

GENERAL NOTICE

NOTICE 2609 OF 1999

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

TOURISM AMENDMENT BILL, 1999

The Tourism Amendment Bill, 1999, is hereby published for public comment.

Comments should be submitted in writing to:

The Acting Director-General
Attention: Dr S Bayat
Department of Environmental Affairs and Tourism
Private Bag X447
PRETORIA
0001

Comments may also be faxed to (012) 320 4740 or sent by e-mail to toe_up@ozone.pwv.gov.za.

Comments must be received not later than 31 January 2000.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

BILL

To amend the Tourism Act, 1993, so as to insert certain definitions; to further provide for the training and registration of tourist guides; to make provision for a code of conduct for tourist guides; to regulate the procedure for lodging complaints; to make provision for the endorsement of certain registers in appropriate cases; to provide for disciplinary measures, appeals and reviews; to criminalise certain conduct; and to make provision for a duty to provide information; and to provide for transitional matters; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 72 of 1993, as amended by section 1 of Act 105 of 1996

1. Section 1 of the Tourism Act, 1993 (hereinafter referred to as the principal Act), is hereby amended-

- (a) by the insertion after the definition of "Minister" of the following definition: " '*National Registrar*' means the *National Registrar of Tourist Guides mentioned in section 20(1)*";; and
- (b) by the insertion after the definition of "prescribe" of the following definition: " '*Provincial Registrar*' means a *Provincial Registrar of Tourist Guides mentioned in section 21*";.

Substitution of section 20 of Act 72 of 1993

2. The following section is hereby substituted for section 20 of the principal Act:

"National Registrar of Tourist Guides

20. (1) *The Minister shall designate an officer in the Department as the National Registrar of Tourist Guides.*

(2) *The National Registrar shall-*

- (a) *maintain a central database of all tourist guides registered by Provincial Registrars in terms of section 21A;*
- (b) *prepare a code of conduct for tourist guides in accordance with section 21C;*
- (c) *hear and determine appeals lodged under section 21G;*
- (d) *monitor trends in the tourist guiding industry by conducting research and analysis;*
- (e) *publish or otherwise disseminate information about tourist guides, associations of tourist guides and any other information to promote and develop the tourist guiding industry nationally;*
- (f) *liaise with the board, Provincial Registrars, tourist guides, associations of tourist guides, education and training authorities, the South African Police Service, the Consumer Council and any other person or organisation to-*
 - (i) *facilitate the growth and development of the tourist guiding industry;*
 - (ii) *improve and maintain standards in the tourist guiding industry; and*
 - (iii) *co-operate on matters of mutual interest in the tourist guiding industry; and*
- (g) *review the regulations relating to tourist guides made under section 26 and recommend amendments thereof to the Minister.*

(3) (a) *The National Registrar may, after consultation with all Provincial Registrars, determine conditions subject to which tourist guides may be registered.*

(b) *Different conditions may be determined in respect of different categories of tourist guides."*

Substitution of section 21 of Act 72 of 1993

3. The following section is hereby substituted for section 21 of the principal Act:

"Provincial Registrars of Tourist Guides

21. (1) *The Member of the Executive Council responsible for tourism in each province shall designate an officer in the province as the Provincial Registrar of Tourist Guides for that province.*

(2) A Provincial Registrar shall-

- (a) for the purposes of section 21A, keep a register of tourist guides within the province concerned and shall-
- (i) record in the register the prescribed particulars with regard to each registered tourist guide;
 - (ii) delete from the register the particulars of any tourist guide whose registration has been withdrawn;
 - (iii) make the prescribed endorsement against the name of any tourist guide whose registration has been suspended; and
 - (iv) inform the National Registrar of anything done in terms of subparagraph (i), (ii) or (iii);
- (b) publish or otherwise disseminate information about registered tourist guides within the province and associations of tourist guides and any other information to promote and develop the tourist guiding industry within the province;
- (c) promote and develop the tourist guiding industry within the province in any manner other than as contemplated in paragraph (b);
- (d) deal with complaints lodged under section 21D;
- (e) act in accordance with section 21E when a tourist guide becomes subject to any disqualification mentioned in section 21A(5); and
- (f) exercise disciplinary powers in accordance with section 21F."

