceedings and investigations

(1) All criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the provisions of the Provincial Parks Board Act (Eastern Cape), 2003, and the Eastern Cape Tourism Act, 2003, and which proceedings have not been concluded before the commencement of this Act, must be continued and concluded, in all respects as if this Act had not been passed.

(2) No provision of this Act affects any civil matter pending at the commencement of this Act, and such matter must be continued and concluded in every respect as if this Act had not been passed.

(3) A civil matter is, for the purposes of this section, deemed to be pending if, at the commencement of this Act, summons had been issued but judgment had not been given, and to be concluded when judgment is given.

(4) Any internal hearing, investigation or disciplinary proceedings or process instituted by the Eastern Cape Parks Board or the Eastern Cape Tourism Board which is pending at the date of commencement of this Act, may be continued or instituted as if this Act had not been passed.

72 Management of protected areas

The management of the protected areas that the Eastern Cape Parks Board has identified as Provincial parks in its jurisdiction and which the Eastern Cape Parks Board manages in terms of the Provincial Parks Board Act (Eastern Cape), 2003, is hereby assigned to the Agency irrespective of the fact that the MEC may not have duly assigned those provincial parks to the Eastern Cape Parks Board in terms of that Act and the Agency is the management authority of those protected areas for purposes of section 38(2) of the Protected Areas Act.

73 Financial, administrative and other records of Eastern Cape Parks Board and Eastern Cape Tourism Board

All financial, administrative and other records of the Eastern Cape Parks Board and the Eastern Cape Tourism Board must be transferred to the Agency.

74 Employees of Eastern Cape Parks Board and Eastern Cape Tourism Board

(1) A person who, immediately before the commencement of this Act, was in the employ of the Eastern Cape Parks Board or the Eastern Cape Tourism Board is transferred to the employ of the Agency with the retention of the salary, allowances and other conditions of service which applied in respect of that person before the commencement of the Act and is deemed to be appointed under this Act.

(2) The salary, allowances and other conditions of service of such person is regarded as having been determined under this Act, and any leave, pension or other benefits which have accrued in the person's favour by virtue of the person's service with the Eastern Cape Parks Board or the Eastern Cape Tourism Board is regarded as having been accrued in the person's favour by virtue of service with the Agency.

(3) Subject to the provisions of this Act, any-

- (a) law regarding any condition of service;
- (b) measure regarding the duties, functions and powers; or
- (c) arrangement regarding any administrative function,

which applied to a person in the employ of the Eastern Cape Parks Board or the Eastern Cape Tourism Board immediately before the date of commencement of this Act, remain in force until amended by the Agency and the employee concerned.

75 Continued registration of tour guides, tour operators, couriers, training providers, hotels, other accommodation establishments, conference centres, restaurants and designated tourist amenities

(1) A person who immediately prior to the commencement of this Act was registered in terms of the Eastern Cape Tourism Act, 2003, and was, by virtue of that registration, authorised to carry on a business as defined in that Act, is deemed to be registered in terms of this Act and is, subject to this Act, authorised to carry on that business subject to the conditions which had been determined in respect of such person in relation to such person's registration to carry on that business in terms of the Eastern Cape Tourism Act, 2003.

(2) A person referred to in subsection (1) must, before the date that the registration would have expired if the Eastern Cape Tourism Act, 2003 had not been repealed, apply to the Agency in accordance with section 44 for a certificate of registration issued in terms of this Act in exchange for the certificate of registration issued to such person under the Eastern Cape Tourism Act, 2003.

(3) Upon receipt of an application in terms of subsection (2), the Agency must issue the new certificate of registration specifying the requirements referred to in section 43.

76 Management plans

Any management plan submitted by the Eastern Cape Parks Board to the MEC for approval in terms of the Provincial Parks Board Act (Eastern Cape), 2003 and which has -

- (a) been approved by the MEC, is deemed to have been approved in terms of the Protected Areas Act; and
- (b) not yet been approved by the MEC, must be approved by him or her in terms of the Protected Areas Act.

77 Investigations and law enforcement activities

Any investigation and law enforcement activity undertaken in terms of the Provincial Parks Board Act (Eastern Cape), 2003, and the Eastern Cape Tourism Act, 2003 is

deemed to be undertaken in terms of the provisions of this Act for the purposes of prosecution and findings of the court.

78 General

(1) From the date of commencement of this Act, all assets, rights, obligations and liabilities of the Eastern Cape Parks Board and the Eastern Cape Tourism Board not referred to in this chapter, vest in the Agency;

(2) Anything done or any decision made or steps taken by the Eastern Cape Parks Board or the Eastern Cape Tourism Board in terms of any provision of the Provincial Parks Board Act (Eastern Cape), 2003, or the Eastern Cape Tourism Act, 2003, is deemed to have been done, made or taken, by the Agency and remain valid until repealed or amended by the Agency.

(3) Any levies or fees determined by the Eastern Cape Parks Board or the Eastern Cape Tourism Board in terms of the Provincial Parks Board Act (Eastern Cape), 2003, or the Eastern Cape Tourism Act, 2003 before the commencement of this Act is deemed to have been determined under this Act and remain valid until repealed or amended by the Agency.

(4) No action taken by the Eastern Cape Parks Board inside the Provincial parks in terms of the Provincial Parks Board Act (Eastern Cape), 2003 is invalid by reason only that the MEC did not duly assign the Provincial parks to the Eastern Cape Parks Board in terms of that Act.

CHAPTER 10 GENERAL PROVISIONS

79 Procedural fairness

Subject to the provisions of this Act, where the Agency takes a decision or any other step of an administrative nature under this Act that affects the rights and duties of another person, the Agency must -

- (a) make known the nature and effect thereof in a written, printed or electronic manner to any affected person and body in a manner designed to ensure that they acquire full knowledge thereof; and

- (b) comply with any applicable requirement of just administrative action, including the furnishing of reasons for discretionary decisions imposed by, under or by virtue of any law.

80 Repeal of laws

The Eastern Cape Tourism Act, 2003, and the Provincial Parks Board Act (Eastern Cape), 2003, are hereby repealed.

CHAPTER 11

SHORT TITLE AND COMMENCEMENT

81 Short title and commencement

(1) This Act is called the Eastern Cape Parks and Tourism Agency Act, 2010 and will come into operation on a date determined by the Premier by proclamation in the *Gazette*.

(2) The Premier may determine different dates for commencement of different sections or chapters of this Act.