

REPUBLIC OF SOUTH AFRICA

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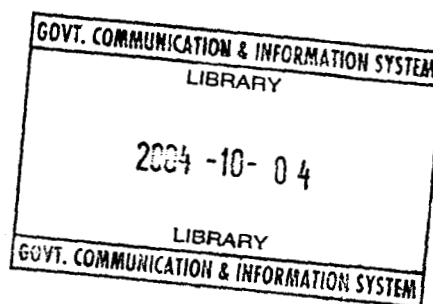
# NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS AMENDMENT BILL

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*(As amended by the Portfolio Committee on Environmental Affairs and Tourism  
(National Assembly)) (The English text is the official text of the Bill)*

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(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)



[B 2B—2004]

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## GENERAL EXPLANATORY NOTE:

- [                      ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.
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# BILL

To amend the National Environmental Management: Protected Areas Act, 2003, to provide for the application of that Act in relation to national parks and marine protected areas; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 1 of Act 57 of 2003

1. Section 1 of the National Environmental Management: Protected Areas Act, 2003 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the insertion, after the definition of “biological resource”, of the following definitions:

“ **‘Board’** means the Board of South African National Parks referred to in section 57;

**‘Chief Executive Officer’** means the Chief Executive Officer of South African National Parks appointed in terms of section 72;” 10

- (b) by the insertion, after the definition of “management authority”, of the following definition:

“ **‘marine protected area’** means an area declared as a marine protected area in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);” 15

- (c) by the insertion, after the definition of “national environmental management principles”, of the following definitions:

“ **‘national park’** means—

- (a) an area which was a park in terms of the National Parks Act, 1976 (Act No. 57 of 1976), immediately before the repeal of that Act by section 90(1) of this Act, and includes a park established in terms of an agreement between a local community and the Minister which has been ratified by Parliament; or 20

- (b) an area declared or regarded as having been declared in terms of section 20 as a national park, and includes an area declared in terms of section 20 as part of an area referred to in paragraph (a) or (b) above; 25

**‘National Parks Land Acquisition Fund’** means the fund established by section 12A of the National Parks Act, 1976 (Act No. 57 of 1976);” 30

- (d) by the insertion in the definition of “national protected area”, after paragraph (a), of the following paragraph:  
 “(b) a national park; or”;
- (e) by the substitution for the definition of “protected environment” of the following definition: 5  
 “‘**protected environment**’ means—  
 (a) an area declared, or regarded as having been declared, in terms of section 28 as a protected environment; [or]  
 (b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 28(2) be declared as a protected environment; or 10  
 (c) an area which was a lake area in terms of the Lake Areas Development Act, 1975 (Act No. 39 of 1975), immediately before the repeal of that Act by section 90(1) of this Act, 15  
 and includes an area declared in terms of section 28(1) as part of an area referred to in paragraph (a) [or], (b) or (c) above;”; and  
 (f) by the insertion, after the definition of “subordinate legislation”, of the following definition:  
 “‘**the Fund**’ means the National Parks Land Acquisition Fund;”. 20

#### **Amendment of section 2 of Act 57 of 2003**

2. Section 2 of the principal Act is hereby amended—  
 (a) by the deletion of “and” at the end of paragraph (e) and the addition of “and” at the end of paragraph (f); and  
 (b) by the addition of the following paragraph: 25  
 “(g) to provide for the continued existence of South African National Parks.”.

#### **Amendment of section 9 of Act 57 of 2003**

3. Section 9 of the principal Act is hereby amended—  
 (a) by the substitution for paragraph (a) of the following paragraph: 30  
 “(a) special nature reserves, national parks, nature reserves (including wilderness areas) and protected environments;”; and  
 (b) by the insertion of the following paragraph after paragraph (b):  
 “(c) marine protected areas;”.

#### **Insertion of section 14 in Act 57 of 2003** 35

4. The following section is hereby inserted in the principal Act after section 13:

##### **“Marine protected areas**

14. (1) Chapter 1, this Chapter and section 48 apply to marine protected areas.  
 (2) The other provisions of this Act do not apply to marine protected areas, but if a marine protected area has been included in a special nature reserve, national park or nature reserve, such area must be managed and regulated as part of the special nature reserve, national park or nature reserve in terms of this Act.”. 40

#### **Amendment of section 15 of Act 57 of 2003** 45

5. Section 15 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:  
 “(2) The other provisions of this Act do not apply to specially protected forest areas, forest nature reserves or forest wilderness areas, but if any such area has been

declared as or included in a special nature reserve, national park or nature reserve, such area must be managed as a, or as part of the, special nature reserve, national park or nature reserve in terms of this Act in accordance with an agreement concluded between the Minister and the Cabinet member responsible for forestry.”.

