

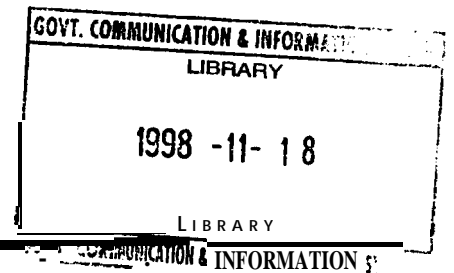
REPUBLIC OF SOUTH AFRICA

NATIONAL PARKS AMENDMENT BILL

*(As amended by the Portfolio Committee on Environmental Affairs and Tourism
(National Assembly))*

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 83B—98]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP NASIONALE PARKE

*(Soos gewysig deur die Portefeuljekomitee oor Omgewingsake en Toerisme
Nasionale Vergadering))*

(MINISTER VAN OMGEWINGSAKE EN TOERISME)

[W 83B—98]

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[Words in boldtype in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the National Parks Act, 1976, so as to allow the board of South African National Parks to accept and receive any land or mineral rights in respect of land donated or bequeathed to that board for the purposes of a national park, and to exchange land or mineral rights in respect of land for other land that may be required for those purposes; to extend the activities that may be carried out within a national park by private persons with that board's authorization; to impose a prohibition on the possession, within a national park, of any animal or carcass or part thereof, and to provide that contravention of that prohibition will be an offence; to regulate the delegation or assignment by that board of the powers, duties and functions conferred or imposed on it by or in terms of that Act; to empower the Minister of Environmental Affairs and Tourism to transfer the powers, duties and functions conferred or imposed on that board with regard to the Knysna National Lake Area by section 30C of that Act, to an authority under the government of the Province of the Western Cape, or another authority in that province, as designated by the Premier of that province; to repeal certain unconstitutional provisions of that Act; to extend the application of the National Parks Act, 1976, to all those areas in the national territory where it was not of force and did not apply previously; and to provide for incidental matters.

Amendment of section 2A of Act 57 of 1976, as inserted by section 3 of Act 43 of 1986

Amendment of section 2B of Act 57 of 1976, as inserted by section 3 of Act 43 of 1986

2. Section 2B of the principal Act is hereby amended by the substitution for the words “Minister of Mineral and Energy Affairs”, wherever they occur in subsection (1), of the words “Minister of Minerals and **Energy**”.

Amendment of section 3 of Act 57 of 1976, as substituted by section 1 of Act 13 of 1982 and amended by section 3 of Act 23 of 1983, section 4 of Act 43 of 1986, section 4 of Act 23 of 1990 and section 4 of Act 52 of 1992

3. Section 3(1) of the principal Act is hereby amended by the substitution for the words “Minister of Mineral and Energy Affairs” of the words “Minister of Minerals and Energy”.

Amendment of section 3A of Act 57 of 1976, as inserted by section 5 of Act 52 of 1992

4. Section 3A of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Notwithstanding the provisions of section 3, the board [may], with the approval of the Minister granted after consultation with the Minister of Public Works and the Minister of [Mineral] Mineral ; and Energy [Affairs], may—
 (a) purchase land or a mineral right to land or the purposes of a park; and
 (b) accept and receive land or a mineral right to land donated or bequeathed for those purposes.”;
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) Land or a mineral right to land purchased or accepted and received as a donation or bequest in terms of subsection (1), or expropriated in terms of subsection (2), shall be registered in the name of the board.”; and
- (c) by the substitution for subsection (4) of the following subsection:
 - “(4) The board [may], with the approval of the Minister granted after consultation with the Minister of Minerals and Energy, may sell or exchange land or a mineral right to land which has been acquired in terms of subsection (1) or (2).”.

Amendment of section 12 of Act 57 of 1976, as amended by section 7 of Act 43 of 1986, section 2 of Act 60 of 1987, section 7 of Act 23 of 1990 and section 6 of Act 52 of 1992

5. Section 12(2) of the principal Act is hereby amended—

- (a) in paragraph (a), by the substitution for the words “Minister of Mineral and Energy Affairs” of the words “Minister of Minerals and Energy”; and
- (b) in paragraph (b), by the substitution for subparagraph (x) of the following subparagraph:
 - “(x) authorize any person to carry on, subject to such conditions and @ the payment of such charges as [it may think] the board considers fit, any activity, [other than] except the sale of liquor, which [may] in terms of [subparagraph (v), (vi) or (vii)] this subsection may be carried on by the board;”.