Insertion of sections 21A to 21J in Act 72 of 1993

4. The following sections are hereby inserted in the principal Act after section 21:

"Procedure relating to registration of tourist guides

21A. (1) Any person who wishes to be registered as a tourist guide in a province shall apply to the Provincial Registrar in the prescribed manner, and the application shall be accompanied by the prescribed registration fee.

(2) Upon receipt of an application and the registration fee the Provincial Registrar may request the applicant to furnish such additional particulars and information as he or she may deem necessary in order to consider the application properly.

(3) At the request of the Provincial Registrar an applicant shall appear before him or her in person and shall furnish such additional particulars and information as may be required by the Provincial Registrar in order to enable the Provincial Registrar to decide whether the application should be approved or not.

(4) No person shall be registered as a tourist guide in terms of this Act unless he or she shows proof of the prescribed qualifications, acquired through the training contemplated in section 21B.

(5) No person shall be registered as a tourist guide in terms of this Act if he or she-

- (a) becomes or remains insolvent, until he or she is rehabilitated;
- (b) is within the Republic or elsewhere convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (c) loses his or her South African citizenship or right of permanent residence or work permit in the Republic.

(6) If the Provincial Registrar, after considering the information and particulars contemplated in subsections (2) and (3), is satisfied that the applicant complies with the prescribed qualifications for registration as a tourist guide and that the applicant is not subject to any disqualification mentioned in subsection (5), he or she shall register the applicant as a tourist guide.

(7) When the Provincial Registrar registers any person as a tourist guide, he or she shall issue to that person a registration certificate and a badge, which shall be in the prescribed form.

(8) (a) Registration as a tourist guide shall be valid for a period of one year, reckoned from the date of issue of the registration certificate.

(b) Any person registered as a tourist guide may before the end of the period for which he or she has been registered, apply to the Provincial Registrar on the prescribed form to be re-registered as a tourist guide in respect of the next ensuing period of one year, and if the person so applies to be re-registered, he or she shall upon the payment of the prescribed fee be re-registered, unless he or she has become subject to any of the disqualifications mentioned in subsection (5) since the previous registration.

(9) (a) Subject to paragraphs (b) and (c), the Provincial Registrar may refuse to approve an application for registration as a tourist guide if the applicant's registration was withdrawn on the grounds of misconduct in terms of section 21F at any time within the period of three years preceding the date of application.

(b) If the Provincial Registrar is contemplating a refusal under paragraph (a), he or she shall, by notice sent by registered post or any other effective method, inform the applicant of the possible refusal and the reason therefor and call upon the applicant to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.

(c) Before the Provincial Registrar decides on an application under this subsection, he or she shall consider the representations, if any, made by the applicant in accordance with paragraph (b).

Training

21B. The training required for a qualification mentioned in section 21A(4), shall follow the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and the national standards and qualifications registered for the tourism sector as contemplated in section 5(1) of that Act.

Code of conduct

21C. The National Registrar shall in the prescribed manner, after consultation with the Provincial Registrars and associations of tourist guides, prepare and publish a code of conduct with which all registered tourist guides shall comply.

Complaints

21D. (1) (a) Any person may lodge a complaint with a Provincial Registrar if a person is acting as a tourist guide in contravention of section 21H(1) or (2).

(b) The Provincial Registrar shall, if the complaint discloses an offence, lay a charge with the South African Police Service.

(c) In the case of a contravention of section 21H(2), the Provincial Registrar shall consider taking steps in accordance with section 21E.

(2) (a) Any person may lodge a complaint with the Provincial Registrar regarding the misconduct of a tourist guide.

(b) The Provincial Registrar shall, if the complaint discloses-

- (i) a contravention of this Act or any other law constituting an offence, lay a charge with the South African Police Service and consider taking steps in accordance with section 21F;
- (ii) misconduct not constituting an offence, including a contravention of the code of conduct contemplated in section 21C, consider taking steps in accordance with section 21F.

(3) (a) Any person may lodge a complaint with the Provincial Registrar regarding a contravention of section 21H(3).

(b) The Provincial Registrar shall, if the complaint discloses an offence, lay a charge with the South African Police Service.

(4) The Provincial Registrar concerned shall report to the National Registrar in writing on the result of any case dealt with in terms of subsection (1), (2) or (3).