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### Insertion of Part 2 in Chapter 3 of Act 57 of 2003

6. The following Part is hereby inserted in Chapter 3 of the principal Act after section 19:

#### “Part 2

#### *National parks*

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#### **Declaration of national parks**

**20.** (1) The Minister may by notice in the *Gazette*—

- (a) declare an area specified in the notice—
    - (i) as a national park; or
    - (ii) as part of an existing national park; and
  - (b) assign a name to the national park.
- (2) A declaration under subsection (1) (a) may only be issued to—
- (a) protect—
    - (i) the area if the area is of national or international biodiversity importance or is or contains a viable, representative sample of South Africa’s natural systems, scenic areas or cultural heritage sites; or
    - (ii) the ecological integrity of one or more ecosystems in the area;
  - (b) prevent exploitation or occupation inconsistent with the protection of the ecological integrity of the area;
  - (c) provide spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible; and
  - (d) contribute to economic development, where feasible.
- (3) A notice under subsection (1)(a) may be issued in respect of land if the owner has consented to the declaration by way of a written agreement with the Minister or South African National Parks.
- (4) The Minister must notify the relevant MEC of any declaration of an area in terms of subsection (1).
- (5) An area which was a national park when this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

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#### **Withdrawal of declaration or exclusion of part of national park**

**21.** (1) A declaration under section 20 may only be withdrawn—

- (a) by resolution of the National Assembly; or
  - (b) in terms of subsection (2).
- (2) If the Minister or South African National Parks, as the case may be, or the other party to an agreement referred to in section 20(3), withdraws from the agreement, the Minister must withdraw the declaration in terms of which the land in question was declared a national park or part of an existing national park.

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#### **Designation of national park as wilderness area**

**22.** (1) The Minister may by notice in the *Gazette* designate any national park, or part thereof, as a wilderness area.

- (2) A designation under subsection (1) may only be issued—
- (a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;
  - (b) to provide outstanding opportunities for solitude;

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(c) to control access which, if allowed, may only be by non-mechanised means.

(3) Before designating a national park as a wilderness area, the Minister must consult the management authority of the park.”.

#### Amendment of section 23 of Act 57 of 2003

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7. Section 23 of the principal Act is hereby amended—

(a) by the insertion in subsection (2) of the following paragraph:

“(a) to supplement the system of national parks in South Africa;”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) No area which is or forms part of a special nature reserve or national park may be declared as a nature reserve or as part of an existing nature reserve.”.

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#### Amendment of section 28 of Act 57 of 2003

8. Section 28 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) to regulate the area as a buffer zone for the protection of a special nature reserve, national park, world heritage site or nature reserve;”;

(b) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

“(d) to protect a specific ecosystem outside of a special nature reserve, national park, world heritage site or nature reserve;”;

(c) by the substitution for paragraph (f) of subsection (2) of the following paragraph:

“(f) to control change in land use in the area if the area is earmarked for declaration as, or inclusion in, a national park or nature reserve.”;

(d) by the substitution for subsection (4) of the following subsection:

“(4) No area which is or forms part of a special nature reserve, national park or nature reserve may be declared as a protected environment or as part of an existing protected environment.”;

(e) by the substitution for subsection (6) of the following subsection:

“(6) An area ceases to be a protected environment if that area is declared as, or included into, a national park or nature reserve or part thereof.”.

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#### Amendment of section 31 of Act 57 of 2003

9. Section 31 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Subject to section 34, before issuing a notice under section 18(1), 19, 20(1), 22(1), 23(1), 24(1), 26(1), 28(1) or 29, the Minister may follow such consultative process as may be appropriate in the circumstances, but must—”.

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#### Amendment of section 34 of Act 57 of 2003

10. Section 34 of the principal Act is hereby amended by the substitution in subsection

(1) for the words preceding paragraph (a) of the following words:

“If it is proposed to declare an area under section 18(1) or 20(1) as a special nature reserve or a national park, or as part thereof, and that area consists of or includes—”.

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### Amendment of section 35 of Act 57 of 2003

#### 11. Section 35 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The declaration of private land as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, may be initiated either by the Minister or the MEC or the owners of that land acting individually or collectively.”; and 5

(b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) The terms of any written agreement entered into between the Minister, South African National Parks or an MEC and the owner of private land in terms of section 18(3), 20(3) or 23(3) are binding on the successors in title of such owner.”. 10

### Amendment of section 36 of Act 57 of 2003

#### 12. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) The Minister or the MEC, as the case may be, must in writing notify the Registrar of Deeds whenever an area is declared as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, or whenever a declaration in respect thereof is withdrawn or altered.”. 20

### Substitution of section 37 of Act 57 of 2003

#### 13. The following section is hereby substituted for section 37 of the principal Act:

##### “Application of Chapter

37. Except where expressly stated otherwise in this Chapter, this Chapter only applies to a protected area which is a special nature reserve, national park, nature reserve or protected environment, and the expressions ‘protected area’, ‘national protected area’, ‘provincial protected area’, ‘local protected area’ and ‘protected environment’ must be construed accordingly in this Chapter.”. 25

### Amendment of section 38 of Act 57 of 2003

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#### 14. Section 38 of the principal Act is hereby amended—

