

REPUBLIC OF SOUTH AFRICA

TOURISM BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 35909 of 30 November 2012)
(The English text is the official text of the Bill)*

(MINISTER OF TOURISM)

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BILL

To provide for the development and promotion of sustainable tourism for the benefit of the Republic, its residents and its visitors; to provide for the continued existence of the South African Tourism Board; to provide for the establishment of the Tourism Grading Council; to regulate the tourist guide profession; to repeal certain laws; and to provide for matters connected therewith.

PREAMBLE

SINCE tourism in South Africa has grown considerably since the country's first democratic election;

AND SINCE inadequate, uncoordinated, inconsistent and fragmented tourism planning and information provision is the most pervasive challenge facing the development and growth of tourism in the Republic;

AND SINCE transformation is vital to ensure the sustainable growth and development of the tourism sector;

AND SINCE these challenges are best addressed through a concerted effort by all spheres of government and the private sector to work together to create an environment that is conducive to the sustainable growth, development and transformation of tourism,

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA therefore enacts as follows:—

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CHAPTER 1

INTERPRETATION AND OBJECTS

Definitions 30

- In this Act, unless the context indicates otherwise—
 - “**Board**” means the South African Tourism Board contemplated in section 9;
 - “**Consumer Protection Act**” means the Consumer Protection Act, 2008 (Act No. 68 of 2008);
 - “**Council**” means the Tourism Grading Council established by section 29; 35
 - “**Department**” means the national Department responsible for tourism;
 - “**Director-General**” means the Director-General of the Department;
 - “**MEC**” means the member of the executive council of a province who is responsible for tourism in that province;
 - “**Minister**” means the Cabinet member responsible for tourism; 40
 - “**National Registrar**” means the National Registrar of Tourist Guides contemplated in section 48(1);
 - “**national tourism sector strategy**” means the national tourism sector strategy contemplated in section 4;
 - “**organ of state**” has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;
 - “**prescribed**” means prescribed by regulation;
 - “**Provincial Registrar**” means a Provincial Registrar of Tourist Guides contemplated in section 49(1);
 - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 50
 - “**regulation**” means a regulation made by the Minister under this Act;

“**this Act**” includes the norms and standards contemplated in section 7 and the regulations;

“**Tourism Protector**” means the Tourism Protector designated as such by the Minister under section 45; and

“**tourist guide**” means any person registered as such under section 50.

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Objects of Act

2. (1) The objects of this Act are to—
- (a) promote the practising of responsible tourism, contemplated in subsection (2), for the benefit of the Republic and for the enjoyment of all its residents and foreign visitors; 10
 - (b) provide for the effective domestic and international marketing of South Africa as a tourist destination;
 - (c) promote quality tourism products and services;
 - (d) promote growth in and development of the tourism sector; and
 - (e) enhance cooperation and coordination between all spheres of government in developing and managing tourism. 15
- (2) Responsible tourism is tourism which—
- (a) seeks to avoid negative economic, environmental and social impacts;
 - (b) generates greater economic benefits for local people, enhances the well-being of host communities and improves working conditions and access to the tourism sector; 20
 - (c) involves local people in decisions that affect their lives;
 - (d) makes positive contributions to the conservation of natural and cultural heritage and to the maintenance of the world’s diversity;
 - (e) provides enjoyable experiences for tourists through meaningful connections with local people and a greater understanding of local cultural, social and environmental issues; 25
 - (f) provides access for physically challenged people; and
 - (g) is culturally sensitive, engenders respect between tourists and hosts, and builds local pride and confidence. 30

Conflict with other laws and binding force of Act

3. (1) In the event of any conflict between this Act and—
- (a) other national legislation in force immediately prior to the date of commencement of this Act, this Act prevails if the conflict specifically concerns the management and development of tourism; 35
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, this Act prevails.
- (3) This Act binds all organs of state—
- (a) in the national and local spheres of government; and 40
 - (b) in the provincial sphere of government, subject to section 146 of the Constitution.

CHAPTER 2

NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF GOOD PRACTICE

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National tourism sector strategy

4. (1) The Minister must by notice in the *Gazette* and after following the consultation process contemplated in subsection (3), adopt a national tourism sector strategy to promote the objects of this Act.

(2) The national tourism sector strategy must at least make provision for strategies, objectives, indicators, targets, plans, guidelines, procedures and institutional arrangements relating to the promotion, development and transformation of tourism. 50

(3) Before adopting the national tourism sector strategy in terms of subsection (1), the Minister must—

- (a) give notice of the proposed national tourism sector strategy in the *Gazette*; 55

- (b) invite members of the public to submit to the Minister, within the period determined in the notice, written representations regarding the proposed national tourism sector strategy;
 - (c) take such further steps as may be necessary to bring the contents of the proposed national tourism sector strategy to the attention of interested persons; and
 - (d) consider any written representations received.
- (4) (a) The Minister may review and, if necessary, adjust the national tourism sector strategy.
- (b) Before adjusting the national tourism sector strategy the Minister must follow a consultative process and for that purpose subsection (3) applies with the changes required by the context.
- (5) The Minister and relevant organs of state must give effect to the national tourism sector strategy when performing any function in terms of this Act.

National tourism information and monitoring system 15

5. The Minister may establish a national tourism information and monitoring system for—
- (a) collecting, recording, managing, analysing and disseminating information and data on tourism; and
 - (b) monitoring developments and trends in tourism. 20

Information on tourism businesses

6. (1) The Minister may for purposes of planning, and with a view to the development and growth in the tourism sector, establish and maintain a database of information on tourism businesses.
- (2) The Minister may for the purposes of subsection (1), by notice in the *Gazette*, determine the categories of tourism businesses that may provide information, and may in this regard determine—
- (a) the period within which information is to be provided;
 - (b) the form and manner for providing information;
 - (c) the information which must be provided, which must, in relation to each tourism business, at least include—
 - (i) the name and form of the tourism business;
 - (ii) the geographical area of operation;
 - (iii) the nature of services, facilities or products it provides;
 - (iv) particulars relating to the classification and grading of the tourism business;
 - (v) statistics and information of the services, facilities or products it offers; and
 - (vi) information as to the extent it provides facilities which are accessible to people with disabilities, children and the aged;
 - (d) the place and manner for the submission of information, which may include submitting the information to any organ of state;
 - (e) any other information which may be required for the purpose of the database; and
 - (f) the type of recognition and incentives that may accrue to tourism businesses which may provide information in terms of this section. 30 35 40 45
- (3) The Minister may make different determinations under subsection (2) in respect of different categories of tourism services, facilities and products.
- (4) A determination that information be submitted to an organ of state must be made with the concurrence of the organ of state concerned. 50
- (5) For purposes of a comprehensive database of information, nothing in this section prevents the Minister from collecting information about tourism businesses from any other source.

Norms and standards for tourism

7. (1) The Minister may, by notice in the *Gazette* and after following the consultation process contemplated in subsection (2), determine—
- (a) norms and standards for—
 - (i) practising responsible tourism contemplated in section 2(2);

- (ii) achieving service excellence in the tourism sector;
 - (iii) promoting the objects of this Act; and
 - (iv) the provisioning of tourism information services to the public; and
 - (b) indicators to measure compliance with such norms and standards.
- (2) Before determining norms and standards under subsection (1), the Minister must— 5
- (a) consult with the MEC's on the norms and standards;
 - (b) give notice of the proposed norms and standards in—
 - (i) the *Gazette*;
 - (ii) at least two newspapers published and circulating nationally; and 10
 - (iii) a newspaper published and circulating in each province;
 - (c) invite members of the public to submit to the Minister, within the period determined in the notice, written representations regarding the proposed norms and standards; and
 - (d) consider any written representations received. 15
- (3) Organs of state, including any institution established by government to exercise tourism functions, must apply the norms and standards determined under subsection (1) in the performance of their functions.
- (4) The norms and standards contemplated in subsection (1)(a)(iv) may relate to matters such as— 20
- (i) the form of business and management that must be applied;
 - (ii) business hours;
 - (iii) facilities that must be available;
 - (iv) staff and training requirements;
 - (v) information and displays that must be offered; and 25
 - (vi) signage and identification that must be used.

