

WESTERN CAPE NATURE CONSERVATION BOARD ACT 15 OF 1998

Assented to:
24 December 1998

Date of commencement:
15 January 1999

(Afrikaans text signed by the Premier)

as amended by

Western Cape Nature Conservation Laws Amendment Act 3 of 2000

[NB, PN 88 of 2000 (PG 5440 of 24 March 2000) determines that the effective date for the commencement of operations by the Western Cape Nature Conservation Board is 1 April 2000.]

ACT

To provide for the establishment, powers, functions and funding of a Western Cape Nature Conservation Board and the establishment, funding and control of a Western Cape Nature Conservation Fund, and to provide for matters incidental thereto.

Chapter 1

DEFINITIONS (sec 1)

1 Definitions

(1) In this Act, unless the context otherwise indicates—

'Board' means the Western Cape Nature Conservation Board referred to in section 2;

'budget' means an estimate of expected revenue and expenditure which contains particulars of the purposes for which money is to be used;

'chairperson' means the chairperson of the Board appointed in terms of section 7(1);

'chief executive officer' means the chief executive officer of the Board appointed in terms of section 10;

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'Department' means the Department of Environmental and Cultural Affairs and Sport referred to in Column 1 of Schedule 2 of the Public Service Act, 1994;

[Definition of 'department' substituted by sec 3(a) of Act 3 of 2000 w e f 1 April 2000.]

'effective date' means the date, after the date fixed by the Premier for the commencement of this Act, prescribed* by the responsible Minister for the commencement of operations by the Board;

'financial year' means the period from 1 April in any year to 31 March in the next succeeding year;

'Fund' means the Western Cape Nature Conservation Fund established by section 18;

'nature conservation' means the conservation of naturally-occurring ecological systems and the sustainable utilisation of indigenous plants and animals and the promotion and maintenance

* The effective date is 1 April 2000 – PN 88 of 2000 (PG 5440 of 24 March 2000).

nance of biological diversity within those systems, with due regard to the need to preserve objects of geological, archeological, historical, ethnological, educational, oceanographic or scientific interest;

'nature conservation area' means an area proclaimed as such by the responsible Minister in terms of section 9(2) for the purpose of conserving indigenous wildlife and plants in the Province;

'prescribe' means prescribe by regulation in terms of section 22;

'Province' means the province of Western Cape;

'provincial administration' . . .

[Definition of 'provincial administration' deleted by sec 3(b) of Act 3 of 2000 w e f 1 April 2000.]

'Provincial Cabinet' means the Provincial Cabinet as contemplated in section 42 of the Provincial Constitution;

'Provincial Constitution' means the Constitution of the Western Cape, 1997;

'Provincial Minister of Finance' means the member of the Provincial Cabinet responsible for financial matters or, if that person is the same person as the responsible Minister, the Premier of the Province;

'Provincial Parliament' means the Provincial Parliament as contemplated in section 9(1) of the Provincial Constitution;

'Republic' means the Republic of South Africa;

'responsible Minister' means the member of the Provincial Cabinet responsible for nature conservation;

'staff transfer date' means the date, after the effective date*, prescribed by the responsible Minister for the transfer of employees and personnel records from the provincial administration to the Board;

'vice-chairperson' means the vice-chairperson of the Board appointed in terms of section 7(1).

(2) References to any statutory provision shall include a reference to that provision as amended or re-enacted from time to time.

(3) Where in this Act any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary: Provided if such other functionary is a body of persons it shall express its concurrence in accordance with its own decision-making procedures.

(4) Where in this Act any functionary is required to take a decision after consultation with another functionary, such decision shall be taken in good faith after consulting and giving serious consideration to the views of such other functionary.

Chapter 2

WESTERN CAPE NATURE CONSERVATION BOARD (secs 2-17)

2 Establishment and composition of Western Cape Nature Conservation Board

There is hereby established a board to be known as the Western Cape Nature Conservation Board, which shall consist of twelve members, it shall be a body corporate capable of suing and being sued and, subject to the provisions of this Act and in so far as may be necessary for the better performance of its functions and duties, of performing all such acts as a body corporate may by law perform.

[Sec 2 amended by sec 4 of Act 3 of 2000 w e f 1 April 2000.]

* The effective date is 1 April 2000 - PN 88 of 2000 (PG 5440 of 24 March 2000).

3 Objects of Board

The objects of the Board shall be—

- (a) to promote and ensure nature conservation and related matters in the Province;
- (b) to render services and provide facilities for research and training in connection with nature conservation and related matters in the Province, and
- (c) in pursuing the objects set out in paragraphs (a) and (b), to generate income, within the framework of any applicable policy determined by the responsible Minister or the Provincial Cabinet.