Amendment of section 21 of Act 57 of 1976, as amended by section 12 of Act 43 of 1986 and section 9 of Act 52 of 1992

6. Section 21(1) of the principal Act is hereby amended—

- (a) in the portion preceding paragraph (a), by the substitution for the word “shall” of the word “may”; and
- (b) by the substitution for paragraph (h) of the following paragraph:
 - “(h) [remove from] within a park be in possession of any animal (other than an animal lawfully introduced into [that] the park), whether alive or dead, or any part of an animal, or remove such an animal or any part thereof from a park;”.

Amendment of section 24 of Act 57 of 1976, as amended by section 6 of Act 23 of 1983, section 8 of Act 23 of 1990, section 2 of Act 33 of 1997 and section 4 of Act 70 of 1997

7. Section 24(I) of the principal Act is hereby amended by the substitution for the portion preceding paragraph (a) of the following:

“(I) Any person who contravenes the provisions of section 21 (1)(c) or (h) with reference to—”.

Repeal of section 26 of Act 57 of 1976

8. Section 26 of the principal Act is hereby repealed.

Substitution of section 28 of Act 57 of 1976, as amended by section 61 of Act 88 of 1996

9. The following section is hereby substituted for section 28 of the principal Act:

Incitation of liability

28. Neither the board nor any of its members, officers or employees shall be liable for any damage or loss caused by any animal in or from a park, unless the damage or loss is attributable to any negligent or intentional act or omission of the board or any of its members, officers or employees.”.

Substitution of section 30A of Act 57 of 1976, as inserted by section 2 of Act 13 of 1982

10. The following section is hereby substituted for section 30A of the principal Act: 15

Delegation

30A. (1) (a) The Minister may delegate any power conferred upon him or her by or under this Act, to the Director-General: **[Environment]** Environmental Affairs and Tourism or any other officer in the Department of **[Environment]** Environmental Affairs and Tourism. However, the delegation of a power shall not prevent the Minister from personally exercising the power.

[(2) (b)] The Minister may at any time revoke any delegation made under **[subsection (1), and no delegation of any power shall prevent the exercise of the power by the Minister himself]** paragraph (a). 25

(2) The board may—

(a) delegate to its chairperson or any other member, or to any committee, officer or employee of the board, any power conferred on the board by or under this Act, on such conditions as the board may determine; and

(b) authorize its chairperson or such a member, committee, officer or employee to perform any duty or function of the board in terms of this Act. 30

(3) An officer authorized by the board to do so (in this section called the designated officer), may—

(a) delegate to any officer or employee of the board who is subject to the supervision and control of the designated officer, any power conferred upon the designated officer by or under this Act; and 35

(b) authorize such an officer or employee to perform any duty or function assigned to the designated officer by or under this Act.

(4) Any delegation or authorization under subsection (2) or (3)— 40

(a) does not preclude the board or the designated officer (as the case may be) from personally exercising or performing the relevant power, duty or function;

(b) may at any time be revoked by the board or the designated officer (as the case may be). 45

(5) The board may ratify any act or thing performed or done by any of its members, officers or employees which purports to have been performed or done on behalf of the board (including, without derogating from the generality of the foregoing, any contract purporting to have been concluded on behalf of the board), if— 50

- (a) the board itself is competent in law to perform such an act or do such a thing; and
- (b) the relevant act or thing otherwise complies with all legal requirements; and
- (c) that act or thing will be to the board's benefit should it be ratified; and
- (d) the member, officer or employee concerned acted in good faith under the mistaken belief that the relevant act or thing had been authorized by the board and that he or she had the board's authorization to perform or do it,
- (6) The provisions of this section shall not be construed as derogating from the validity of any delegation of powers or assignment of duties or functions in terms of this Act by the board to any of its members, committees, officers or employees that occurred before the commencement of section 10 of the National Parks Amendment Act, 1998."

Amendment of section 30C of Act 57 of 1976, as inserted by section 12 of Act 52 of 1992

11. (1) Section 30C of the principal Act is hereby amended by the addition after the existing provisions (which become subsection (1)) of the following subsection:

- "(2) The Minister, by notice in the *Gazette* and with effect from a date determined by the Minister with the agreement of the Premier of the Province of the Western Cape and specified in that notice, may transfer the powers, duties and functions in respect of the said Knysna National Lake Area that were conferred or imposed on the board by subsection (1), to an authority under the government of the province of the Western Cape, or any other authority in that province, that has been designated for that purpose by the Premier of that province."
- (2) Subsection (1) comes into operation on a date that will be determined by the President by proclamation in the *Gazette*.