Action by Provincial Registrar regarding disqualification of tourist guide

21E. (1) If a Provincial Registrar has reason to believe that a tourist guide has become subject to any disqualification mentioned in section 21A(5), the Provincial Registrar shall by notice, sent by registered post or any other effective method, inform the tourist guide of the allegations against him or her and call upon that tourist guide to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.

(2) The notice shall direct the attention of the tourist guide to the possibility of his or her registration as a tourist guide being withdrawn.

(3) If, after considering the allegations against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that one or more of the disqualifications mentioned in section 21A(5) are applicable, the Provincial Registrar shall withdraw the person's registration as a tourist guide.

(4) The Provincial Registrar may by the notice referred to in subsection (1) suspend the registration of the tourist guide concerned, pending the decision of the Provincial Registrar under subsection (3): Provided that before the decision to suspend the registration of the tourist guide is taken, he or she shall be afforded an opportunity to make representations to show why the registration should not be suspended.

(5) If the registration of a tourist guide is suspended in terms of subsection (4), the Provincial Registrar shall make the prescribed endorsement in the register against the name of the tourist guide.

Disciplinary measures

21F. (1) A Provincial Registrar who has reason to believe that a tourist guide is guilty of misconduct by-

- (a) contravening a provision of this Act or any other law;
- (b) contravening the code of conduct contemplated in section 21C;
- (c) failing to comply with any condition subject to which he or she has been registered; or
- (d) behaving in a disgraceful manner,

shall institute an investigation or cause an investigation to be instituted and, if satisfied that there is substance to such belief, by notice, sent by registered post or any other effective method, inform the tourist guide of the charge against him or her and call upon that tourist guide to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.

(2) The notice shall direct the attention of the tourist guide to the possible penalties mentioned in subsection (3).

(3) If, after considering the charge against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that the tourist guide is guilty of the charge of which he or she is accused, the Provincial Registrar may-

- (a) issue a warning to the tourist guide;
- (b) impose a fine not exceeding R500 on the tourist guide; or
- (c) withdraw the registration as a tourist guide, either for an indefinite period or for such period as the Provincial Registrar may determine.

(4) The Provincial Registrar may, by the notice referred to in subsection (1), suspend the registration of the tourist guide concerned, pending the decision of the Provincial Registrar under

subsection (3): Provided that before the decision to suspend the registration of the tourist guide is taken, he or she shall be afforded an opportunity to make representations to show why the registration should not be suspended.

(5) If the registration of a tourist guide is suspended in terms of subsection (4), the Provincial Registrar shall make the prescribed endorsement in the register against the name of the tourist guide.

Appeals and reviews

21G. (1) (a) Any person who considers himself or herself aggrieved by a decision of a Provincial Registrar, may appeal against the decision in question to the National Registrar in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(b) The National Registrar may confirm, set aside or amend the decision.

(2) The power to determine an appeal in terms of this section is not restricted to the merits of the decision appealed against, but includes the power to review any irregularity alleged regarding the decision.

Prohibitions

21H. (1) No person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn, may for reward, whether monetary or otherwise, act as a tourist guide.

(2) No person who has become subject to any disqualification mentioned in section 21 A(S) may for reward, whether monetary or otherwise, continue to act as a tourist guide.

(3) No person may for the promotion of any business undertaking conducted by him or her, employ or continue to employ as a tourist guide any person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn or who has become subject to a disqualification contemplated in subsection (2).

Duty to provide information

21I. (1) For the purposes of section 20(2)(d) or (e) the National Registrar may call upon any person in writing to furnish him or her with information at his or her disposal within a specified period of time to enable the National Registrar to perform his or her functions.

(2) A person may refuse a request for information if its disclosure would constitute an invasion of the privacy of that person.

(3) A person may refuse a request for information which would disclose-

(a) trade secrets of that person;

(b) financial, commercial or technical information, other than trade secrets, the disclosure of which could reasonably be expected to cause harm to the commercial or financial interests of that person;

or

(c) *information the disclosure of which could reasonably be expected to put that person at a disadvantage in contractual or other negotiations or prejudice that person in commercial competition.*

(4) *Subsections (2) and (3) do not apply to information-*

(a) *already publicly available; or*

(b) *regarding the safety of services rendered by the person and the disclosure of which is likely to result in better informed choices by persons seeking to make use of those services.*

(5) *No person may refuse or fail to comply with a written request under subsection (1) without sufficient reason.*

Disputes

21J. Where a dispute or disagreement arises between the National Registrar and a Provincial Registrar concerning the performance of any of the functions contemplated in section 21, 21 A, 21 C, 21 D, 21 E, 21 F or 21 G, the matter shall be referred to the Director-General: Environmental Affairs and Tourism for arbitration and his or her decision shall be final."