4 Appointment of members of Board

(1) Subject to subsection (2), the responsible Minister shall appoint as members of the Board, after consultation with a Standing Committee of the Provincial Parliament—

- (a) four persons with expertise in nature conservation, and
- (b) eight other persons;

[Para (b) amended by sec 5 of Act 3 of 2000 w e f 1 April 2000.]

provided that no employee of the Board, no member of the Provincial Parliament, no person who is appointed to a full-time post by, or is in the service of, the State and receives remuneration for that appointment or service, and no person who has been declared insolvent or of unsound mind by a competent court, or who has been convicted of an offence and sentenced to imprisonment without the option of a fine, shall be appointed to the Board.

(2) The responsible Minister shall, before appointing a member of the Board, by notice in the *Provincial Gazette*, and in such other media which the Minister may consider appropriate, invite all interested parties to submit to the Minister, within the period mentioned and in the manner prescribed in the notice, the names of persons who in the opinion of those interested parties are fit and proper persons to be so appointed, stating the grounds upon which their opinion is based.

(3) The name of every person appointed as a member of the Board shall be tabled in the Provincial Parliament within 14 days after the appointment or, if the Provincial Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(4) If, within 30 days after the name of any person has been tabled in terms of subsection (3), the Provincial Parliament adopts a resolution whereby the appointment of that person as a member of the Board is not approved, that person's appointment shall be cancelled.

(5) The cancellation of any appointment in terms of subsection (4) shall not affect the validity of anything done by the Board while the person whose appointment is so cancelled was a member of the Board.

5 Period of office of members of Board

(1) A member of the Board shall hold office for such period, not exceeding five years, as the responsible Minister may determine at the time of that member's appointment: Provided that the responsible Minister shall ensure that the expiry dates of the periods of office of members of the Board do not coincide.

(2) A member of the Board shall be eligible for reappointment for one other period, not exceeding five years, as the responsible Minister may determine at the time of that member's reappointment: Provided that a person may be appointed to the Board in terms of subsection (1) if a period of at least 12 months has passed since having served as a member of the Board.

6 Vacation of office of members of Board

- (1) The office of a member of the Board becomes vacant if that member—
- (a) is declared insolvent or of unsound mind by a competent court;
 - (b) has his or her appointment cancelled in terms of section 4(4);
 - (c) is removed from office in terms of subsection (2);
 - (d) is convicted of an offence and sentenced to imprisonment without the option of a fine; provided that no one shall be regarded as having been sentenced until an appeal against the conviction or sentence has been determined;
 - (e) is absent from three consecutive meetings of the Board without the consent of the chairperson; which consent shall not be unreasonably withheld;
 - (f) submits his or her resignation in writing to the chairperson;
 - (g) becomes a member of a Provincial Parliament or an employee of the Board or is appointed by, or enters the service of, the State, and receives remuneration for that appointment or service, or
 - (h) dies.

(2) The responsible Minister may remove a member of the Board from office on the ground of misconduct, incapacity or incompetence; provided that—

- (a) the responsible Minister shall table in the Provincial Parliament forthwith or, if the Provincial Parliament is not then in session, within seven days after the commencement of its next ensuing session, a notice of intention to remove a member of the Board from office, including a full statement of reasons, and
- (b) if, within 30 days after a notice has been tabled in terms of paragraph (a), the Provincial Parliament adopts a resolution calling for that person's retention in office, the responsible Minister shall not remove that person from office.

(3) The responsible Minister may suspend a member of the Board from office pending the expiry of the 30-day period described in paragraph (b) of the proviso to subsection (2).

(4) Subject to section 4, the responsible Minister shall forthwith fill any vacancies on the Board.

7 Chairperson and vice-chairperson of Board

(1) The responsible Minister shall, after consultation with the Board, appoint or reappoint one member of the Board as chairperson and one as vice-chairperson for such period, not exceeding three years, as the responsible Minister may determine at the time of their appointment or reappointment.

(2) The responsible Minister shall fill any vacancies in the office of chairperson or vice-chairperson forthwith, in accordance with subsection (1).

(3) If the chairperson is for any reason unable to act as chairperson, the vice-chairperson shall perform the functions of the chairperson.

(4) Subject to section 8, the Board shall meet for the dispatch of business and adjourn and otherwise regulate its meetings as the chairperson deems fit; provided that the provisions of section 28(1) and (2) of the Provincial Constitution shall apply *mutatis mutandis* to meetings of the Board.

8 Meetings and decisions of Board

(1) The first meeting of the Board shall be held at a time and place determined by the responsible Minister, and thereafter the Board shall meet at such times and places as may be determined by the chairperson from time to time, but the Board shall meet at least once every three months.

(2) The chairperson or responsible Minister may at any time, either of his or her own volition or at the written request of not fewer than seven members of the Board, by notice convene an extraordinary meeting of the Board, which shall be held at the time and place determined by the chairperson or responsible Minister, as the case may be.