Codes of good practice for tourism

8. The Minister may, by notice in the *Gazette*, issue codes of good practice to—
- (a) guide conduct relating to tourism services, facilities and products;
 - (b) guide conduct of organs of state responsible for developing and managing tourism; and 30
 - (c) promote the achievement of the objects of this Act.

CHAPTER 3

SOUTH AFRICAN TOURISM BOARD

Continued existence of South African Tourism Board 35

9. The South African Tourism Board, established by section 2 of the Tourism Act, 1993 (Act No. 72 of 1993), continues to exist as a juristic person despite the repeal of that Act by section 62.

Functions of Board

10. (1) The functions of the Board are to— 40
- (a) market South Africa as a domestic and international tourist destination;
 - (b) market South African tourism products and facilities internationally and domestically;
 - (c) develop and implement a marketing strategy for tourism that promotes—
 - (i) the objects of this Act; and 45
 - (ii) the national tourism sector strategy.
 - (d) advise the Minister on any other matter relating to tourism marketing;
 - (e) with the approval of the Minister, establish a National Conventions Bureau to market South Africa as a business tourism destination by—
 - (i) coordinating bidding for international conventions; and 50
 - (ii) liaising with other organs of state and suitable bodies to promote South Africa as a business tourism destination; and
 - (f) report to the Minister on the work performance of the National Conventions Bureau.

(2) The Board must perform any function imposed upon it in accordance with a policy direction not in conflict with this Act issued by the Minister.

Powers of Board

- 11.** Without derogating from its power generally to perform legal acts as a juristic person, the Board may— 5
- (a) with the approval of the Minister open and operate such offices within or outside the Republic which may be necessary for the effective performance of its functions;
 - (b) with the approval of the Minister, granted with the concurrence of the Cabinet member responsible for finance, borrow money from a money lending institution in the Republic; 10
 - (c) insure the Board against—
 - (i) any loss, damage or risk;
 - (ii) any liability it may incur in the application of this Act;
 - (d) employ persons who are necessary for the performance of the functions of the Board; 15
 - (e) conclude agreements with organs of state and other persons.

Delegations and assignments by Board

- 12.** (1) The Board may in writing and subject to such conditions as it may determine, delegate or assign any of its powers or duties in terms of this Act— 20
- (a) to any committee of the Board;
 - (b) to an employee of the Board; or
 - (c) with the concurrence of the Minister, to any other suitable body.
- (2) A delegation or assignment under subsection (1)—
- (a) must be in writing; 25
 - (b) does not divest the Board of the power delegated or duty assigned;
 - (c) does not prevent the Board from exercising the power or performing the duty so delegated or assigned; and
 - (d) may at any time be withdrawn by the Board.

Composition of Board 30

- 13.** (1) The Board consists of—
- (a) at least nine and no more than 13 members appointed by the Minister on the basis of their knowledge, experience or qualifications relating to the functions of the Board; and
 - (b) one officer of the Department appointed by the Minister to represent the Department. 35
- (2) The member of the Board contemplated in subsection (1)(b)—
- (a) is a non-voting member of the Board; and
 - (b) may not be appointed as chairperson or deputy chairperson of the Board.
- (3) (a) Before appointing the members of the Board contemplated in subsection (1)(a), the Minister must, by notice in the *Gazette* and in two newspapers published and circulating nationally, invite nominations for membership of the Board. 40
- (b) The notice must specify a period of at least 30 days for nominations to be submitted to the Minister.
- (4) When appointing the members of the Board, the Minister must ensure that the Board is broadly representative of society, with due regard to race, gender and disability. 45
- (5) After appointing the members of the Board the Minister must, by notice in the *Gazette* and in two newspapers published and circulating nationally, publish the names of the persons appointed and the dates of commencement of their terms of office.
- (6) If the Minister receives no nominations or an insufficient number of nominations within the period specified in the invitation, the Minister may, subject to subsections (4) and (5), appoint the required number of persons. 50
- (7) The Minister must appoint one member of the Board as chairperson and another as deputy chairperson of the Board.

Term of office of members of Board

14. (1) A member of the Board contemplated in section 13(1)(a) holds office for a period of three years from the date of his or her appointment.
- (2) Despite subsection (1), the Minister may by notice in the *Gazette* extend the period of office of any member of the Board for a maximum period of 12 months. 5
- (3) Any person whose period of office has expired is eligible for reappointment.
- (4) No person may be appointed as chairperson of the Board for more than two consecutive terms.

Disqualification from membership of Board

15. (1) A person may not be appointed as a member of the Board if that person— 10
- (a) is not a South African citizen and ordinarily resident in the Republic;
 - (b) is an unrehabilitated insolvent;
 - (c) is disqualified under any law from practising that person's profession;
 - (d) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both; 15
 - (e) subject to subsection (2), has been convicted of an offence in a foreign country and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both; or 20
 - (f) has at any time been removed from an office of trust on account of breach of a fiduciary duty.
- (2) An offence contemplated in subsection (1)(e) must constitute an offence in the Republic. 25

Vacation of office and filling of vacancies

16. (1) A member of the Board must vacate office if the member—
- (a) resigns by written notice addressed and delivered to the Minister and the chairperson of the Board;
 - (b) ceases to hold any qualification necessary for that member's appointment to the Board; 30
 - (c) is unable to perform his or her functions due to mental illness or severe or profound intellectual disability contemplated in the Mental Health Act, 2002 (Act No. 17 of 2002);
 - (d) becomes subject to any disqualification contemplated in section 15; or 35
 - (e) is removed from office by the Minister, after consulting the Board, on good cause shown.
- (2) If for any reason the office of a member of the Board becomes vacant before the member's term of office expires, the Minister may appoint any suitably qualified person to fill the vacancy for the unexpired portion of the period for which such member was appointed. 40
- (3) (a) The Minister may on good cause shown dissolve the Board by way of notice in the *Gazette* and appoint a new Board in accordance with section 13.
- (b) If the Board is dissolved in terms of paragraph (a) the Minister may defer the reconstitution of the Board and, in the notice by which the Minister has so dissolved the Board or by any subsequent notice in the *Gazette*, appoint one or more persons, on such conditions as the Minister may deem necessary, to manage the affairs of the Board until the appointment of the new Board. 45

Remuneration of members of Board

17. A member of the Board who is not in the full-time employment of the State may be paid such remuneration and allowances as may be determined by the Minister with the approval of the Cabinet member responsible for finance. 50

Board meetings

18. (1) The Board must hold at least four ordinary meetings every year.