Amendment of section 28 of Act 72 of 1993

5. Section 28 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

"(d) **contravenes section 21(9)(a) or 10 21H or 21I(5));"**

Transitional provisions

6. (1) The person, if any, who immediately before the date of commencement of this section occupied the post of Registrar of Tourist Guides in the employment of the board shall, with his or her consent, on such commencement be transferred to the establishment of the Department to the post of National Registrar of Tourist Guides, and shall be deemed to have been designated as such by the Minister in terms of section 20 of the principal Act.

(2) The incumbents of not more than two subordinate posts in the employment of the board who, immediately before the date of commencement of this section, were charged with the registration of tourist guides shall, with their consent, on such commencement be transferred to the establishment of the Department under the supervision of the National Registrar of Tourist Guides.

(3) (a) The conditions of employment which were applicable to the persons referred to in subsections (1) and (2) immediately before the date of commencement of this section, shall not be affected to the detriment of the person concerned, and no such condition of employment shall after that date be construed or applied in a manner which is less favourable to the person concerned than the manner in which it was construed or applied immediately before that date.

(b) The period of service of the persons referred to in subsections (1) and (2) in the public service shall be deemed to be part of and continuous with their employment by the board, for all purposes, including those of

leave, pension and any other conditions of service, and the provisions of any pension law applicable to them as such employees, or in the event of their deaths, to their dependants, shall, with the necessary changes, continue so to apply.

(4) The furniture, equipment and other movable assets and records (including computer software) used by the persons referred to in subsections (1) and (2) for the performance of their functions in the employment of the board, shall be transferred to the Department on the commencement of this section.

(5) Any tourist guide registered in terms of the principal Act immediately before the date of amendment thereof by section 4 of this Act, shall remain so registered, subject to the principal Act as so amended, and shall be exempt from section 21A(4) of the principal Act for a period of three years from the date of commencement of this section.

(6) In this section-

"board" means the South African Tourism Board established by section 2 of the principal Act;

"Department" means the Department of Environmental Affairs and Tourism; and "Minister" means the Minister of Environmental Affairs and Tourism.

Short title and commencement

7. This Act shall be called the Tourism Amendment Act, 1999, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

MEMORANDUM ON THE OBJECTS OF THE TOURISM AMENDMENT BILL, 1999

General

1. The Tourism Amendment Bill, 1999, seeks to amend the Tourism Act, 1993 (Act No. 72 of 1993, "the principal Act"), so as to introduce a radically redesigned tourist guiding system for South Africa.

2. The Bill is the result of a Tourist Guiding Policy aimed at developing a socially, environmentally and culturally responsible tourist guiding sector, which, in accordance with the tourism vision, will in turn contribute to the development of an internationally competitive tourism industry in South Africa.

3. The transformation of the tourist guiding system takes place against the backdrop of current policy developments with regard to tourism, education and training, labour, gender, human rights and environmental management.

Clause by clause explanation

4. Clause 1 seeks to insert new definitions for "National Registrar of Tourist Guides" and "Provincial Registrar of Tourist Guides," which relate to important changes that will be discussed later.

5. Clause 2 proposes to introduce a new section 20 in the principal Act so as to provide for a National Registrar of Tourist Guides in the Department of Environmental Affairs and Tourism to replace the present post of Registrar of Tourist Guides in the South African Tourism Board (Satour). It is intended with this proposed amendment that Satour will in future be a

purely marketing body for tourism at the national level.

The most important functions of the National Registrar will be to-

- * maintain a central database of all tourist guides registered by Provincial Registrars;
- * prepare a code of conduct for tourist guides; and
- * hear appeals against certain decisions taken by Provincial Registrars regarding tourist guides.

6. Clause 3 seeks to replace section 21 of the principal Act in order to provide for Provincial Registrars of Tourist Guides. The basic idea is that the registration function which is at present being done on a national basis within Satour, will be devolved to the provinces. The most important functions of the Provincial Registrars will be to-

- * register tourist guides and maintain a register for this purpose;
- * promote and develop the tourist guiding industry in their respective provinces;
- * deal with complaints;
- * withdraw the registration of persons who have become disqualified to act as tourist guides; and
- * exercise disciplinary powers in respect of tourist guides.