Insertion of section 30D in Act 57 of 1976

12. The following section is hereby inserted in the principal Act after section 30C:

"Application of Act

30D. This Act, together with all amendments thereof, including the amendments effected by the National Parks Amendment Act, 1998, shall, with effect from the commencement of section 12 of the National Parks Amendment Act, 1998, apply and be of force in the whole of the national territory to the exclusion and in substitution of any other law relating to national parks applicable in any particular portion of the national territory."

Substitution of "chairman" in Act 57 of 1976

13. The principal Act is hereby amended by the substitution for the word "chairman", wherever it occurs in the principal Act, of the word "chairperson".

Short title

14. This Act is called the National Parks Amendment Act, 1998

MEMORANDUM ON THE OBJECTS OF THE NATIONAL PARKS AMENDMENT BILL, 1998

1. The objects of the National Parks Amendment Bill, 1998 ("the Bill") are evidenced by the following:

1.1 At present the National Parks Act, 1976 (Act No. 57 of 1976 — "the Act"), does not authorise the board of South African National Parks ("the board") to acquire land (or mineral rights to land) for the purposes of a national park by way of donation or bequest. Section 3A(1) of the Act limits the board's capacity in this regard to acquisition only by means of purchase or through expropriation. Although, in order to circumvent this difficulty, donations and bequests of land (or mineral rights) made for the purposes of national parks, in practice have been accepted *by the State* "in trust" for the board, such a donation or bequest in reality is made to the State, so that the Registrar of Deeds in such cases is obliged to register the relevant land (or mineral rights to land) in the name of the Minister of Public Works, being the custodian of all State property. This is an unsatisfactory state of affairs that, on a number of occasions, has discouraged potential donors from making donations of land for the purposes of national parks, as happened again recently in two cases when the board lost the opportunity to acquire land offered to it by way of donation. Clause 4(a) of the Bill proposes to remedy this shortcoming in section 3A(1) of the Act, by providing for the board to accept and receive such donations and bequests of land (and mineral rights), while clause 4(b) of the Bill is to amend section 3A(3) of the Act in such manner as to require the Registrar of Deeds to register any land (and mineral rights) so donated or bequeathed, in the name of the board.

1.2 At present, the Act provides, in section 3A(4), that land (or mineral rights to land) may only be alienated by way of sale, thereby precluding the exchange of any land of the board for other land required for the purposes of a national park. This omission appears to be an oversight in view of the fact that section 3(1) of the Act makes provision for *state land* to be exchanged for other land for the purposes of a national park. There are various examples where an exchange of land is the most suitable option to the parties concerned, as appears from the cases of the Karoo National Park and the Augrabies National Park. The amendment to section 3A(4) of the Act proposed by clause 4(c) of the Bill, is aimed at rectifying that oversight.

1.3 Section 12(2)(b)(x) of the Act **authorises** the board to allow certain services to be outsourced. Clause 5 of the Bill proposes to widen the types of service which may be outsourced in terms of that section.

1.4 The Act does not at present place any restriction on the possession of animal carcasses or parts thereof within a national park. The amendment to section 21(1)(h) of the Act proposed by clause 6 of the Bill, is calculated to prohibit persons' possession of carcasses (or parts thereof) within a national park.

1.5 Furthermore, clause 7 of the Bill is directed at amending section 24(1) of the Act, *inter alia*, so as to elevate the possession of an animal carcass within a national park (i.e. contravention of the last mentioned (new) prohibition to be contained in section 21(1)(h)) to an offence.

1.6 Clause 8 of the Bill provides for the repeal of section 26 of the Act, which section appears to be in conflict with section 35(3) of the Constitution of the Republic of South Africa 1996 (Act No. 108 of 1996 — "the Constitution"), in so far as it creates rebuttable presumptions as to the existence of certain facts that constitute the essential elements of certain offences in terms of the Act. By so doing, the said section 26 effectively imposed a burden on any person charged with such an offence, to disprove the presumed facts, and therefore to prove his or her innocence, thereby infringing the person's constitutional right to a fair trial, which includes the right to be presumed innocent until the contrary is proved. (See section 35(3)(1) of the Constitution.)