(a) by the deletion of “and” at the end of paragraph (a) of subsection (1); and

(b) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

“(aA) must assign the management of a national park to South African National Parks or another suitable person, organisation or organ of state; and” 35

### Amendment of section 42 of Act 57 of 2003

#### 15. Section 42 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 40

“(5) Where the Minister or MEC in terms of subsection (4) cancels a co-management agreement forming a material term of an agreement contemplated in section 20(3), 23(3) or 28(3), the withdrawal of the declaration of the protected area or exclusion contemplated in section 21(2), 24(2) or 29, respectively, [apply] applies.”. 45

### Substitution of section 46 of Act 57 of 2003

16. The following section is hereby substituted for section 46 of the principal Act:

#### **“Access to national park, nature reserve and world heritage site**

46. (1) Despite any other legislation, no person may without the written permission of the management authority of a national park, nature reserve or world heritage site enter or reside in the park, reserve or site. 5

(2) Subsection (1) does not apply to—

(a) an official of the Department or of another organ of state designated by the Minister or, in the case of a provincial or local nature reserve, a person designated by the MEC, to monitor— 10

(i) the state of conservation of the park, reserve or site or of the biodiversity in the park, reserve or site; or

(ii) the implementation of the management plan and this Act;

(b) an official of the management authority [to perform] performing official duties in the park, reserve or site; 15

(c) any police, customs or excise officer entering the park, reserve or site in the performance of official duties;

(d) the holder of a vested right to enter the park, reserve or site; or

(e) a person travelling through the park, reserve or site by rail, as long as that person stays on the train or within the precincts of any railway station. 20

(3) If the management authority of a national park, nature reserve or world heritage site refuses permission to an official of an organ of state to enter the park, reserve or site for the performance of official duties, the Minister may— 25

(a) reconsider the matter; and

(b) either confirm the refusal or grant the permission.”.

### Amendment of section 47 of Act 57 of 2003

17. Section 47 of the principal Act is hereby amended—

(a) by the substitution for the heading to that section of the following heading: 30

**“Use of aircraft in special nature reserve, national park or world heritage site”;** and

(b) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

“(1) A special nature reserve, national park or world heritage site includes the air space above the reserve, park or site to a level of 2 500 feet above the highest point of the reserve, park or site. 35

(2) No person may land or take off in an aircraft in a special nature reserve, national park or world heritage site, except—

(a) on or from a landing field designated by the management authority of that special nature reserve, national park or world heritage site; 40  
and

(b) with the permission of, and on conditions determined by, the management authority.

(3) No person may fly over a special nature reserve, national park or world heritage site at [an altitude] a level of less than 2 500 feet above its highest point, except as may be necessary for the purpose of subsection (2).”.

### Amendment of section 48 of Act 57 of 2003

18. Section 48 of the principal Act is hereby amended— 50

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) in a special nature reserve, national park or nature reserve;”;

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 55

“(c) in a protected area referred to in section 9(b), (c) or (d).”.

### Amendment of section 50 of Act 57 of 2003

19. Section 50 of the principal Act is hereby amended—

- (a) by the substitution for the heading to that section of the following heading:
 

**“Commercial and community activities in national park, nature reserve and world heritage site”**;
- (b) by the substitution for subsections (1), (2) and (3) of the following subsections:
  - “(1) The management authority of a national park, nature reserve and world heritage site may, despite any regulation or by-law referred to in section 49, but subject to the management plan of the park, reserve or site—
    - (a) carry out or allow—
      - (i) a commercial activity in the park, reserve or site; or
      - (ii) an activity in the park, reserve or site aimed at raising revenue;
    - (b) enter into a written agreement with a local community inside or adjacent to the park, reserve or site to allow members of the community to use in a sustainable manner biological resources in the park, reserve or site; and
    - (c) set norms and standards for any activity allowed in terms of paragraph (a) or (b).
  - “(2) An activity allowed in terms of subsection (1)(a) or (b) may not negatively affect the survival of any species in or significantly disrupt the integrity of the ecological systems of the national park, nature reserve or world heritage site.
  - “(3) The management authority of the national park, nature reserve or world heritage site must establish systems to monitor—
    - (a) the impact of activities allowed in terms of subsection (1)(a) or (b) on the park, reserve or site and its biodiversity; and
    - (b) compliance with—
      - (i) any agreement entered into in terms of subsection (1)(b); and
      - (ii) any norms and standards set in terms of subsection (1)(c).”; and
- (c) by the substitution for subsection (5) of the following subsection:
 

**“(5) No development, construction or farming may be permitted in a national park, nature reserve or world heritage site without the prior written approval of the management authority.”.**

### Amendment of section 52 of Act 57 of 2003

20. Section 52 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The management authority of a national park, nature reserve or world heritage site may, in accordance with prescribed norms and standards, make rules for the proper administration of the area.”.

### Insertion of Chapter 5 in Act 57 of 2003

21. The following Chapter is hereby inserted in the principal Act after section 53:

#### “CHAPTER 5

#### SOUTH AFRICAN NATIONAL PARKS

##### *Part 1*

##### *Continued existence and functions of South African National Parks*

##### **Continued existence**

**54.** (1) South African National Parks established by section 5 of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a juristic person despite the repeal of that Act by section 90 of this Act.