[Subsec (2) amended by sec 6 of Act 3 of 2000 w e f 1 April 2000.]

(3) A notice whereby an extraordinary meeting of the Board is convened shall state the purpose of that meeting.

(4) The quorum for a meeting of the Board shall be seven members; provided always that at least two members, as contemplated in section 4(1)(a), shall be present.

[Subsec (4) amended by sec 6 of Act 3 of 2000 w e f 1 April 2000.]

(5) If both the chairperson and the vice-chairperson are absent from a meeting of the Board, the members present shall elect one of their number to preside at that meeting.

(6) The decision of a majority of the members present at a meeting of the Board shall constitute a decision of the Board, and in the event of an equality of votes on any matter the person presiding at the meeting shall, in addition to a deliberative vote, have a casting vote.

(7) A decision taken by the Board at a time when there was a vacancy on the Board, or when any person who was not entitled to sit as a member of the Board sat as a member, or when any member of the Board contravened the provisions of subsection (9), shall not be invalid if—

(a) the decision was taken by a majority of the members of the Board, and

(b) at least seven of the members comprising that majority were entitled to sit as members and complied with the provisions of subsection (9).

[Para (b) amended by sec 6 of Act 3 of 2000 w e f 1 April 2000.]

(8) The Board may allow a person who is not a member of the Board to attend any meeting of the Board and may allow such person to take part in the proceedings at such meeting, without having the right to vote.

(9) When the Board is in session, a member thereof may not take part in the discussion of, or participate in the making of a decision on, any matter in which that member or that member's spouse, partner or employer has any personal and direct or indirect pecuniary interest, unless he or she first declares the nature, extent and particulars of that interest; provided that the Board may require that any member who has declared such an interest shall recuse himself or herself from its proceedings regarding such matter.

(10) Any member of the Board who contravenes the provisions of subsection (9) shall be guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 12 months.

(11) The minutes of meetings of the Board and any subcommittees and working groups appointed in terms of section 9(1)(v) shall be signed by the person who chairs the next meeting.

9 Powers, functions and duties of Board

(1) Subject to the provisions of this Act, from the effective date* and in order to achieve its objects referred to in section 3 the Board may—

- (a) exercise any other power or perform any other function conferred upon, or delegated to, the Board by or with the approval of the responsible Minister by or in terms of any legislation, in a manner consistent with that legislation or delegation;
- (b) make recommendations in accordance with subsection (3) to the responsible Minister regarding the proclamation and de-proclamation of nature conservation areas, and may, in or in respect of proclaimed nature conservation areas—
 - (i) in consultation with the owners of the land concerned—
 - (aa) maintain, construct or erect in such areas or any part thereof roads, bridges, buildings, dams, fences and other structures, works or amenities;
 - (bb) take steps aimed at the safety of visitors and the preservation in a natural state of the environment in such areas;
 - (ii) in consultation with the owners of the land concerned and the responsible Minister—
 - (aa) regulate and control or prohibit public access to such areas or any part thereof;
 - (bb) determine the fees which are to be paid for permission to enter or utilise such areas or any part thereof;
- (c) on any immovable property leased, purchased or otherwise acquired by or made available to the Board in terms of sub-paragraph (d)(i)—
 - (i) reserve sites as breeding places for animals or as nurseries for trees, shrubs, plants and flowers;
 - (ii) carry on any business or trade for the convenience of the public and visitors;
- (d) with the approval of the responsible Minister and the Provincial Minister of Finance—
 - (i) lease, purchase or otherwise acquire immovable property or any real right or mineral right in immovable property;

* The effective date is 1 April 2000 – PN 88 of 2000 (PG 5440 of 24 March 2000).