- (2) The chairperson of the Board—
- (a) may convene a special meeting of the Board; and
 - (b) must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of the members.
- (3) The request contemplated in subsection (2)(b) must clearly state the reason for the request, and only that matter may be discussed at the special meeting. 5
- (4) The Minister may at any time request a meeting with the Board, should the need arise.
- (5) If the chairperson and deputy chairperson are not present at any meeting of the Board the members present must appoint another member to preside at the meeting. 10
- (6) The quorum for any meeting of the Board is a majority of the voting members of the Board in office at the time.
- (7) (a) A decision of the majority of the voting members of the Board at any quorate meeting constitutes a decision of the Board.
- (b) In the event of an equality of votes the chairperson has a casting vote in addition to his or her deliberative vote. 15
- (8) A member of the Board who has any personal or financial interest in any matter before the Board must disclose that interest and withdraw from the proceedings of the Board when that matter is considered.
- (9) No decision taken by or act performed on the authority of the Board shall be invalid merely because of a casual vacancy on the Board or because any person who was not entitled to sit as a member of the Board, sat as a member at the time when the decision was taken or the act was authorised, provided the decision was taken or the act was authorised by a majority of the members of the Board who were then present and were entitled to sit as members. 25

Conduct of meetings

- 19.** (1) The Board may make rules to regulate its proceedings.
- (2) Minutes of proceedings of every meeting of the Board must be—
- (a) recorded and kept in a manner that cannot be altered or tampered with; and
 - (b) submitted to the next meeting of the Board for consideration and, if adopted, signed by the chairperson. 30
- (3) The Board may—
- (a) permit members to participate in a particular meeting by means of a conference call or audio-visual technology and a member who participates in this manner is regarded as being present at the meeting; and 35
 - (b) invite a person to attend a meeting for the purpose of advising or informing the Board on any matter.

Resolution without meeting

- 20.** (1) The Board may adopt a resolution without a meeting if at least a majority of the members in office at the time indicate their support for the resolution in accordance with a procedure previously established by the Board. 40
- (2) A resolution in terms of subsection (1)—
- (a) has the same status as if it were adopted at a meeting; and
 - (b) must be regarded as having been adopted on a day determined in accordance with the procedure contemplated in subsection (1). 45

Funds of Board

- 21.** (1) The funds of the Board consist of—
- (a) monies appropriated by Parliament for that purpose;
 - (b) any money paid to the Board for services rendered;
 - (c) any money received by way of donation; and 50
 - (d) any other amounts to which the Board is or may become entitled.
- (2) The Board may use its funds for defraying expenditure incurred in performing its functions in terms of this Act.
- (3) The Board may invest any of its funds not immediately required—
- (a) subject to any investment policy that may be prescribed in terms of the Public Finance Management Act; and 55

- (b) in such manner as the Minister may approve.
 (4) The Board may charge and recover fees for any services rendered.

Application of Public Finance Management Act to Board

22. The Public Finance Management Act applies to the Board.

Committees of Board 5

23. The Board may establish any committee to assist the Board in the performance of its functions and must determine its composition and terms of reference.

Appointment and responsibilities of chief executive officer of Board

24. (1) The Board, acting with the concurrence of the Minister, must appoint a suitably qualified person as chief executive officer. 10

(2) The chief executive officer—

- (a) is appointed for a period not exceeding five years; and
 (b) may be reappointed by the Board with the concurrence of the Minister.

(3) The chief executive officer holds office on such terms and conditions, including those relating to remuneration and allowances, as the Board may determine in accordance with the policy contemplated in section 27(1). 15

(4) The chief executive officer is responsible for the efficient management of the business and affairs of the Board and must perform any function delegated or assigned by the Board.

Employment contract and performance agreement of chief executive officer 20

25. (1) The Board and the chief executive officer must conclude a written contract of employment which must incorporate in an appropriate form the provisions of section 57 of the Public Finance Management Act.

(2) The Board and the chief executive officer must conclude a performance agreement— 25

- (a) as soon as reasonably practicable but within three months after the appointment of the chief executive officer; and
 (b) thereafter, annually within one month of the commencement of each financial year.

(3) The performance agreement must include— 30

- (a) measurable work performance objectives and targets that must be met by the chief executive officer, and the time frames within which those performance objectives and targets must be met;
 (b) standards and procedures for evaluating the work performance of the chief executive officer and intervals for evaluation; and 35
 (c) the consequences for substandard work performance.

Resignation and dismissal of chief executive officer and appointment of acting chief executive officer

26. (1) The Board, after giving the chief executive officer an opportunity to be heard, and acting with the concurrence of the Minister, may dismiss the chief executive officer for any lawful reason. 40

(2) The chief executive officer may resign by notice in writing to the Minister and the Board.

(3) If the chief executive officer is for any reason absent or unable to carry out his or her duties, or if a vacancy in the office of the chief executive officer occurs, the Board may, with the concurrence of the Minister, appoint a suitably qualified person to act as chief executive officer until the chief executive officer is able to resume his or her duties or until the vacant position is filled. 45

(4) An acting chief executive officer—

- (a) may exercise all the powers and must carry out all the duties of the chief executive officer; and 50

- (b) is appointed on terms and conditions, including those relating to remuneration and allowances, as the Board may determine in accordance with the policy contemplated in section 27(1).

Employment and remuneration policy of Board and appointment of staff

- 27.** (1) (a) The Board must determine an employment and remuneration policy applicable to personnel of the Board. 5
 (b) The determination must be made with the approval of the Minister acting with the concurrence of the Cabinet member responsible for finance.
 (2) The chief executive officer— 10
 (a) after consulting the Board, must determine the staff establishment necessary to assist the Board in carrying out its functions; and
 (b) appoint persons in posts on the staff establishment.
 (3) An employee of the Board is employed subject to terms and conditions determined by the Board in accordance with the employment policy contemplated in subsection (1).

CHAPTER 4 15

GRADING SYSTEM

National grading system for tourism

- 28.** (1) The Minister may develop a national grading system for tourism with a view to maintaining or enhancing the standards and quality of tourism services, facilities and products. 20
 (2) The grading system must promote—
 (a) the objects of this Act;
 (b) the national tourism sector strategy; and
 (c) excellence in the provision of tourism services, facilities and products.
 (3) (a) The grading system contemplated in subsection (1) must provide for the establishment of one or more schemes in terms of which tourism services, facilities and products are graded or classified. 25
 (b) Such a scheme may—
 (i) apply any basis of differentiation in respect of tourism services, facilities and products; 30
 (ii) classify tourism services, facilities and products into different classes on the ground of, amongst others, their nature, extent, variety, availability and quality;
 (iii) make provision for the acquisition, continuation and termination of membership of the scheme; and 35
 (iv) make provision for the use and display of the prescribed insignia, which may include a depiction of a star or number of stars indicating the grading awarded in terms of the scheme.

Establishment of Tourism Grading Council

- 29.** The Tourism Grading Council is hereby established. 40

Main function of Council and oversight and accountability

- 30.** (1) The Council must implement and manage the national grading system for tourism contemplated in section 28.
 (2) The Minister must oversee the functioning of the Council and the Council is in this respect accountable to the Minister for the proper implementation and management of the national grading system. 45

Composition of Council

31. (1) The Council consists of—

(a) at least nine and not more than 13 members appointed by the Minister on the basis of their knowledge, experience or qualifications relating to the functions of the Council; and

(b) one officer of the Department appointed by the Minister to represent the Department.

(2) Section 13(2) to (7) applies to the Council with the changes required by the context.

Term of office of members of Council

32. (1) A member of the Council contemplated in section 31(1)(a) holds office for a period of three years from the date of his or her appointment.

(2) Section 14(2) to (4) applies to a member of the Council with the changes required by the context.

Disqualification from membership of Council

33. Section 15 applies to a member of the Council with the changes required by the context.

Vacation of office and filling of vacancies

34. (1) Section 16(1) and (2) applies to a member of the Council with the changes required by the context.

(2) The Minister may on good cause shown dissolve the Council by way of notice in the *Gazette* and appoint a new Council in accordance with section 31.

Remuneration of members of Council

35. Section 17 applies to a member of the Council with the changes required by the context.

Council meetings

36. (1) Meetings of the Council must be held on such dates, times and places as the chairperson may determine.

(2) The Council may make rules to regulate its proceedings.

(3) Section 18(4) to (9) applies to the Council with the changes required by the context.