(2) As from the repeal of the National Parks Act, 1976, South African National Parks functions in terms of this Act.

### Functions

55. (1) South African National Parks must—

- (a) manage the national parks and other protected areas assigned to it in terms of Chapter 4 and section 92 in accordance with this Act; 5
  - (b) protect, conserve and control those national parks and other protected areas, including their biological diversity; and
  - (c) on the Minister's request, advise the Minister on any matter concerning— 10
    - (i) the conservation and management of biodiversity; and
    - (ii) proposed national parks and additions to or exclusions from existing national parks; and
  - (d) on the Minister's request, act as the provisional managing authority of protected areas under investigation in terms of this Act. 15
- (2) South African National Parks may in managing national parks—
- (a) manage breeding and cultivation programmes, and reserve areas in a park as breeding places and nurseries;
  - (b) sell, exchange or donate any animal, plant or other organism occurring in a park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to re-introduce into a specific park; 20
  - (c) undertake and promote research;
  - (d) control, remove or eradicate any species or specimens of species which it considers undesirable to protect and conserve in a park or that may negatively impact on the biodiversity of the park; 25
  - (e) carry out any development and construct or erect any works necessary for the management of a park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels; 30
  - (f) allow visitors to a park;
  - (g) take reasonable steps to ensure the security and well-being of visitors and staff;
  - (h) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies; 35
  - (i) carry on any business or trade or provide other services for the convenience of visitors and staff, including the sale of liquor;
  - (j) determine and collect fees for— 40
    - (i) entry to or stay in a park; or
    - (ii) any service provided by it;
  - (k) authorise any person, subject to such conditions and the payment of such fees as it may determine, to— 45
    - (i) carry on any business or trade, or provide any service, which South African National Parks may carry on or provide in terms of this section; and
    - (ii) provide the infrastructure for such business, trade or service;
  - (l) by agreement with— 50
    - (i) a municipality, provide any service in a park which that municipality may or must provide in terms of legislation; or
    - (ii) any other organ of state, perform a function in a park which that organ of state may or must perform in terms of legislation; or
  - (m) perform such other functions as may be prescribed.

(3) Subsection (2) applies also to other protected areas managed by South African National Parks, and the powers contained in that subsection may be exercised by it to the extent that those powers are consistent with the purpose for which any such area was declared as a protected area. 55

**General powers**

- 56.** South African National Parks may for the purpose of performing its functions—
- (a) appoint its own staff, subject to section 73;
  - (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment; 5
  - (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
  - (d) open and operate its own bank accounts;
  - (e) invest, subject to section 76, any of its money, including money in the fund referred to in section 77; 10
  - (f) borrow money, subject to section 66 of the Public Finance Management Act;
  - (g) charge fees for any work performed or services rendered by it or collect fees resulting from any intellectual property rights; 15
  - (h) insure itself against—
    - (i) any loss, damage or risk; or
    - (ii) any liability it may incur in respect of Board members or staff members in the application of this Act;
  - (i) perform legal acts, including acts in association with or on behalf of any other person or organ of state; and 20
  - (j) institute or defend any legal action.

**Part 2****Governing board, composition and membership****Composition** 25

- 57.** (1) South African National Parks is governed by a board consisting of—
- (a) no fewer than nine and no more than 12 members appointed in terms of section 59;
  - (b) the Director-General or an official of the Department designated by the Director-General; and 30
  - (c) the Chief Executive Officer.
- (2) The Minister—
- (a) must determine the number of members to be appointed in terms of subsection (1)(a); and 35
  - (b) may alter from time to time the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.
- (3) The Board takes all decisions in the performance of the functions of South African National Parks, except— 40
- (a) those decisions taken in consequence of a delegation in terms of section 71; or
  - (b) where the Public Finance Management Act provides otherwise.

**Qualifications**

- 58.** (1) A member of the Board must— 45
- (a) be a fit and proper person to hold office as a member; and
  - (b) have appropriate qualifications or experience.
- (2) A person is disqualified from becoming or remaining a member of the Board if that person—
- (a) is holding office as a member of Parliament or a provincial legislature; 50
  - or
  - (b) has been removed from office in terms of section 65.

## Appointment procedure

**59.** (1) Whenever it is necessary to appoint a member of the Board, the Minister must—

- (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations; and
- (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by—

- (a) the personal details of the nominee;
- (b) particulars of the nominee's qualifications or experience; and
- (c) any other information that may be prescribed.

(3) The Minister must make the required number of appointments from the list referred to in subsection (1)(b), but if the list is inadequate, the Minister may appoint any suitable person.

(4) When making an appointment the Minister must have regard to the need for appointing persons disadvantaged by unfair discrimination.

(5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise.