- (ii) let, sell, exchange or otherwise alienate its immovable property;
- (iii) mortgage, burden with a servitude, or confer any other real right in, its immovable property;
- (e) subject to section 13(8) and (9), hire, purchase or acquire, hire out, sell, exchange or alienate, pledge or confer any other real rights in, its movable property;
- (f) negotiate or co-operate with any national, provincial or local government, or any board, body or person, in the Republic or elsewhere with regard to any matter which is directly or indirectly aimed at the achievement of the objects of the Board;
- (g) enter into agreements—
 - (i) with any similar body, within the Republic or elsewhere, which are necessary or advisable for the effective and proper exercise of its powers, the performance of its functions and the carrying out of its duties;
 - (ii) in consultation with the responsible Minister, with any person to undertake, on any immovable property leased, purchased or otherwise acquired by or made available to the Board, a business or trade for the convenience of visitors or such other purposes as the Board may deem necessary or appropriate;
- (h) open and administer offices in the Province or elsewhere;
- (i) acquire insurance cover—
 - (i) for itself against any loss, damage, risk or liability which it may suffer or incur, and
 - (ii) for its members, chief executive officer and other employees against death, bodily injury or disablement resulting from an accident which occurs in the course of the performance of their duties as such, in accordance with guidelines as prescribed;
- (j) subject to section 230 of the Constitution, with the approval of the responsible Minister and the Provincial Minister of Finance borrow money in the Republic or elsewhere;
- (k) subject to paragraph (j) and section 13(6), open and conduct banking accounts at a bank as defined in the Banks Act, 1990 (Act 94 of 1990);
- (l) make investments in the area of the Republic with financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984);
- (m) subject to the proviso to section 13(1)(b), take over investments forming the subject-matter of donations or bequests to the Board and retain them in the form in which they are received or realise them and re-invest the proceeds in accordance with paragraphs (k) and (l);
- (n) in consultation with the responsible Minister and the Provincial Minister of Finance, donate or lend money to the Fund or any board, body or person, on condition that the donation or loan is used to further the objects of the Board and in the manner stipulated by the Board;
- (o) otherwise expend the funds of the Board;
- (oA) subject to section 51(1)(g) of the Public Finance Management Act, 1999 (Act 1 of 1999), establish trusts, and companies not for gain contemplated by section 21 of the Companies Act, 1973 (Act 61 of 1973);

[Para (oA) inserted by sec 7(a)(ii) of Act 3 of 2000 w e f 1 April 2000.]
- (p) administer the Fund created by section 18;
- (q) gather, evaluate, process and disseminate information relating to nature conservation in the Province;

- (r) with a view to the effective marketing of, and the provision of information relating to, any service, facility or product offered in connection with nature conservation in the Province, publish, draw up, make, and sell or make available free of charge, in the Republic or elsewhere, books, guides, maps, photographs, films, videos and similar matter;
- (s) give advice and guidance to persons who are engaged in nature conservation in the Province or elsewhere;
- (i) negotiate and co-operate with any educational institution regarding the institution, continuation or expansion of courses for the training of persons for careers in nature conservation;
- (u) employ persons;
- (v) establish and appoint persons to the subcommittees and working groups it deems necessary for the exercise of its powers, the performance of its functions and the carrying out of its duties; provided that—
 - (i) the majority of the members of subcommittees shall be members of the Board;
 - (ii) subcommittees and working groups shall function in accordance with terms of reference determined by the Board;
- (w) procure the registration of a coat of arms, badges, other emblems and names in terms of the Heraldry Act, 1962 (Act 18 of 1962), and the registration of trade marks in terms of the Trade Marks Act, 1993 (Act 194 of 1993);
- (x) generate income, inter alia by means of donations and bequests, fundraising, fees for services and user charges, and
- (y) perform any other acts required by this Act or which may contribute towards the achievement of the objects of the Board.

[Subsec (1) amended by sec 7(a)(i) of Act 3 of 2000 w e f 1 April 2000.]

(1A) The Board shall by agreement with the Department provide services required by the Department.

[Subsec (1A) inserted by sec 7(b) of Act 3 of 2000 w e f 1 April 2000.]

(2) Subject to subsection (3), the responsible Minister may, on receipt of a written recommendation from the Board, and if the Minister is satisfied that it is in the interest of nature conservation in the Province to do so, by notice in the *Provincial Gazette*—

- (a) proclaim land to be a nature conservation area or to form part of a nature conservation area, or
- (b) de-proclaim a nature conservation area or land forming part of a nature conservation area.

(3) Before the responsible Minister issues any notice under subsection (2) the Board shall, in any case in which in its opinion the rights of any person may, without the person's consent be adversely affected by such notice—

- (a) serve a notice by registered post on the municipality in whose area the land is situate giving particulars of the land and the proposed proclamation or de-proclamation and the reasons for it and calling for its comments and recommendation to be lodged with the Board within a period of 21 days after the date of the notice;
- (b) publish a notice in Afrikaans, English and isiXhosa, once in the *Provincial Gazette* and twice with an interval of one week in a newspaper circulating in the area in which the land is situate, giving particulars of the land and the proposed proclamation or de-proclamation and the reasons for it and calling for written objections against the proposed proc-

- clamation or de-proclamation to be lodged with the Board within a period of 21 days after the date of the last publication of the notice;
- (c) where reasonably practicable, by registered post serve on every owner of land who in the Board's opinion may be adversely affected by the proposed proclamation or de-proclamation, a copy of the notice described in paragraph (b) at that owner's last known address;
 - (d) on the expiry of the period within which objections may be lodged in terms of the notice referred to in paragraph (a) or (b), whichever is the later, consider the objections and decide whether or not to recommend to the responsible Minister that a notice in terms of subsection (2) in relation to the land or any part of the land be issued, and
 - (e) in writing formulate its recommendation to the responsible Minister and its reasons therefor and transmit to the Minister the recommendation and reasons, together with copies of the notices referred to in paragraphs (a) to (c) and the objections, if any, referred to in paragraph (d).