Funds of Council

37. Section 21 applies to the Council with the changes required by the context.

Application of Public Finance Management Act to Council

38. The Public Finance Management Act applies to the Council.

Committees of Council

39. The Council may establish any committee to assist the Council in the performance of its functions and must determine its composition and terms of reference.

Appointment and functions of chief quality assurance officer of Council

40. (1) The Council, acting with the concurrence of the Minister, must appoint a suitably qualified person as chief quality assurance officer.

(2) The chief quality assurance officer—

(a) is appointed for a period not exceeding five years; and

(b) may be reappointed by the Council with the concurrence of the Minister.

(3) The chief quality assurance officer holds office on terms and conditions, including those relating to remuneration and allowances, as the Council may determine in accordance with the policy contemplated in section 43(1).

(4) (a) The chief quality assurance officer is responsible for the efficient management of the business and affairs of the Council and must perform any function delegated or assigned by the Council. 5

(b) The chief quality assurance officer is furthermore responsible for—

- (i) supervising the processes involved in the grading of tourism services, facilities and products and ensuring that such grading conforms to the national grading system for tourism contemplated in section 28; 10
- (ii) the implementation and strategic management of the national grading system;
- (iii) strategic management of the resources and funds of the Grading Council; and
- (iv) assisting the Grading Council in developing strategic plans.

Employment contract and performance agreement of chief quality assurance officer 15

41. (1) The Council and the chief quality assurance officer must conclude a written contract of employment which must incorporate in an appropriate form the provisions of section 57 of the Public Finance Management Act.

(2) Section 25(2) and (3) applies to the chief quality assurance officer of the Council with the changes required by the context. 20

Resignation and dismissal of chief quality assurance officer and appointment of acting chief quality assurance officer

42. Section 26 applies to the chief quality assurance officer and an acting chief quality assurance officer of the Council with the changes required by the context, except that the reference in section 26(4)(b) to section 27(1) must be read as a reference to section 43(1). 25

Employment and remuneration policy of Council and appointment of staff

43. (1) (a) The Council must determine an employment and remuneration policy applicable to personnel of the Council.

(b) The determination must be made with the approval of the Minister, acting with the concurrence of the Cabinet member responsible for finance. 30

(2) The chief quality assurance officer—

- (a) after consulting the Council, must determine the staff establishment necessary to assist the Council in carrying out its functions; and
- (b) appoint persons in posts on the staff establishment. 35

(3) An employee of the Council is employed subject to the terms and conditions determined by the Council in accordance with the employment policy contemplated in subsection (1).

Assignment of oversight and functions of Council

44. (1) The Minister may in writing and subject to such conditions as the Minister may determine, assign oversight of the Council, contemplated in section 30(2), and the performance of any function of the Council contemplated in this Chapter to— 40

- (a) the Department;
- (b) the Board; or
- (c) any other suitable body which is subject to the Public Finance Management Act. 45

(2) The Minister may at any time—

- (a) amend or revoke an assignment made under subsection (1); and
- (b) review, amend or set aside any decision made under such assignment, provided that a decision may not be withdrawn where it confers a right or an entitlement on a person. 50

(3) An assignment under this section does not prevent the Minister from performing the function himself or herself.

CHAPTER 5

TOURISM PROTECTION

Designation of Tourism Protector

45. (1) The Minister may designate a suitably qualified officer of the Department as Tourism Protector and publish his or her name in the *Gazette*. 5
- (2) The Tourism Protector must—
- (a) perform the functions referred to in section 46; and
 - (b) deal with any complaint received in respect of tourism services, facilities or products in the manner provided for in section 47.

Accreditation of scheme 10

46. (1) (a) The Tourism Protector may on his or her own initiative or in response to a proposal from persons conducting business within a particular tourism sector, recommend to the Minister—
- (i) the accreditation of a particular scheme or arrangement established by or for a particular tourism sector to resolve tourist complaints; and 15
 - (ii) the person responsible for the implementation of the scheme or arrangement.
- (b) Before making the recommendation the Tourism Protector, must—
- (i) consult persons conducting business within the particular tourism sector;
 - (ii) publish particulars of the proposed scheme or arrangement and of the proposed accreditation for public comments; 20
 - (iii) consider any comments received; and
 - (iv) where appropriate, make any adjustments to the proposed scheme or arrangement.
- (2) A scheme or arrangement contemplated in subsection (1) must—
- (a) be consistent with the objects of this Act; 25
 - (b) be consistent with the Consumer Protection Act; and
 - (c) comply with such requirements as may be prescribed.
- (3) The Minister may, by notice in the *Gazette*—
- (a) accredit a scheme or arrangement contemplated in subsection (1); and
 - (b) amend or withdraw the accreditation on the recommendation of the Tourism Protector. 30
- (4) The Tourism Protector—
- (a) must monitor the effectiveness of any accredited scheme or arrangement; and
 - (b) may require the person responsible for the implementation of an accredited scheme or arrangement to provide such information as may be reasonably necessary for the purposes of such monitoring. 35

Duties of Tourism Protector in respect of tourists' complaints

47. Upon receiving a complaint in respect of any tourism services, facilities or products the Tourism Protector must—
- (a) for the purpose of resolving the complaint, refer the complaint to an accredited scheme or arrangement contemplated in section 46; 40
 - (b) refer the complaint to the National Consumer Commission, provincial consumer protection authority or consumer court contemplated in the Consumer Protection Act if the Tourism Protector believes that the issues raised by the complaint can be dealt with expeditiously and fully by the body concerned; 45
 - (c) refer the complaint to the South African Police Service, if the complaint alleges that a person has committed an offence;
 - (d) refer the complaint to the equality court referred to in section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), if the complaint alleges unfair discrimination against a tourist; 50
 - (e) refer the complaint to another regulatory authority with jurisdiction over the matter; or
 - (f) deal with the matter in the prescribed manner. 55

CHAPTER 6

TOURIST GUIDES

National Registrar of Tourist Guides

- 48.** (1) The Minister must appoint a suitably qualified officer in the Department as the National Registrar of Tourist Guides and publish his or her name in the *Gazette*. 5
- (2) The National Registrar must—
- (a) maintain a central database of all tourist guides registered by Provincial Registrars in terms of section 50;
 - (b) prepare a code of conduct and ethics for tourist guides in accordance with section 52; 10
 - (c) hear and determine appeals and review irregularities under section 56;
 - (d) monitor trends in the tourist guiding sector by conducting research and analysis;
 - (e) publish or otherwise disseminate information about tourist guides, associations of tourist guides and any other information to promote and develop the tourist guiding sector nationally; and 15
 - (f) liaise with the Board, the Council, Provincial Registrars, tourist guides, associations of tourist guides, education and training authorities, organs of state, the South African Police Service, provincial consumer affairs bodies and any other person or organisation to— 20
 - (i) facilitate the growth and development of the tourist guiding sector;
 - (ii) improve and maintain standards in the tourist guiding sector; and
 - (iii) cooperate on matters of mutual interest in the tourist guiding sector.