7. Clause 4 proposes the insertion of new sections 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21I and 21J in the principal Act.

7.1 The proposed section 21A sets out the procedure relating to the registration of tourist guides. Some of the main points are: The applicant must apply in the prescribed manner; must show that he or she has the prescribed qualifications; and must not be disqualified, for example, by insolvency; when the Provincial Registrar registers a person as tourist guide, he or she must issue to that person a registration certificate and a badge; a registration is valid for one year but can be renewed annually; the Provincial Registrar may refuse an application on the grounds of serious misconduct.

7.2 The proposed section 21B deals with the nature of the training required for a person to become a qualified tourist guide. It also brings uniformity in the training of tourist guides.

7.3 The proposed section 21C provides that the National Registrar shall prepare a code of conduct for tourist guides.

7.4 A complaints procedure is set out in the proposed section 21D in terms of which the misconduct of tourist guides or cases of unregistered persons acting as tourist guides may be brought to the attention of the Provincial Registrar.

7.5 In the proposed section 21E the procedure is set out in accordance with which a Provincial Registrar may withdraw the registration of a person who has become disqualified to be a tourist guide, on the grounds of insolvency, serious criminal conduct or loss of South African citizenship or permanent residency.

7.6 Disciplinary measures are provided for in the proposed section 21F to deal with the misconduct of tourist guides. The proposed penalties that the Provincial Registrar will be able to impose are a warning, a fine not exceeding R500 and the withdrawal of registration, either for an indefinite period or for a period determined by the Provincial Registrar.

7.7 In terms of the proposed section 21G, it is proposed that an aggrieved person may appeal to the National Registrar against a decision of a Provincial Registrar.

7.8 The proposed section 21H prohibits any person who is not a registered tourist guide, or has been disqualified, from acting as a tourist guide. It also prohibits a business undertaking from employing unregistered or disqualified persons as tourist guides.

7.9 In order to enable the National Registrar to monitor trends in the tourist guiding industry or to publish information to promote and develop the industry nationally, the proposed section 21I imposes a duty on any person to provide the National Registrar with the information needed by him or her for that purpose. On certain grounds such person may refuse to comply with the request, for example where the information requested would constitute an invasion of privacy or disclose trade secrets.

7.10 It is proposed that where a dispute or disagreement arises between the National Registrar and a Provincial Registrar concerning the exercise of a function relating to tourist guides, the Director-General will act as arbitrator in accordance with the proposed section 21J.

8. Clause 5 seeks to amend section 28 of the principal Act, which sets out offences and penalties. This clause is merely of consequential nature, as it is connected to sections 21H and 21I already discussed.

9. Clause 6 provides for certain transitional measures and clause 7 contains the short title and commencement provision.

Effect on provincial and local government

10. The Bill requires the MEC responsible for tourism in each province to designate an officer in the province to act as Provincial Registrar of Tourist Guides. This officer will perform certain functions mentioned in the Bill, namely to-

- * register tourist guides and maintain a register for this purpose;
- * publish information about tourist guides registered in the provincial register and about other matters relating to the tourist guiding industry;
- * promote and develop the tourist guiding industry within the province;
- * handle complaints;
- * withdraw the registration of persons who have become disqualified to act as tourist guides; and
- * exercise disciplinary powers in respect of tourist guides.

The Bill has no effect on local government.

Other departments and bodies consulted

11. The following were consulted:

- * Satour
- * The provincial tourism authorities
- * The provincial departments responsible for tourism
- * The Tourist Guides Association and other groupings in the tourist guiding fraternity
- * The Travel and Tourism Association of South Africa
- * The Hospitality Industry Training Board
- * The Department of Education
- * The Department of Arts, Culture, Science and Technology
- * The Department of Safety and Security

The Legislative process to be followed in Parliament

12. The Department of Environmental Affairs and Tourism and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with section 76 of the Constitution as it falls within the functional area listed in Schedule 4 to the Constitution, namely "tourism".

Financial implications for the State

13. There will be no increased expenditure caused by the Bill as the relevant personnel will be transferred from Satour to the Department together with the necessary funding and other movable assets.