10 Chief executive officer of Board

(1) The Board, in consultation with the responsible Minister, shall appoint a fit and proper person with knowledge of, or experience in management as chief executive officer; provided that no member of the Board or the Provincial Parliament, no person who is appointed to a full-time post by, or is in the service of, the State and receives remuneration for that appointment or service, and no person who has been declared insolvent or of unsound mind by a competent court or who has been convicted of an offence and sentenced to imprisonment without the option of a fine shall be appointed chief executive officer.

(2) The chief executive officer shall be appointed for such period, not exceeding five years, as the Board may determine in consultation with the responsible Minister.

(3) The chief executive officer shall be eligible for reappointment.

(4) In addition to the powers, functions and duties conferred upon the chief executive officer by the other provisions of this Act, the chief executive officer shall—

- (a) be in charge of the other employees of the Board and of such employees as may be seconded to the Board in terms of this Act;

[Para (a) amended by sec 8 of Act 3 of 2000 w e f 1 April 2000.]

- (b) be accountable to the Board;
- (c) ensure that proper minutes are kept of meetings of the Board and any subcommittees and working groups appointed in terms of section 9(1)(v); and
- (d) attend meetings of the Board, and
- (e) submit to the responsible Minister, within 14 days after the conclusion of any meeting of the Board, a copy of the minutes thereof.

(5) If the chief executive officer is absent or for any reason unable to perform his or her functions, or whenever there is a vacancy in the office of chief executive officer, the Board shall appoint another person to act as chief executive officer during such absence or inability or until a chief executive officer has been appointed in terms of subsection (1).

(6) An acting chief executive officer shall, for the duration of his or her appointment, perform the functions of the chief executive officer.

11 Financial control

(1) The chief executive officer shall be the accounting officer of the Board and shall account for all money received, and all payments made, by the Board, and the acquisition, receipt, custody and disposal of all property of the Board.

(2) The accounting officer shall—

- (a) keep full and correct records of all money received or spent by the Board, and of the assets, liabilities and financial transactions of the Board, and
- (b) as soon as possible, but not more than three months after the end of the financial year, draw up annual financial statements which shall consist of—
 - (i) a balance sheet;
 - (ii) an income and expenditure statement;
 - (iii) a cash-flow statement, and
 - (iv) notes to the annual financial statements.

(3) The records and annual financial statements referred to in subsection (2) shall be audited by the Auditor-General.

(4) The financial statements referred to in subsection (2)(b) shall—

- (a) be in conformity with generally accepted accounting practice;
- (b) fairly reflect the state of affairs and functions of the Board and the results thereof, and
- (c) refer to any relevant matter not specifically prescribed by this Act, which affects or is likely to affect the affairs of the Board, by means of both figures and a descriptive report, which amplify and explain that matter, where necessary.

(5) All cheques, promissory notes and other documents requiring signature on behalf of the Board shall be signed by the chief executive officer and a senior employee of the Board, or in such manner as the Board may decide; provided always that at least two signatories shall be required.

(6) The chief executive officer and every member and employee of the Board shall be indemnified, out of the funds of the Board for all costs, losses and expenses incurred by them by reason of any contract entered into or any act performed in good faith in their capacity as such.

(7) The accounting officer is personally liable for any unauthorised expenditure incurred by the Board, unless the unauthorised expenditure is approved and confirmed by the Board.

(8) The Board shall appoint at least three of its members to an audit committee, comprising those members, the accounting officer, a member of a provincial department nominated by the responsible Minister, in consultation with the Provincial Minister of Finance, at least two senior employees of the Board engaged in its financial administration and, should the Auditor-General decide to participate in the audit committee or to nominate a person to do so, the Auditor-General or that person.

[Subsec (8) amended by sec 9 of Act 3 of 2000 w e f 1 April 2000.]

(9) The audit committee shall—

- (a) assist the members of the Board in their evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied in the day-to-day management of the affairs of the Board;
- (b) facilitate and ensure communication about the matters referred to in paragraph (a) or any other related matter between the members of the Board and the accounting officer, the Auditor-General and the responsible Minister, and
- (c) propose to the Board such measures as in the committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the Board.

12 Submission of reports and financial statements by Board

(1) The Board shall annually, after completion of the annual audit but not more than three months after the end of the financial year, submit to the responsible Minister and the Provincial Minister of Finance—

- (a) a report on its affairs and activities during that financial year, and
- (b) the annual financial statements referred to in section 11(2)(b).

[Subsec (1) amended by sec 10 of Act 3 of 2000 w e f 1 April 2000.]

(2) The responsible Minister shall table copies of the report and annual financial statements submitted in terms of subsection (1) in the Provincial Parliament within 14 days after receipt thereof or, if the Provincial Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(3) The responsible Minister may require the Board to submit to him or her an interim report on any matter or interim financial statements, and the provisions of subsection (2) are *mutatis mutandis* applicable to any such interim report or interim financial statements.