Provincial Registrars of Tourist Guides

- 49.** (1) The MEC in each province must appoint a suitably qualified officer in the province as the Provincial Registrar of Tourist Guides for that province and publish his or her name in the *Provincial Gazette*. 25
- (2) A Provincial Registrar must—
- (a) for the purposes of section 50, keep a register of tourist guides within the province concerned and must— 30
 - (i) record in the register the prescribed particulars with regard to each registered tourist guide;
 - (ii) delete from the register the particulars of any tourist guide whose registration has been withdrawn;
 - (iii) make the prescribed endorsement against the name of any tourist guide whose registration has been suspended; and 35
 - (iv) inform the National Registrar of anything done in terms of subparagraphs (i), (ii) or (iii);
 - (b) publish or otherwise disseminate information about registered tourist guides within the province and associations of tourist guides and any other information to promote and develop the tourist guiding sector within the province; 40
 - (c) promote and develop the tourist guiding sector within the province in any manner other than as contemplated in paragraph (b);
 - (d) deal with complaints lodged under section 53; 45
 - (e) act in accordance with section 54 when a tourist guide becomes subject to any disqualification referred to in section 50(3);
 - (f) exercise disciplinary powers in accordance with section 55; and
 - (g) if he or she has reason to believe that any person, company or close corporation contravenes section 57, lay a charge with the South African Police Service. 50

Procedure relating to registration of tourist guides

- 50.** (1) (a) Any person who wishes to be registered as a tourist guide must apply to a Provincial Registrar in the prescribed manner.
- (b) The application must be accompanied by the prescribed registration fee. 55

- (2) No person may be registered as a tourist guide in terms of this Act unless he or she shows proof of the competence contemplated in section 51.
- (3) No person may be registered as a tourist guide in terms of this Act if he or she—
- (a) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both; 5
 - (b) subject to subsection (4), has been convicted of an offence in a foreign country and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both; 10
 - (c) loses his or her South African citizenship or right of permanent residence or work permit in the Republic;
 - (d) has failed to pass the prescribed quality assurance process that a tourist guide must complete not later than two years after the date of his or her last registration as a tourist guide. 15
- (4) An offence contemplated in subsection (3)(b) must constitute an offence under South African law.
- (5) If the Provincial Registrar is satisfied that the applicant complies with the competence for registration as a tourist guide and that the applicant is not subject to any disqualification mentioned in subsection (3), he or she must register the applicant as a tourist guide. 20
- (6) When the Provincial Registrar registers any person as a tourist guide, he or she must issue to that person a registration certificate and a badge, which must be in the prescribed form. 25
- (7) Registration as a tourist guide is valid—
- (a) for a period of three years, reckoned from the date of issue of the registration certificate; and
 - (b) in all the provinces of the Republic.
- (8) (a) Any person registered as a tourist guide may before the end of the period for which he or she has been registered, apply to the Provincial Registrar on the prescribed form for the renewal of his or her registration as a tourist guide in respect of the ensuing period of three years. 30
- (b) If the person so applies for the renewal of his or her registration, his or her registration must upon payment of the prescribed fee be renewed, unless he or she has become subject to any disqualification referred to in subsection (3) since the previous registration or renewal of registration. 35
- (9) If a tourist guide has since his or her registration acquired a competence contemplated in section 51 in a prescribed field of specialisation or an additional competence within a prescribed field of specialisation, the Provincial Registrar must, on the application of the tourist guide made in the prescribed manner, accompanied by the prescribed fee, issue to the tourist guide a new registration certificate reflecting that competence and also a new badge, which must be in the prescribed form. 40
- (10) Subject to subsections (11) and (12), the Provincial Registrar may refuse to approve an application for registration as a tourist guide if the applicant's registration was withdrawn on the grounds of misconduct in terms of section 55 at any time within a period of three years preceding the date of application. 45
- (11) Before the Provincial Registrar refuses to approve an application for registration under subsection (10), he or she must, by notice sent by registered post or any other effective method, inform the applicant of the possible refusal and the reason therefor and call upon the applicant to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice. 50
- (12) Before the Provincial Registrar decides on an application under this section, he or she must consider the representations, if any, made by the applicant in accordance with subsection (11). 55

Competence

51. The competence referred to in section 50 must be determined by the South African Qualifications Authority in accordance with the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008). 60

Code of conduct and ethics

- 52.** (1) The National Registrar must in the prescribed manner, after consultation with the MEC, the Provincial Registrars and stakeholder groupings, prepare and publish a code of conduct and ethics with which every registered tourist guide must comply.
- (2) The code of conduct and ethics must include provisions requiring a tourist guide— 5
- (a) to take all reasonable steps to ensure the safety of a tourist whom the tourist guide is accompanying; and
 - (b) to render services which comply with any norms and standards determined under section 7.

Reporting of contraventions and lodging of complaints 10

- 53.** (1) (a) Any person may report a contravention of section 57(1), (2) or (3) with a Provincial Registrar.
- (b) The Provincial Registrar must, if the complaint discloses an offence, lay a charge with the South African Police Service.
- (c) In the case of a contravention of section 57(2), the Provincial Registrar must act 15 in accordance with section 54.
- (2) (a) Any person may lodge a complaint with a Provincial Registrar regarding the misconduct of a tourist guide.
- (b) The Provincial Registrar must, if the complaint discloses—
- (i) a contravention of this Act or any other law constituting an offence, lay a 20 charge with the South African Police Service and act in accordance with section 54;
 - (ii) misconduct not constituting an offence, including a contravention of the code of conduct and ethics contemplated in section 52, act in accordance with 25 section 54.
- (3) A Provincial Registrar concerned must within 14 days report to the National Registrar in writing the result of any case dealt with in terms of this section.

Action by Provincial Registrar regarding disqualification of tourist guides

- 54.** (1) (a) If a Provincial Registrar has reason to believe that a tourist guide has become subject to any disqualification referred to in section 50(3), the Provincial 30 Registrar must by notice, sent by registered post or any other effective method, inform the tourist guide of the allegation against him or her and call upon that tourist guide to submit such representations in connection therewith as he or she may wish to make.
- (b) The representations must be submitted to the Provincial Registrar within the period specified in the notice, which may not be fewer than 30 days from the date of the 35 notice.
- (2) The notice must direct the attention of the tourist guide to the possibility of his or her registration as a tourist guide being withdrawn.
- (3) The tourist guide may present his or her case personally before the Provincial Registrar or through an adviser of his or her choice. 40
- (4) If, after considering the allegations against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that one or more of the disqualifications referred to in section 50(3) are applicable, the Provincial Registrar must withdraw the registration as a tourist guide.
- (5) (a) The Provincial Registrar may, by the notice referred to in subsection (1), 45 suspend, for a period not exceeding 30 days, the registration of the tourist guide concerned, pending the decision of the Provincial Registrar under subsection (4).
- (b) The Provincial Registrar must, before the decision to suspend the registration of the tourist guide is taken, afford the tourist guide an opportunity to make representations to show why the registration should not be suspended. 50
- (6) Subsection (3) applies to any proceedings for the suspension of the registration of a tourist guide under subsection (5).
- (7) If the registration of a tourist guide is suspended in terms of subsection (5), the Provincial Registrar must make the prescribed endorsement in the register of tourist guides referred to in section 49(2), against the name of the tourist guide. 55
- (8) The Provincial Registrar must cause the names of any person whose registration has been withdrawn under this section to be published in the *Gazette* and in at least one newspaper that circulates in the province concerned.