1.7 Clause 9 of the Bill proposes the substitution of section 28 of the Act in such a manner as to purge therefrom the provisions which at present restrict the institution of legal proceedings against the board (in so far as they impose time limits therefor). Those provisions (see section 28(2) and (3) of the Act), appear to be unconstitutional inasmuch as they encroach on the fundamental right of the State's subjects to have recourse to a court of law with a view to protecting or enforcing their rights. (See sections 34 and 38

of the Constitution and the decision in *Mohlomi v Minister of Defence* /997(1) SA 124 (C).)

1.8 The board's competence to delegate or assign its powers, duties and functions in terms of the Act, at present is not expressly dealt with therein but is inferred by necessary implication. (After all, the full and effective exercise or performance of the multitude of powers, duties and functions entrusted to the board will not be possible otherwise.) However, in view of certain questions recently raised with regard to the board's competence so to delegate and assign as well as the present uncertainties as to the persons to whom the board may make delegations and assignments, and the extent of any such delegation or assignment, clause 10 of the Bill, in substituting section 30A of the Act, seeks to settle the matter once and for all. To that end, the proposed new section 30A expressly authorises the board to delegate any of its powers and assign any of its duties and functions to any of its members, committees, officers and employees (i.e. persons on various managerial levels within the board's organisation). It also allows officers in the board's organisation who are designated by it for that purpose (i.e. "designated officers") to further delegate or assign to their subordinates within that organisation, any power, duty or function that originally had been delegated or assigned to the designated officers. (See subsections (2), (3) and (4) of the proposed new section 30A.) Subsection (5) of that proposed new section also empowers the board to ratify (*ex post facto*) contracts and other acts concluded or performed by any of the board's members, officers or employees on its behalf but without the necessary authorisation, if—

- * the board itself lawfully could have concluded such a contract or performed such an act;
- * the contract or act otherwise meets all legal requirements;
- * it will be to the board's advantage to ratify it; and
- * such a member, officer or employee had acted in good faith under the mistaken belief that his or her action was authorised.

1.9 Section 30C of the Act at present authorises the board to manage, administer and control the Knysna National Lake Area declared under section 2 of the Lake Areas Development Act, 1975 (Act No. 39 of 1975). Since the Knysna system does not meet the international criteria set for national parks, the board wants to have the management, administration and control of the Knysna National Lake Area transferred to the provincial administration of the province of the Western Cape, or to a local government institution in that province. With a view to being able to achieve this result, clause 11 of the Bill adds to the existing provisions of section 30C of the Act a new subsection, viz. subsection (2), which authorises the Minister of Environmental Affairs and Tourism to transfer the management, administration and control of the Knysna National Lake Area by notice in the *Gazette* to an authority under the government of that province, or another authority in that province, as designated for that purpose by its Premier.

1.10 In terms of section 229 of the ("Interim") Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), the laws that immediately before the commencement of the Interim Constitution on 27 April 1994 were applicable in the former TBVC countries and self-governing territories and the remainder of the Republic, continued in force in their respective areas of application, which arrangement, in essence, has been continued under the (New) Constitution (see item 2 of Schedule 6 to the Constitution). In the result, the National Parks Act, 1976, to this day does not have the force of law in all the constituent parts of the national territory but is in force only in those areas of the Republic where it applied on 26 April 1994¹, which in effect means that those portions of the Republic comprising the territories of the former TBVC countries are at present not included in its area of application. Since it is of vital importance to have nationwide uniformity as regards the system of governance and the norms, standards and legislative and regulatory measures applicable with regard to national parks, clause 12 of the Bill makes the Act of force and applicable in the whole of the national territory to the exclusion and in substitution of any other law that may be applicable in relation to national parks within any particular area in the Republic.

1. The same applies for that matter as regards the laws of the TBVC countries relating to national parks.

2. The following institutions have been consulted in connection with the Bill:

Department of Constitutional Development and Provincial Affairs.

Department of Public Works.

Department of Minerals and Energy.

Administration of the Province of the Western Cape.

3. The view is held by the State Law Advisers and the Department of Environmental Affairs and Tourism that the Bill should be dealt with in accordance with the procedure provided for in section 75 of the Constitution, inasmuch as the Bill—

*is designed to regulate matters relating to national parks, which does not fall within any of the functional areas mentioned in Schedule 4 or 5 to the Constitution and, indeed, falls exclusively within the national sphere of government;

*does not contemplate any amendment to the Constitution nor propose the imposition of any tax, levy or duty; and

*does not provide for legislation of the nature envisaged in section 76(3)(a) to (e), (4) or (5) of the Constitution.