## Chairperson

**60.** (1) The Minister must appoint a member of the Board as the Chairperson.

(2) The Chairperson is appointed for such period as the Minister may determine which may, in the case of a member referred to in section 57(1)(a), not extend beyond his or her term as a member.

(3) The Minister may appoint a member of the Board as acting chairperson of the Board if—

- (a) the Chairperson is absent for a substantial period; or
- (b) the appointment of a Chairperson is pending.

## Term of office

**61.** (1) Members of the Board referred to in section 57(1)(a) are—

- (a) appointed for a term of three years or, if section 66(2) applies, for a term determined in terms of that section;
- (b) on completion of any term contemplated in paragraph (a), eligible for reappointment for one additional term of three years; and
- (c) after a break of at least three years after a term has ended, eligible for appointment in terms of paragraph (a) again and, if appointed, eligible for reappointment in terms of paragraph (b).

(2) Any appointment in terms of subsection (1) may be extended by the Minister for a specific period not exceeding one year.

## Conditions of appointment

**62.** (1) The Minister must determine the conditions of appointment of members of the Board referred to in section 57(1)(a).

(2) (a) The conditions of appointment of members who are not in the employ of a national, provincial or local organ of state may provide for the payment of remuneration and allowances determined by the Minister with the concurrence of the Cabinet member responsible for finance.

(b) Such remuneration and allowances are payable by South African National Parks.

(3) Members who are in the employ of a national, provincial or local organ of state are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by South African National Parks.

(4) Members are appointed part-time.

### Conduct of members

#### 63. (1) A member of the Board—

- (a) must perform the functions of office in good faith and without favour or prejudice; 5
- (b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant; 10
- (c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and
- (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of South African National Parks. 15

(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

### Termination of membership

#### 64. (1) A person referred to in section 57(1)(a) ceases to be a member of the Board when that person—

- (a) is no longer eligible in terms of section 58 to be a member; 20
- (b) resigns; or
- (c) is removed from office in terms of section 65.

(2) A member may resign by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case. 25

### Removal from office

#### 65. (1) The Minister may remove a member of the Board referred to in section 57(1)(a) from office on the ground of—

- (a) misconduct, incapacity or incompetence; 30
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board, except on good cause shown;
- (c) insolvency; or
- (d) conviction of a criminal offence without the option of a fine. 35

(2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister. 35

(3) The Minister may suspend a member under investigation in terms of this section.

### Filling of vacancies

#### 66. (1) A vacancy in the Board is filled—

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 60(1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section 57(1)(a), by following the procedure set out in section 59. 45

(2) A person appointed to fill a vacancy holds office for the unexpired portion of the term of the vacating Chairperson or member.

**Part 3****Operating procedures of Board****Meetings**

**67.** (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a meeting at a time and place set out in the request. 5

(2) The Chairperson presides at meetings of the Board, but if absent from a meeting, the members present must elect another member to preside at the meeting.

**Procedures 10**

**68.** (1) The Board may determine its own procedures subject to the other provisions of this Act.

(2) The Board must keep a record of its proceedings and of decisions taken.

**Quorum and decisions 15**

**69.** (1) A majority of the serving members of the Board constitutes a quorum for a meeting of the Board.

(2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member. 20

**Committees**

**70.** (1) The Board may establish one or more committees to assist it in the performance of its functions. 25

(2) When appointing members to a committee, the Board is not restricted to members of the Board.

(3) The Board—

- (a) must determine the functions of a committee;
- (b) must appoint the chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time; and
- (d) may determine a committee's procedure. 30

(4) The Board may dissolve a committee at any time.

(5) (a) Section 62 applies with the changes required by the context to the conditions of appointment of committee members. 35

(b) A staff member of South African National Parks appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

**Delegation of powers and assignment of duties**

**71.** (1) When necessary for the proper performance of its functions the Board may delegate any of its powers or assign any of its duties, excluding those mentioned in subsection (2), to— 40

- (a) a Board member;
- (b) a committee referred to in section 70; or
- (c) a staff member of South African National Parks. 45

(2) The following powers and duties may not be delegated or assigned by the Board:

- (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 72(1) or (2);
- (b) the determination of the conditions of service of the Chief Executive Officer in terms of section 72(3); 50

- (c) the determination of an employment policy in terms of section 73(1);
- (d) the setting of financial limits in terms of section 73(2)(a) or (3); and
- (e) the approval of the budget.

(3) A delegation or assignment in terms of subsection (1)—

- (a) must be in writing; 5
- (b) is subject to such limitations, conditions and directions as the Board may impose;
- (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty; and
- (d) does not prevent the exercise of the assigned power or the performance of the assigned duty by the Board. 10

(4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

#### **Part 4**

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### **Administration of South African National Parks**

#### **Appointment of Chief Executive Officer**

72. (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of South African National Parks.

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(2) The Chief Executive Officer—

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

(3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.

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(4) The Chief Executive Officer—

- (a) is responsible for the management of South African National Parks;
- (b) must perform such duties and may exercise such powers as the Board may assign or delegate to the Chief Executive Officer; and
- (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers at such frequency and in such manner as the Board may determine.