Disciplinary measures

- 55.** (1) (a) A Provincial Registrar must institute an investigation or cause an investigation to be instituted if he or she has reason to believe that a tourist guide is guilty of misconduct by—
- (i) contravening a provision of this Act or any other law; 5
 - (ii) contravening the code of conduct and ethics referred to in section 52; or
 - (iii) failing to comply with any condition subject to which he or she has been registered.
- (2) (a) A Provincial Registrar who institutes an investigation or causes an investigation to be instituted contemplated in subsection (1) must by notice, sent by registered post or any other effective method, inform the tourist guide of the charge against him or her. 10
- (b) The notice must call upon that tourist guide to submit such representations in connection with the charge as he or she may wish to make, within a period specified in the notice, which may not be fewer than 30 days from the date of the notice. 15
- (c) The notice must direct the attention of the tourist guide to the possible penalties referred to in subsection (4).
- (3) The tourist guide may present his or her case personally before the Provincial Registrar or through an adviser of his or her choice.
- (4) If, after considering the charge against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that the tourist guide is guilty of the charge of which he or she is accused, the Provincial Registrar may— 20
- (a) issue a warning to the tourist guide;
 - (b) impose the prescribed fine, which may not exceed R10 000, on the tourist guide; or 25
 - (c) withdraw the registration as a tourist guide for such period, not exceeding five years, as the Provincial Registrar may determine.
- (5) (a) The Provincial Registrar may, by notice contemplated in subsection (2)(a), suspend, for a period not exceeding 30 days, the registration of the tourist guide concerned, pending the decision of the Provincial Registrar under subsection (4). 30
- (b) The Provincial Registrar must, before the decision to suspend the registration of the tourist guide is taken, afford the tourist guide an opportunity to make representations to show why the registration should not be suspended.
- (6) Subsection (3) applies to any proceedings for the suspension of the registration of a tourist guide under subsection (5). 35
- (7) If the registration of a tourist guide is suspended in terms of subsection (5), the Provincial Registrar must make the prescribed endorsement in the register of tourist guides referred to in section 49(2), against the name of the tourist guide.

Appeals and reviews

- 56.** (1) Any person who is aggrieved by a decision of a Provincial Registrar may appeal against the decision in question to the National Registrar in the prescribed manner, within the prescribed period and upon payment of the prescribed fee. 40
- (2) The appellant may argue his or her appeal personally before the National Registrar, or through an adviser of his or her choice.
- (3) The National Registrar may confirm, set aside or amend the decision. 45
- (4) The power to determine an appeal in terms of this section is not restricted to the merits of the decision appealed against, but includes the power to review any irregularity alleged regarding the decision.

Prohibitions

- 57.** (1) No person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn, may for reward, whether monetary or otherwise, act as a tourist guide. 50
- (2) No person who has become subject to any disqualification referred to in section 50(3) may for reward, whether monetary or otherwise, act as a tourist guide.
- (3) No person, company or close corporation may for the promotion of any business undertaking conducted by him, her or it, employ or continue to employ as a tourist guide any person who is not a registered tourist guide or whose registration as a tourist guide 55

has been suspended or withdrawn or who has become subject to a disqualification contemplated in subsection (2).

Disputes

58. Any dispute or disagreement between the National Registrar and a Provincial Registrar concerning the performance of any of the functions contemplated in sections 49, 50, 52, 53, 54, 55 or 56 must— 5

- (a) be dealt with in accordance with the principles of cooperative government and intergovernmental relations referred to in section 41 of the Constitution of the Republic of South Africa, 1996, and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005); and 10
- (b) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005.

CHAPTER 7

GENERAL

Offences and penalties 15

59. (1) A person is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year if he or she—

- (a) professes to be a member of a scheme contemplated in section 28(3), while he or she is not such a member.
- (b) uses in relation to any tourism services, facilities or products offered by him or her any depiction or depictions of a star or stars, or any other prescribed insignia, unless he or she is a member of a scheme contemplated in section 28(3); 20
- (c) uses in relation to any tourism services, facilities or products offered by him or her an insignia depicting a star or number of stars, or any other prescribed insignia, which is greater than the number which he or she is authorised to depict in terms of such tourism services, facilities or products; 25
- (d) knowingly makes or assists in providing information or any document, required by this Act, that contains an untrue statement of a material fact;
- (e) knowingly omits to state a material fact in or on any document referred to in paragraph (d); or 30
- (f) contravenes section 57(1), (2) or (3).

(2) Any company or close corporation that contravenes section 57(3) is guilty of an offence and liable on conviction to a fine not exceeding R100 000,00.

Delegations and assignments 35

60. (1) The Minister may in writing and subject to such conditions as the Minister may determine, delegate or assign to the Director-General, any other officer of the Department or any organ of state any power or duty conferred on the Minister by this Act.

- (2) The Minister may not delegate the power— 40
 - (a) to determine norms and standards in terms of this Act;
 - (b) to appoint a member of the Board;
 - (c) to appoint a member of the Council; or
 - (d) to make a regulation.

(3) The Director-General may in writing and subject to such conditions as the Director-General may determine, delegate or assign to any other officer of the Department, any power or duty conferred on the Director-General in terms of this Act or delegated or assigned to the Director-General under subsection (1). 45

- (4) Any delegation or assignment under subsection (1) or (3)— 50
 - (a) must be in writing;
 - (b) does not divest the person who made the delegation or assignment of the power delegated or duty assigned;
 - (c) does not prevent the person who made the delegation or assignment from exercising the power or performing the duty so delegated or assigned; and

- (d) may at any time be withdrawn by the person who delegated the power or assigned the duty.

Regulations

- 61.** (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) in relation to the national tourism information and monitoring system 5 contemplated in section 5—
 - (i) the nature and form of the system;
 - (ii) the categories, content and form of the data and information to be captured on the system;
 - (iii) the content, form and manner in which organs of state must provide the 10 Minister with data and information and the intervals at which the information and data must be provided; and
 - (iv) any other matter necessary for the proper administration and functioning of the system;
 - (b) the manner and procedure for lodging complaints with the Tourism Protector; 15
 - (c) any matter which may or must be prescribed in terms of this Act; and
 - (d) generally, any ancillary or incidental administrative or procedural matter that 20 it is necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (2) A regulation made under this section may, for any contravention thereof, or failure 20 to comply therewith, prescribe a fine or imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

Repeal of laws

- 62.** The following Acts are hereby repealed:
- (a) the Tourism Act, 1993 (Act No. 72 of 1993); 25
 - (b) the Tourism Amendment Act, 1996 (Act No. 105 of 1996);
 - (c) the Tourism Amendment Act, 2000 (Act No. 8 of 2000); and
 - (d) the Tourism Second Amendment Act, 2000 (Act No. 70 of 2000).

Transitional provisions and savings

- 63.** The transitional provisions and savings contained in Schedule 1 must be read and 30 applied as substantive provisions of this Act.

Short title and commencement

- 64.** (1) This Act is called the Tourism Act, 2012, and takes effect on a date to be determined by the President by proclamation in the *Gazette*.
- (2) Different dates may be so determined in respect of different provisions of this Act. 35

SCHEDULE 1

(Clause 63)

TRANSITIONAL PROVISIONS AND SAVINGS

Definitions

1. In this Schedule, “repealed Act” means the Tourism Act, 1993 (Act No. 72 of 1993). 5

Members of South African Tourism Board

2. (1) Every person who is a member of the South African Tourism Board established by section 2 of the repealed Act immediately before this Act takes effect, remains a member of the Board until a date determined by the Minister by notice in the *Gazette*. 10

(2) Anything done or any decision or step taken by the South African Tourism Board in terms of the repealed Act which could have been done by the Board in terms of any provision of this Act, is regarded as having been done by the Board in terms of the last-mentioned provision.

Grading and classification schemes established under repealed Act 15

3. (1) Any grading and classification scheme established by the Minister under section 18 of the repealed Act in respect of accommodation establishments, and any scheme established by the Minister under section 19 of that Act in respect of a sector of the tourism industry other than accommodation establishments, remains of force and effect and must be regarded as a scheme established by virtue of section 28(3). 20

(2) Any person who is a member of a grading and classification scheme contemplated in section 18(1) of the repealed Act or a scheme contemplated in section 19(1) of that Act, remains such a member and must be regarded as a member of a grading and classification scheme established by virtue of section 28(3).