13 Funds and assets of Board

(1) The funds and assets of the Board shall consist of—

- (a) appropriations from the Provincial Parliament pursuant to an annual budget submitted by the Board in terms of subsection (2) or a supplementary budget submitted by the Board in terms of subsection (3);
- (b) donations or bequests received by the Board; provided that no donation or bequest which is subject to any condition shall be accepted for the benefit of the Board except in consultation with the responsible Minister and the Provincial Minister of Finance, and
- (c) income generated by the Board in accordance with the provisions of this Act, including fees for services and user charges determined by the Board in terms of section 9(1)(x).

(2) The Board shall annually, before or on the date determined by the responsible Minister after consultation with the Provincial Minister of Finance, submit a budget for the ensuing financial year to the responsible Minister, who shall forthwith include any request in that budget for an appropriation contemplated by subsection (1)(a) in the budget of the Depart-

ment for the next ensuing financial year; provided that any request for an appropriation contemplated by subsection (1)(a) shall be approved by the responsible Minister and the Provincial Minister of Finance prior to a budget being submitted by the Board to the responsible Minister.

[Subsec (2) amended by sec 11 of Act 3 of 2000 w e f 1 April 2000.]

(3) The Board may, in the course of a financial year, submit a supplementary budget for that financial year to the responsible Minister, who shall cause any request in such budget for an additional appropriation in terms of subsection (1)(a) to be included in the next ensuing Adjustments Appropriation Bill; provided that any request for an additional appropriation contemplated by subsection (1)(a) shall be approved by the responsible Minister and the Provincial Minister of Finance prior to a supplementary budget being submitted by the Board to the responsible Minister.

(4) The Board shall not incur any expenditure which may cause a budget or supplementary budget in terms of subsection (2) or (3) to be exceeded.

(5) If the Board's expenditure in a financial year is less than the appropriation in terms of subsection (1)(a) for that financial year, the Board shall pay into the Provincial Revenue Fund an amount equal to the difference between its expenditure and that appropriation; provided that, should the Provincial Parliament during the budgeting process so decide, that amount or any part thereof shall be repaid to the Board, in addition to any appropriation in terms of subsection (1)(a) for the next ensuing financial year.

(6) Subject to subsection (5), any unexpended portion of the Board's revenue in terms of subsection (1) at the end of a financial year shall be transferred to the Fund.

(7) The Board shall open a banking account at a bank as defined in the Banks Act, 1990 (Act 94 of 1990), and shall deposit all money received by it into that account.

(8) All funds and assets of the Board which accrued to it by virtue of any donation or bequest shall be used in accordance with the conditions, if any, of the donation or bequest.

(9) Any condition of a donation referred to in subsection (8), may be altered by agreement between the donor, the Board, the responsible Minister and the Provincial Minister of Finance.

(10) The responsible Minister may, in consultation with the Provincial Minister of Finance, transfer to the Board, conditionally or otherwise, movable property belonging to the Province to enable the Board to perform its functions and achieve its objects; provided that the responsible Minister shall within 30 days table in the Provincial Parliament a register of property so transferred to the Board; provided further that, if within 30 days after a register has been tabled, the Provincial Parliament adopts a resolution calling for the restitution of that property, the Board shall forthwith transfer to the Province the property specified in that resolution and the Province shall forthwith transfer to the Board any consideration received in respect thereof.

(11) No duties or taxes, including stamp duty, office fees or other fees, shall be payable in respect of a transfer contemplated in subsection (10).

14 Remuneration and allowances of members of Board

The members of the Board shall be paid the prescribed remuneration and allowances out of the funds of the Board; provided that a member whose appointment is cancelled in terms of section 4(4) or who is removed from office in terms of section 6(2) shall not be entitled to any remuneration in respect of the period during which he or she would have been a member were it not for the cancellation or removal from office.

15 Employees of Board

(1) Subject to the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable laws and collective agreements, the Board may—

- (a) within the framework of any applicable policy determined by the Provincial Cabinet, determine and pay to, or in respect of, its chief executive officer and, after the staff transfer date, other employees, remuneration, allowances, bonuses, subsidies and pensions and other service benefits, and
- (b) in the event of the death or injury of its chief executive officer and, after the staff transfer date, other employees, which occurred in the course of their employment, determine and pay gratuities to its chief executive officer and those employees or to their dependants.

(2) Before the effective date* the Board may employ and pay as contemplated by subsection (1)(a), the chief executive officer and other persons approved by the responsible Minister.

[Subsec (2) substituted by sec 12(a) of Act 3 of 2000 w e f 1 April 2000.]