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(5) (a) Whenever the Chief Executive Officer is for any reason absent or unable to perform his or her functions, or whenever there is a vacancy in the office of the Chief Executive Officer, the Chairperson of the Board may appoint another staff member of South African National Parks as acting Chief Executive Officer for a period not exceeding six months.

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(b) Whilst acting as Chief Executive Officer, such staff member—

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- (i) has the powers and duties of the Chief Executive Officer; and
- (ii) is employed subject to such terms and conditions of employment as the Chairperson of the Board may determine in accordance with the policy referred to in subsection (3).

#### **Employment of staff**

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73. (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for South African National Parks.

(2) The Chief Executive Officer—

- (a) within the financial limits set by the Board, must determine a staff establishment necessary to enable South African National Parks to perform its functions; and
- (b) may appoint persons in posts on the staff establishment.

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(3) An employee of South African National Parks is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of and within the financial limits set by the Board.

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(4) (a) A person in the service of another organ of state may be seconded to South African National Parks by agreement between the Chief Executive Officer and such organ of state.

(b) Persons seconded to South African National Parks perform their functions under the supervision of the Chief Executive Officer.

(5) A person in the service of South African National Parks may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

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## Part 5

### Financial matters

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#### Financial accountability

74. South African National Parks is a public entity for the purposes of the Public Finance Management Act, and must to that end comply with the provisions of that Act.

#### Funding

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75. The funds of South African National Parks consist of—

- (a) income derived from the performance of its functions;
- (b) money appropriated for its purposes by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed in terms of section 56(f);
- (f) income derived from investments;
- (g) fines received or recovered in respect of offences committed within national parks; and
- (h) money derived from any other source, with the approval of the Cabinet member responsible for finance.

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#### Investments

76. South African National Parks may invest any of its funds not immediately required—

- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
- (b) in accordance with any criteria set by the Minister.

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#### National Parks Land Acquisition Fund

77. The National Parks Land Acquisition Fund established by section 12A of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a separate fund under the administration of South African National Parks despite the repeal of that Act by section 90 of this Act.

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(2) The Fund is administered by South African National Parks and consists of—

- (a) any voluntary contributions, donations and bequests received by South African National Parks for the purpose of the Fund;
- (b) money appropriated by Parliament for the purpose of the Fund;
- (c) the proceeds of land sold by South African National Parks which it has acquired in terms of section 81;
- (d) income derived from investing any credit balances in the Fund;
- (e) money borrowed by South African National Parks in terms of section 56(f) for the purpose of the Fund; and
- (f) money derived from any other source for the purpose of the Fund.

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(3) The money in the Fund may be used—

- (a) to finance—
  - (i) the acquisition of private land or a right in or to private land in terms of section 80 or 81; or

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- (ii) the cancellation of a servitude or a right in land in terms of section 82 or 83; or
- (b) to defray expenses incurred by South African National Parks in connection with the management of the Fund.
- (4) The Chief Executive Officer must—
- (a) keep account of the Fund separately from the other money of South African National Parks; and
- (b) comply with the Public Finance Management Act in administering the Fund.

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## **Part 6**

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### **General**

#### **Minister's supervisory powers**

- 78. (1) The Minister—**
- (a) must monitor the performance by South African National Parks of its functions;
  - (b) may determine norms and standards for the performance by South African National Parks of its functions;
  - (c) may issue directives to South African National Parks on measures to achieve those norms and standards;
  - (d) may determine limits on fees charged by South African National Parks in the performance of its functions; and
  - (e) may identify land for new national parks and extensions to existing national parks.
- (2) South African National Parks must perform its functions subject to the norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

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#### **Absence of functional Board**

- 79. In the absence of a functional Board, the functions of the Board revert to the Minister who, in such a case, must perform those functions until the Board is functional again."**

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#### **Insertion of section 81 in Act 57 of 2003**

**22. The following section is hereby inserted in the principal Act after section 80:**

#### **"Acquisition of private land by South African National Parks**

- 81. (1) South African National Parks, with the approval of the Minister acting with the concurrence of the Cabinet member responsible for land affairs, may acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a national park—**
- (a) by purchasing the land or right; or
  - (b) if the land or right is donated or bequeathed to it, by accepting the donation or bequest.
- (2) If the parties fail to agree on a purchase price for the land or right contemplated in subsection (1)(a), the Minister may on behalf of South African National Parks or the State expropriate the land or right in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), subject to section 25 of the Constitution."