(3) Any differentiation applied and any classification made by the Minister under section 18(2) of the repealed Act in respect of accommodation establishments, or under section 19(2) in respect of a sector of the tourism industry other than accommodation establishments, remains of force and effect and must be regarded as having been applied or made, as the case may be, by virtue of a grading and classification scheme contemplated in section 28(3). 30

(4) Any grading awarded in respect of an accommodation establishment by virtue of a grading and classification scheme contemplated in section 18(1) of the repealed Act, and any authority granted under section 18(5) of that Act to use and display insignia indicating the grading awarded in respect of the establishment concerned, remains of force and effect and must be regarded as having been awarded or granted, as the case may be, by virtue of a grading and classification scheme contemplated in section 28(3). 35

(5) Until a date determined by the Minister by notice in the *Gazette*, the Tourism Grading Council of South Africa which existed immediately before the commencement of this Act as a business unit of the Board must be regarded as the Tourism Grading Council established by section 29. 40

National Registrar of Tourist Guides and Provincial Registrars of Tourist Guides

4. Any person who occupies the post of National Registrar of Tourist Guides or a post of Provincial Registrar of Tourist Guides immediately before this Act takes effect, remains in that post and is regarded as having been appointed under section 48 or section 49, as the case may be. 45

Tourist guides

5. (1) Any person registered as a tourist guide in terms of section 21A of the repealed Act immediately before this Act takes effect, remains registered as a tourist guide for the rest of the period of validity of his or her registration and must be regarded as having been registered in terms of section 50. 50

(2) Any tourist guide registered in a field of specialisation contemplated in section 21A(7) of the repealed Act immediately before this Act takes effect, remains so registered for the rest of the period of validity of his or her registration and must be regarded as having been registered in terms of section 50(9).

(3) Any application by a tourist guide for the renewal of his or her registration as a tourist guide, which has been lodged with a Provincial Registrar in terms of section 21A(6)(b) of the repealed Act but not yet finalised when this Act takes effect, must be dealt with, and a registration certificate issued, in terms of this Act. 5

Disciplinary measures, appeals, reviews and criminal proceedings

6. Any disciplinary measure instituted in terms of section 21F of the repealed Act, any appeal or review lodged in terms of section 21G of that Act and any criminal proceedings instituted in terms of section 28 of that Act, but not yet finalised when this Act takes effect, must be dealt with and concluded in terms of the repealed Act as if that Act had not been repealed. 10

General 15

7. The following matters authorised by or provided for in the repealed Act, remain of force and effect until amended, repealed or replaced in terms of this Act:

- (a) Any record of members of a grading and classification scheme and of establishments graded and classified in terms of such scheme, kept by the South African Tourism Board in terms of section 18(6) of the repealed Act; 20
- (b) any central database of all tourists maintained by the National Registrar in terms of section 20(2)(a) of the repealed Act;
- (c) any register of tourists, kept by a Provincial Registrar in terms of section 21(2)(a) of the repealed Act;
- (d) any code of conduct and ethics prepared and published by the National Registrar in terms of section 21C of the repealed Act; and 25
- (e) any regulation made by the Minister under the repealed Act.

MEMORANDUM OF THE OBJECTS OF THE TOURISM BILL, 2012

1. PROBLEM STATEMENT

The current Tourism Act, 1993 (Act No. 72 of 1993) (“Tourism Act”), predates the White Paper on the Development and Promotion of Tourism in South Africa, 1996 (“White Paper”) and does not support the implementation of the White Paper as a broader policy framework. The Tourism Act also predates the Constitution of the Republic of South Africa, 1996 (“Constitution”). High on the list of challenges within the tourism sector are—

- (a) the fragmentation of tourism planning across the three spheres of government;
- (b) inadequate databases of tourism businesses and the products, services and facilities they provide and its associated lack of reliable market information; and
- (c) the poor integration of tourism with other sectoral policies.

2. POLICY OBJECTIVE

2.1 Tourism is identified as a priority economic sector to fulfil government’s imperative to create sustainable jobs and to ensure that the lack of wealth is addressed in all areas, particularly in the rural areas. The White Paper spells out the functions of National Government as establishing, facilitating and enabling appropriate legal and fiscal frameworks for the tourism industry and facilitating the sustainable and responsible development of the industry, by formulating appropriate development guidelines and regulatory measures.

2.2 In the national sphere of government, tourism is currently regulated by the Tourism Act. The object of that Act is mainly to establish the South African Tourism Board and to provide for the marketing of South Africa as a tourist destination by the South African Tourism Board. Provincial spheres of government have promulgated their own tourism legislation. These pieces of legislation do not present a coordinated regulatory approach in the management and development of tourism. Uncoordinated, inconsistent and fragmented tourism planning has led to unnecessary duplication of functions and resources amongst the three spheres of government and has presented challenges for tourism businesses operating across provincial boundaries.

2.3 Even in its amended form, the Tourism Act does not address the problems that are identified in the White Paper. It also does not reflect the requirement contained in section 41(1)(h)(iv) of the Constitution that all spheres of government must coordinate their actions and legislation with one another. This is so precisely because the Tourism Act was promulgated before the White Paper. The Tourism Act is also not aligned to the Constitution in that it does not recognise the concurrent legislative functional competence of national and provincial spheres of government in tourism.

3. DEPARTMENT OF TOURISM

The President established a Ministry of Tourism and subsequently a Department of Tourism was established by Proclamation on 7 July 2009. The mandate of the Department of Tourism is to create a conducive environment for the tourism sector to increase its direct contribution to the Gross Domestic Product. The Tourism Act does not recognise the role of the national Department of Tourism as a policy and strategy maker for the management, growth and development of tourism. A sound regulatory framework is therefore necessary for the Department of Tourism to be able to exploit its mandate.

4. PROPOSED LEGAL FRAMEWORK

The proposed legal framework is intended to close gaps in the implementation of the Tourism White Paper and to align the legal framework to government objectives and to the Constitution. The proposed regulatory framework provides for the development and promotion of sustainable tourism for the social, economic and environmental benefit of South African citizens and for the enjoyment of all its residents and foreign visitors. It provides for the continued existence of the South African Tourism Board to effectively market South Africa as a tourist destination domestically and internationally. It

furthermore provides for the establishment of the Tourism Grading Council to implement the national grading system for tourism.

5. MAIN PROVISIONS OF BILL

5.1 The main provisions of the Bill can be summarised as follows:

Preamble

5.2 The preamble seeks to provide a background and reason for the envisaged legislation.

Chapter 1 (Interpretation and objects)

5.3 The Chapter seeks to define certain words and expressions. Provisions are made for a clause seeking to establish the general objectives of the Bill and to determine how conflicts with other laws are to be dealt with. (Clauses 1 to 3.)

Chapter 2 (National Tourism Sector Strategy, norms and standards, codes of good practice)

5.4 The Chapter seeks to oblige the Minister of Tourism (“Minister”), following a consultative process, to establish a National Tourism Sector Strategy to promote the objects of the envisaged Act. The Strategy must at least provide for strategies, objectives, indicators, targets, plans, guidelines, procedures and institutional arrangements relating to the promotion, development and transformation of tourism. (Clause 4.)

5.5 The Chapter furthermore seeks to authorise the Minister to gather information relating to tourism and to create a database of information on tourism business for the purposes of planning, and with a view to the development and growth in the tourism sector. (Clauses 5 and 6.)

5.6 Provision is made for the Minister to determine norms and standards, and indicators to measure compliance with such norms and standards, for—

- (i) practising responsible tourism contemplated in clause 2(2);
- (ii) achieving service excellence in the tourism sector;
- (iii) promoting the objects of this Act; and
- (iv) the provisioning of tourism information services to the public.

5.7 The norms and standards and indicators must be determined after a consultative process with the members of the executive councils of provinces and with the public. (Clause 7.)

