

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**No. 57****28 January 2005****WORLD HERITAGE CONVENTION ACT, NO. 49 OF 1999: FIRST AMENDMENT BILL**

The Minister of **Environmental Affairs and Tourism**, Marthinus van Schalkwyk, hereby publishes the World **Heritage** Convention Act: **First Amendment** Bill for public comments. **The Bill** seeks to amend the World **Heritage** Convention Act **No. 49 of 1999**, which provides for the implementation of the United Nations Education, Scientific and Cultural Organisation (**UNESCO**) World **Heritage** Convention (**WHC**) in **South Africa**. The purpose of **the** Bill is to **transfer** the administration of **the** World **Heritage** Convention Act and **the** World **Heritage** Convention functions from **the** Department of Environmental Affairs and Tourism (**DEAT**) to **the** Department of Arts and Culture (**DAC**). **The draft** Amendment Bill was submitted to Cabinet in November 2004 and was subsequently approved.

More details are set out in the **attached** explanatory memorandum.

Written **comments** and **inputs** are invited from interested and affected parties as well as **the** general public. **These** must be submitted to:

DIRECTOR-GENERAL

Attention: Mr Ntsoi November

Department of Environmental Affairs and Tourism

Private Bag X447

PRETORIA

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Copies of the **Bill** can be obtained from:

- Government Printers – Cape Town & Pretoria
- **Website:** www.deat.gov.za

THE CLOSING DATE FOR COMMENTS IS 28 FEBRUARY 2005

MEMORANDUM ON THE OBJECTS OF THE WORLD HERITAGE CONVENTION ACT: FIRST AMENDMENT BILL

INTRODUCTION

To amend the World Heritage Convention Act, 1999, to provide for the administration of the Act by the Minister of **Arts** and Culture; to provide for consultation with the Minister of Environmental Affairs and Tourism; and to provide for matters connected therewith,

DISCUSSION

Provisions

- Cabinet approved the transfer of the administration of the World Heritage Act, No. **49** of 1999 from the Department of Environmental Affairs and Tourism (DEAT) to the Department of Arts and Culture (DAC).
- The **two** departments have further agreed that the functions should **be** transferred to DAC with effect from 5 February 2005. The transfer of functions before the completion of the consultation process on the Draft Amendment Bill is to give DAC time to adjust with the new functions since it will be hosting the 29th session of the World Heritage Committee. The transfer of functions could be effected in terms of section 97 of the Constitution, which states that:

*"The President by proclamation may transfer to a member of **the Cabinet-***

- (a) the administration of any legislation entrusted to another member; or*

(b) any power or function entrusted by legislation to another member."

- Natural World Heritage Sites will be retained by the Department of Environmental Affairs and Tourism and will be moved from the Chief Directorate: Biodiversity and Heritage and be linked with the Chief Directorate: Transfrontier Conservation and Protected Areas.

PROCESS FOLLOWED

The following interested and affected organisations were consulted:

- Department of Arts and Culture
- Minister and MEC Committee
- South African National Parks
- Committee for Environmental Coordination
- South African Tourism
- Statutory Bodies
- Provincial departments
- Cabinet

Deadline for comments is 28 February 2005.

Written comments and inputs should be sent to the:

Director-General
Department of Environmental Affairs and Tourism
Privet Bag X447
PRETORIA
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Contact person:

Mr Ntsizi November
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[] Words in bold type in square brackets indicate omissions from existing enactments.
Words underlined with a solid line indicate insertions in existing enactments.

WORLD HERITAGE CONVENTION AMENDMENT **BILL, 2004**

To amend the World Heritage Convention Act, **1999**, to provide for the administration and co-ordination **of the Act by 'the Minister of *Arts* and Culture**; to provide for consultation with the Minister of Environmental Affairs and Tourism; 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 **49** of **1999**

1. Section 1 of the World Heritage Convention Act, 1999 (hereinafter called the "principal Act"), is hereby amended by -

- (a) the substitution for the definition of 'Department' of the following definition:
"'Department' means the Department of [Environmental Affairs and Tourism] *Arts and Culture*";
- (b) the substitution for the definition of 'MEC' of the following definition:
"'MEC' means the Member of the Executive Council responsible for [environmental, cultural or heritage affairs, as the case may be] heritage affairs in the province concerned;";
- (c) the substitution for the definition of 'Minister' of the following definition:
"'Minister' means the Minister of [Environmental Affairs and Tourism] *Arts and Culture*"; and
- (d) the insertion after the definition of 'prescribe' of the following definition:
"'Protected Areas Act' means the National Environmental Management: Protected Areas Act, 2003 (Act No. **57** of 2003);".