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**Insertion of section 83 in Act 57 of 2003**

23. The following section is hereby inserted in the principal Act after section 82:

**“Cancellation of servitude on, or privately held right in or to, land owned by South African National Parks**

**83.** (1) South African National Parks may take any steps necessary to cancel a servitude on land owned by South African National Parks, or a privately held right in or to such land, which has been or is proposed to be declared as or included in a national park. 5

(2) If South African National Parks fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister may on behalf of South African National Parks or the State expropriate the servitude or right in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), subject to section 25 of the Constitution.”. 10

**Substitution of section 84 of Act 57 of 2003**

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24. The following section is hereby substituted for section 84 of the principal Act:

**“Mineral right**

**84.** The Minister may in accordance with section 80(1)(c) [or], 81(2), 82(3) or 83(2), and the MEC may in accordance with section 80(2) or 82(3), acquire or cancel a mineral right by way of expropriation only with the concurrence of the Cabinet member responsible for mineral and energy affairs.”. 20

**Amendment of section 85 of Act 57 of 2003**

25. Section 85 of the principal Act is hereby amended—

(a) by the addition to subsection (1) of the following paragraph: 25

“(b) the Fund, by agreement with South African National Parks.”; and

(b) by the addition of the following subsection:

“(2) South African National Parks may finance the acquisition of private land or a right in or to private land in terms of section 81, or the cancellation of a servitude on, or a privately held right in or to, land owned by South African National Parks in terms of section 83, from— 30

(a) the funds of South African National Parks; or

(b) the Fund, by agreement with the Minister.”.

**Insertion of section 91 in Act 57 of 2003**

26. The following section is hereby inserted in the principal Act, after section 90: 35

**“Savings**

**91.** (1) Anything done in terms of a law repealed by section 90 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

(2) A person who, immediately before the repeal of the National Parks Act, 1976 (Act No. 57 of 1976), was — 40

(a) a board member of South African National Parks becomes a member of the Board for the unexpired part of the term for which that person was appointed as a member of South African National Parks; or

(b) the Chairperson of South African National Parks becomes the Chairperson of the Board for the unexpired part of the term for which that person was appointed as the Chairperson of South African National Parks.”. 45

**Amendment of section 92 of Act 57 of 2003**

27. Section 92 of the principal Act is hereby amended—

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(a) by the insertion of the following subsection before subsection (2):

“(1) South African National Parks—

- (a) is the management authority for any protected area it managed immediately before this section took effect, unless otherwise assigned by the Minister in terms of this Act; and
- (b) must manage such area in accordance with—
- (i) this Act and any management plan in terms of Chapter 4 for the area; and
  - (ii) any condition and agreement which existed immediately before this section took effect and which were applicable to the area.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- (2) The organ of state managing a protected area immediately before this section took effect, other than a protected area referred to in subsection (1), must continue managing the area until the management of the area is assigned either to it or to another management authority in terms of Chapter 4.”.

### Substitution of Schedule to Act 57 of 2003

28. The following Schedule is hereby substituted for the Schedule to the principal Act:

#### “SCHEDULE

#### REPEAL OF LAWS

(Section 90)

No. and year of Act	Short title of Act	Extent of repeal
Act No. 39 of 1975	Lake Areas Development Act, 1975	The repeal of the whole
Act No. 57 of 1976	National Parks Act, 1976	The repeal of the whole, except section 2(1) and Schedule 1
Act No. 60 of 1979	National Parks Amendment Act, 1979	The repeal of the whole
Act No. 9 of 1980	Lake Areas Development Amendment Act, 1980	The repeal of the whole
Act No. 13 of 1982	National Parks Amendment Act, 1982	The repeal of the whole
Act No. 23 of 1983	National Parks Amendment Act, 1983	The repeal of the whole
Act No. 43 of 1986	National Parks Amendment Act, 1986	The repeal of the whole
Act No. 111 of 1986	National Parks Second Amendment Act, 1986	The repeal of the whole
Act No. 60 of 1987	National Parks Amendment Act, 1987	The repeal of the whole
Act No. 73 of 1989	Environment Conservation Act, 1989	The repeal of sections 16, 17 and 18
Act No. 23 of 1990	National Parks Amendment Act, 1990	The repeal of the whole
Act No. 52 of 1992	National Parks Amendment Act, 1992	The repeal of the whole
Act No. 91 of 1992	National Parks Second Amendment Act, 1992	The repeal of the whole
Act No. 38 of 1995	National Parks Amendment Act, 1995	The repeal of the whole
Act No. 70 of 1997	National Parks Amendment Act, 1997	The repeal of the whole
Act No. 106 of 1998	National Parks Amendment Act, 1998	The repeal of the whole
Act No. 54 of 2001	National Parks Amendment Act, 2001	The repeal of the whole”.