(3) Between the effective date* and the staff transfer date the responsible Minister shall—

- (a) after consultation with the Board;
- (b) in accordance with the provisions of Schedule 2, and
- (c) subject to section 15(3)(a) of the Public Service Act, 1994,

decide which officers in the Department responsible for nature conservation and nature conservation administration will be seconded to the Board.

[Subsec (3) substituted by sec 12(b) of Act 3 of 2000 w e f 1 April 2000.]

(4) The Board may at any time after the commencement of this Act enter into an agreement with any member of the Provincial Cabinet concerning the secondment of officers appointed by the member concerned acting as an executing authority referred to in the Public Service Act, 1994.

[Subsec (4) substituted by sec 12(c) of Act 3 of 2000 w e f 1 April 2000.]

(5) Items 1 to 3 of Schedule 2 apply to employees seconded to the Board in terms of subsection (3).

[Subsec (5) added by sec 12(d) of Act 3 of 2000 w e f 1 April 2000.]

16 Delegation of powers, functions and duties

(1) The Board may delegate to the chief executive officer or any of its employees any power, function or duty assigned or delegated to the Board by or in terms of this Act.

(2) The delegation of a power, function or duty under subsection (1) shall not preclude the exercise of that power, the performance of that function or the carrying out of that duty by the Board.

(3) Any delegation under subsection (1) may at any time be amended or revoked by the Board.

17 Performance audit

(1) In this section, 'performance' means all or any of the following matters—

- (a) the extent to which the Board may or may not be complying or have complied with this Act or the policy referred to in section 3;
- (b) the extent to which the Board may or may not be using or have used its funds and assets efficiently and economically, and

* The effective date is 1 April 2000 – PN 88 of 2000 (PG 5440 of 24 March 2000).

(c) the extent to which the uses to which the Board is putting and has put its funds and assets may or may not benefit, or may or may not have benefitted, nature conservation in the Province.

(2) If the responsible Minister is not satisfied that the performance of the Board is adequate, the Minister may appoint any person to conduct an assessment of, and report to the Minister on, that performance.

(3) For the purpose of conducting an assessment, a person appointed under subsection (2) has, and may exercise and perform, all the powers of a Commissioner appointed under the Western Cape Commissions Act, 1998 (Act 10 of 1998).

(4) The responsible Minister shall table a copy of a report submitted under subsection (2) in the Provincial Parliament within 14 days after receipt thereof or, if the Provincial Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(5) The responsible Minister may take appropriate steps to address any deficiency in performance identified in a report submitted under subsection (2), including—

(a) issuing a directive to the Board, in which the deficiency is described and any steps required to rectify the situation are stated, and

(b) assuming responsibility for any obligation of the Board to the extent that it may be necessary to do so.

(6) If the responsible Minister takes any steps in terms of subsection (5)—

(a) the responsible Minister shall table a notice in which the steps are fully described in the Provincial Parliament within 14 days after having been so taken or, if the Provincial Parliament is not then in session, within 14 days after the commencement of its next ensuing session;

(b) the steps shall be discontinued unless they are approved by the Provincial Parliament within 30 days of the tabling of the notice;

(c) the Provincial Parliament shall review the steps regularly and make any appropriate recommendations to the responsible Minister, and

(d) the Provincial Parliament may at any time adopt a resolution whereby the steps are not approved, in which event the responsible Minister shall forthwith cancel the steps.

Chapter 3

WESTERN CAPE NATURE CONSERVATION FUND (secs 18-21)

18 Western Cape Nature Conservation Fund

There is hereby established a fund called the Western Cape Nature Conservation Fund which shall be separate from the funds of the Board and shall be credited with—

(a) money appropriated by the Provincial Parliament for the Fund;

(b) loans from money appropriated by the Provincial Parliament for the purpose of loans to the Fund; provided that, for the purposes of any budget or supplementary budget of the Fund a request for such a loan shall be subject to the same requirements and procedures as a request for an appropriation in terms of paragraph (a);

- (c) loans from the Board in terms of section 9(1)(n);
- (d) money transferred to the Fund in terms of section 13(6);
- (e) money, assets and investments accruing to the Fund from any other source, including donations and bequests by any person for the benefit of the Fund; provided that—
 - (i) no donation or bequest shall be accepted for the benefit of the Fund if the donation or bequest is subject to any condition, except under the authority of the Board acting in consultation with the responsible Minister and the Provincial Minister of Finance;
 - (ii) the Fund may take over money, assets or investments forming the subject-matter of donations or bequests to the Board and retain them in the form in which they are received, or, in consultation with the responsible Minister and the Provincial Minister of Finance, realise them and re-invest the proceeds in accordance with section 19(1) and (2), and
- (f) income derived from money, assets and investments in the Fund.

19 Money, assets and investments in Fund

(1) The Board shall open a banking account at a bank as defined in the Banks Act, 1990 (Act 94 of 1990), in the name of the Fund, and shall deposit all money received by the Fund into that account.