5.8 The Bill seeks to authorise the Minister to issue codes of good practice within the tourism sector to guide conduct relating to tourism services, facilities and products. (Clause 8.)

Chapter 3 (South African Tourism Board)

5.9 Chapter 4 seeks to provide for the continued existence of the South African Tourism Board (“Board”). Clause 10 of the Bill seeks to specify the functions of the Board. The clause aims to reaffirm the mandate of the Board to market South Africa, its products and facilities internationally and domestically. The Board is authorised to establish a National Conventions Bureau to market the Republic as a business event destination. (Clauses 10 and 11.)

5.10 Provision is made for the composition and appointment by the Minister of members of the Board. The Board will consist of at least nine and no more than 13 members. Provision is further made for matters usually associated with the establishment of a statutory body, such as the term of office of members of the Board, their disqualification from membership and their vacating of office. Further provisions seek to provide for matters relating to meetings, funding, financial accountability and remuneration of members, amongst others. (Clauses 13 to 23.)

5.11 Provision is also made for the appointment of the chief executive officer of the Board, who will be responsible for the efficient management of the business and the affairs of the Board. Provision is furthermore made for the Board to determine an employment and remuneration policy applicable to personnel of the Board and for the chief executive officer to appoint personnel. (Clause 24.)

Chapter 4 (Grading system)

5.12 This Chapter seeks to authorise the Minister to develop a national grading system for tourism. The grading system must promote excellence in the provision of tourism services, facilities and products, amongst others. The grading system must make provision for schemes of which tourist businesses can obtain membership and for the use and display of insignia, such as a star or number of stars, indicating the grading awarded in terms of the scheme. (Clause 28.)

5.13 The Chapter furthermore seeks to establish the Tourism Grading Council (“Council”) which must implement and manage the national grading system. The Minister will have oversight of the Council. (Clauses 29 and 30.)

5.14 As in the case of the Board provided for in Chapter 3 of the Bill, Chapter 4 contains various clauses usually associated with the establishment of a statutory body. Since several of those clauses would have been exactly the same as those relating to the Board, were they to be inserted in Chapter 4, relevant clauses relating to the Board have been made applicable to the Council with the changes required by the context.

5.15 The Bill seeks to provide for appointment of a chief quality assurance officer who will be responsible for supervising the process of grading and for the strategic management of the grading system. (Clauses 40 to 43.)

5.16 Clause 44 seeks to authorise the Minister to assign oversight of the Council and of the performance of any function of the Council to the Department, the Board or any other suitable body which is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999). The purpose of the provision is to give the Minister a discretion which may be exercised as circumstance requires.

Chapter 5: Tourism Protection

5.17 This Chapter seeks to provide for the designation of an official as the Tourism Protector. Functions of the Tourism Protector include recommending to the Minister the accreditation of a scheme or arrangement established by or for a particular tourism sector to resolve tourist complaints, and to monitor the effectiveness of accredited schemes. The Chapter furthermore makes provision for the Tourism Protector to receive complaints in respect of tourism services, facilities or products and to channel such complaints to appropriate functionaries specified in clause 47.

Chapter 6: Tourist Guides

5.18 Section 22 of the Constitution provides that every citizen has the right to choose a trade, occupation or profession freely and that the practice of a trade, occupation or profession may be regulated by law. The Bill, and in particular Chapter 6, seeks to regulate the practice of the tourist guide profession.

5.19 The Bill seeks to provide for the appointment of an official as the National Registrar of Tourist Guides. The National Registrar will, amongst others, be responsible to maintain a central database of tourist guides; to prepare a code of conduct and ethics for tourist guides; to hear and determine appeals lodged against decisions of Provincial Registrars of Tourist Guides; and to liaise with roleplayers in the tourist sector with a view to facilitating growth in the sector and improving and maintaining standards in the tourist guiding sector. (Clause 48.)

5.20 Clause 49 seeks to provide for the appointment of Provincial Registrars of Tourist Guides by Members of the Executive Councils responsible for tourism in each province. The clause sets out the functions of Provincial Registrars, which include to register and maintain a registers of tourist guides within their province; to provide the National Registrar with applicable information; deal with complaints against tourist guides; exercise disciplinary powers over tourists guide; and disseminate information about registered tourist guides.

5.21 The procedure relating to the registration of tourist guides is provided for in clause 50. The clause furthermore requires tourist guides to show proof of competence determined by the South African Qualifications Authority. The Clause also seeks to specify the grounds for disqualification from registration as a tourist guide.

5.22 The rest of Chapter 6 of the Bill seeks to deal with matters such as the code of conduct and ethics with which tourist guides must comply; complaints against tourist guides; powers of a Provincial Registrar regarding the disqualification of tourist guides; disciplinary measures against tourist guides and appeals and reviews. (Clauses 52 to 58.)

Chapter 7: General

5.23 Chapter 7 seeks to deal with matters such as offences and penalties; regulations by the Minister; repeal of laws; transitional provisions and savings and the short title of the Bill (clauses 59 to 64). It would, for example, be an offence to use, in relation to tourist services, facilities or services, insignia depicting a star or number of stars which is greater than the number authorised to be depicted. It would furthermore be an offence to act as a tourist guide while not being registered as such.

5.24 Since the Bill seeks to repeal certain laws, provision is made in clause 63 and Schedule 1 to the Bill for certain transitional provisions and savings. The provisions in question seek to ensure a smooth transition between the old and new dispensation, and with the retention of any rights that may have accrued.

6. CONSULTATION

6.1 A systematic stakeholder consultation process with affected interest groups ranging from informal discussion to formal procedures was followed to ensure the widest possible input into the regulatory decision-making. Interest groups, including provincial and local spheres of government and the private sector, were consulted widely and in a timely fashion. The Director-General of the Department of Tourism started an intergovernmental consultation process with the heads of tourism in provincial governments, the South African Local Government Association, the South African Tourism Board and Provincial Tourism Authorities. The process culminated in the MINMEC which is the intergovernmental tourism forum of the Minister and Members of the Executive Committees (MECs) for Tourism. The MINMEC gave the Minister the go-ahead to start with Cabinet consultations on the Tourism Draft Bill as the legal regulatory framework for the management and development of tourism. Both the Director-General and the Minister held meetings with the private sector and organisations representing the private sector to discuss and receive inputs on the legal regulatory framework for tourism.

6.2 In 2010, the Minister appointed a panel of 32 experts from across all stakeholder groups in the tourism sector, with representation from both the public and private sector. This expert panel guided the development of a national tourism sector strategy. The National Tourism Sector Strategy was approved by Cabinet in 2011. The Strategy emphasises that whereas the White Paper constitutes an overarching policy framework for the promotion of tourism, the Tourism Act in its current form does not support the implementation of the White Paper as a broader policy framework and that the Tourism Act had not necessarily been aligned with constitutional imperatives.

7. FINANCIAL IMPLICATIONS FOR STATE

There are no additional compliance costs associated with the development of a new legal framework for tourism.

8. IMPLICATIONS FOR PROVINCES

Tourism is a functional area of concurrent national and provincial legislative competence referred to in Schedule 4 to the Constitution. Should there be a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4, section 146 of the Constitution applies. In terms of section 146(2) of the Constitution, national legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if, amongst others, the following conditions are met:

- “(b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing—
 - (i) norms and standards;

- (ii) frameworks; or
- (iii) national policies.
- (c) The national legislation is necessary for—
 - (iv) the promotion of economic activities across provincial boundaries”.

The Bill seeks to constitute legislation contemplated in the said section 146(2) of the Constitution.

9. PARLIAMENTARY PROCEDURE

9.1 The State Law Advisers and the Department of Tourism are of the opinion that this Bill should be dealt with in terms of the procedure established by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Tourism”.

9.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.