## Substitution of long title of Act 57 of 2003

29. The following long title is hereby substituted for the long title of the principal Act:
- "To provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; for the continued existence, governance and functions of South African National Parks; and for matters in connection therewith."**

## Amendment of Arrangement of Sections in Act 57 of 2003

30. The Arrangement of Sections after the long title of the principal Act is hereby amended—

- (a) by the insertion after "13. World heritage sites" of the following: 15  
     "14. Marine protected areas";
- (b) by the insertion after "19. Withdrawal of declaration or exclusion of part of special nature reserve" of the following:

### ***"Part 2***

#### ***National parks*** 20

20. Declaration of national parks

21. Withdrawal of declaration or exclusion of part of national park

22. Designation of national park as wilderness area";

- (c) by the substitution for "46. Access to nature reserve and world heritage site" of the following: 25  
     "46. Access to national park, nature reserve and world heritage site";
- (d) by the substitution for "47. Use of aircraft in special nature reserve or world heritage site" of the following:  
     "47. Use of aircraft in special nature reserve, national park or world heritage site"; 30
- (e) by the substitution for "50. Commercial and community activities in nature reserve and world heritage site" of the following:  
     "50. Commercial and community activities in national park, nature reserve and world heritage site";
- (f) by the insertion after "53. Certain rights and entitlements to be respected" of the following: 35

### ***"CHAPTER 5***

## ***SOUTH AFRICAN NATIONAL PARKS***

### ***Part 1***

#### ***Continued existence and functions of South African National Parks*** 40

54. Continued existence

55. Functions

56. General powers

### ***Part 2***

#### ***Governing board, composition and membership*** 45

57. Composition

58. Qualifications

59. Appointment procedure

60. Chairperson

61. Term of office 50

<u>62. Conditions of appointment</u>	
<u>63. Conduct of members</u>	
<u>64. Termination of membership</u>	
<u>65. Removal from office</u>	
<u>66. Filling of vacancies</u>	5

### **Part 3**

#### ***Operating procedures of Board***

<u>67. Meetings</u>	
<u>68. Procedures</u>	
<u>69. Quorum and decisions</u>	10
<u>70. Committees</u>	
<u>71. Delegation of powers and assignment of duties</u>	

### **Part 4**

#### ***Administration of South African National Parks***

<u>72. Appointment of Chief Executive Officer</u>	15
<u>73. Employment of staff</u>	

### **Part 5**

#### ***Financial matters***

<u>74. Financial accountability</u>	
<u>75. Funding</u>	20
<u>76. Investments</u>	
<u>77. National Parks Land Acquisition Fund</u>	

### **Part 6**

#### ***General***

<u>78. Minister's supervisory powers</u>	25
<u>79. Absence of functional Board";</u>	
(g) by the insertion after "80. Acquisition of private land by State" of the following:	
<u>"81. Acquisition of private land by South African National Parks";</u>	30
and	
(h) by the insertion after "82. Cancellation of servitude on, or privately held right in or to, state land" of the following:	
<u>"83. Cancellation of servitude on, or privately held right in or to, land owned by South African National Parks";</u>	

<b>Short title and commencement</b>	35
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**31.** This Act is called the National Environmental Management: Protected Areas Amendment Act, 2004, and takes effect on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS AMENDMENT BILL, 2004**

### **OBJECTS AND PARLIAMENTARY PROCEDURE**

Together with this Amendment Bill, the National Environment Management: Protected Areas Act, 2003, provide for an over-all legal framework governing all protected areas in the Republic. Since the original National Environment Management: Protected Areas Bill, 2003, contained matters affecting both the national and provincial governments, that Bill had to be split into two bills to comply with the constitutionally determined procedures for the passage of such bills. The first Bill was dealt with in accordance with section 76 of the Constitution since it mainly affected provinces. The current Bill has to be dealt with in terms of section 75 of the Constitution since "national parks" and "marine resources" are excluded from the list of functional areas (Schedule 4 to the Constitution), in terms of which the national and provincial governments have concurrent jurisdiction.

Thus, this Bill seeks to complete the first Bill (currently the National Environment Management: Protected Areas Act, 2003), by inserting those provisions which deal with national parks and marine protected areas as part of the general scheme of protected areas of the Republic. Apart from seeking to effect technical insertions in the Act, the current Bill also covers matters such as the Minister of Environmental Affairs' power to declare areas as national parks and to withdraw such declarations. Provisions providing for the continued existence of the current National Parks, and National Parks' constitution, functions, personnel, finances etc. are being provided for. It is also proposed in the Bill to repeal those Acts which, because of the new legislative scheme, will become defunct.

### **EFFECT ON PROVINCES**

As indicated in the Memorandum on the Objects of the first Bill, having one consolidated Protected Areas Act, would obviate the necessity for each province to legislate on the matter. The matters dealt with in this Bill fall within the competence of the national government and will not, as such affect provinces. However, provincial and local governments will have to take into account the existence of national parks and marine protected areas when developing a particular area.

### **FINANCIAL IMPLICATIONS FOR STATE**

The following was stated in the Memorandum on the Objects of the first Bill:

It is estimated that the implementation of the envisaged Act will cost the state in the region of R24 528 730 annually, of which R18 199 102 will be the cost to the provincial authorities. If the Act is implemented in a phased way over five years, the cost of the implementation will be of the order of R9 581 746 and will progressively increase over the five-year period until it peaks at approximately R24 528 730 in the fifth year.

### **CONSULTATION**

As indicated in the Memorandum on the Objects of the first Bill, a consolidated version of the Protected Areas Bill was published for general comment. Various consultations were held and some 66 representations were received. These comments were analysed and taken into account, where applicable.

### **PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Environmental Affairs and Tourism are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.