(2) The Board shall invest any money standing to the credit of the Fund, which is not required for immediate use or as a reasonable working balance, in the area of the Republic with financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984).

(3) Any money, assets or investments in the Fund at the end of any financial year shall be carried forward in the Fund to the next succeeding financial year.

20 Utilisation of money, assets and investments in Fund

(1) The money, assets and investments in the Fund shall be administered by the Board in consultation with the responsible Minister and the Provincial Minister of Finance, and used—

- (a) to undertake or promote any research on nature conservation in the Province or on any related matter which is of material importance to nature conservation in the Province;
- (b) to make grants of money to any person or body engaged, in the Province or elsewhere, in any such research;
- (c) to foster the education and training of—
 - (i) persons required to undertake any such research, and
 - (ii) employees of the Board,whether by the grants, study loans or bursaries;
- (d) to establish facilities for the collection and dissemination of information relating to nature conservation;
- (e) to foster among persons in the Province an awareness of the importance of nature conservation, and

(f) generally, to exercise any power set out in section 9 to further the objects of the Board referred to in section 3.

(2) All money, assets or investments in the Fund which accrued to it by virtue of any donation or bequest, shall be used in accordance with the conditions, if any, of the donation or bequest.

(3) Any condition of a donation referred to in subsection (2), may be altered by agreement between the donor and the responsible Minister, acting in consultation with the Provincial Minister of Finance.

21 Financial matters and reports

The provisions of sections 11, 12 and 13(2), (3) and (4) shall apply *mutatis mutandis* to the Fund.

Chapter 4

GENERAL PROVISIONS (secs 22-25)

22 Regulations

The responsible Minister may, after consultation with the Board, make regulations, relating to any matter which may be dealt with by the responsible Minister in terms of this Act, and any matter deemed necessary by the responsible Minister for the better achievement of the objects of this Act; provided that regulations with financial implications shall be made in consultation with the Provincial Minister of Finance.

[Sec 22 amended by sec 13 of Act 3 of 2000 w e f 1 April 2000.]

23 Diligent performance of obligations

All obligations imposed by or pursuant to this Act shall be performed diligently and without delay.

24

Subject to item 4 of Schedule 2, all records and information of the Department which the responsible Minister, after consultation with the Board, considers necessary for the proper performance of the Board's functions, shall without delay be delivered to the Board after the effective date*.

[Sec 24 substituted by sec 14 of Act 3 of 2000 w e f 1 April 2000.]

25 Short title and commencement

This Act shall be called the Western Cape Nature Conservation Board Act, 1998, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

* The effective date is 1 April 2000 – PN 88 of 2000 (PG 5440 of 24 March 2000).

Schedule 1 . . .

[Schedule 1 repealed by sec 15 of Act 3 of 2000 w e f 1 April 2000.]

Schedule 2

[Schedule 2 substituted by sec 16 of Act 3 of 2000 w e f 1 April 2000.]

1 Persons employed in Department immediately prior to staff transfer date

A person who has been seconded to the Board in terms of section 15(3)(a) becomes an employee on the staff establishment of the Board on the staff transfer date, unless the person chooses to remain a member of the Department in terms of item 2.

2 Persons who remain members of Department

(1) A person who elects to remain a member of the Department must inform the Department thereof in writing before the staff transfer date.

(2) A person who has submitted a written notice in terms of subitem (1) remains a member of the provincial administration on the staff transfer date with retention of rank, remuneration, uninterrupted period of service and other service benefits and obligations, but—

- (a) becomes supernumerary to the staff establishment of the Department, and
- (b) subject to subitem (3), is seconded to the Board for a period of one year from the staff transfer date in accordance with any applicable collective agreement.

(3) The secondment of a person to the Board in terms of subitem (2)—

- (a) may be terminated pursuant to any collective agreement applicable to supernumerary staff in the Department, and
- (b) must be terminated—
 - (i) if during the period of that secondment the person informs the Department in writing that he or she elects to become an employee of the Board, whereupon that person becomes an employee on the staff establishment of the Board with immediate effect;
 - (ii) on the expiry of the period of one year referred to in subitem (2)(b), unless the secondment is extended in exceptional circumstances by agreement between the person, the Board and the responsible Minister.

3 Persons transferred to Board

The transfer of persons to the Board takes place in terms of section 197(1)(a) of the Labour Relations Act, 1995 (Act 66 of 1995), and with retention of rights and obligations in accordance with—

- (a) section 197 of that Act, and
- (b) any applicable collective agreement concluded between the responsible Minister and the recognised employee organisations before the staff transfer date.

4 Personnel records and information of Department

All personnel records and information relating to personnel in the Department transferred to the Board, including all financial and administrative information in the possession of other provincial departments, must, without delay, be delivered to the Board after the staff transfer date.