Insertion of section 4A in Act 49 of 1999

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

“Administration and Co-ordination of this Act

4A(1). The Minister is responsible for the administration and coordination of this Act. and must discharge this responsibility in accordance with a written agreement with the Cabinet member responsible for environmental affairs and tourism.”

4(A)(2). The Minister must when concluding a written agreement with the Cabinet member responsible for environmental affairs and tourism discharge the Minister’s responsibility for the administration and coordination of this Act according to the nomination status of the relevant World Heritage Sites to provide for:

- (1) the administration of a nominated cultural World Heritage Site by the Minister. the administration of a nominated natural World Heritage Site by the Department of Environmental Affairs and Tourism or the protected area manager delegated by the Cabinet member responsible for the administration of the Protected Areas Act and for the administration of a nominated mixed World Heritage Site by the Minister, in consultation with the protected area manager responsible for the management of the protected area within which the World Heritage Site falls, if applicable, alternatively, the Cabinet member or the MEC responsible for environmental affairs and tourism;
- (2) the effective administration, sustainable management, reporting procedures and control of a World Heritage Site by the most appropriate Cabinet member or MEC responsible for the administration of World Heritage Sites;
- (3) the determination of the criteria for the conditions of service, employment and the transfer of employees where the World Heritage Site is already

managed by another organ of state or falls within the functional area of jurisdiction of another organ of state: and

- (4) the integration and harmonisation of integrated management required by the Convention and Operational Guidelines, as required in terms of section 22

4(A)(3). The organ of state, which is already lawfully managing a World Heritage Site, shall continue reporting to the Cabinet member or MEC to which it reported immediately before this section took effect and must continue managing the area until the management of the area is assigned to another organ of state in terms of Chapter 11, and the relevant member of Cabinet member or MEC shall continue to exercise full control over such organ of state

4(A)(4). If a World Heritage Site is listed as a natural site and is subject to the Protected Areas Act, the Cabinet member or MEC responsible for environmental affairs and tourism shall appoint the organ of state as manager of such a natural site and the Cabinet member or MEC responsible for environmental affairs and tourism shall administer this Act in all respects concerning such natural World Heritage Site.

Amendment of section 7 of Act 49 of 1999

3. Section 7 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) The Minister must consult with, and may not declare **an** area to be a natural World Heritage Site without the concurrence of the [**Minister of Arts and Culture**] Cabinet member responsible for environmental affairs and tourism and with interested parties before acting in terms of section 8 or 9, which consultation, in the case of interested parties may be in the form of public hearings and **must** include consultation with representatives from the relevant affected –".

Amendment of section 25 of Act 49 of 1999

4. Section 25 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"(4) The Minister must, upon receipt of an integrated development plan and in consultation with the [Minister of Arts and Culture] Cabinet member responsible for environmental affairs and tourism, the relevant MEC and planning authority, and if applicable, the Council established in terms of section 14 of the National Heritage Resources Act, 1999—".

Substitution of section 28 of Act 49 of 1999

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

"Model integrated management plan

28. (1) The Minister may prepare model integrated management plans or sections thereof **[after] in** consultation with the [Minister of Arts and Culture] Cabinet member responsible for environmental affairs and tourism;

(2) The Minister may prescribe norms and standards in connection with the preparation and contents of integrated management plans **[after] in** consultation with [Minister of Arts and Culture] the Cabinet member or the MEC responsible for environmental affairs and tourism. save that in respect of natural World Heritage Sites the Cabinet member responsible for environmental affairs and tourism alone shall Prescribe norms and standards;

Amendment of section 43 of Act 49 of 1999

6. Section 43 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (3) of the following paragraph:

"(c) to a statutory body that is primarily involved in cultural matters or nature conservation, but such delegation may not affect the obligations of the [Department] Republic under the Convention."

Insertion of section 44A in Act 49 of 1999

7. The following section is hereby inserted in the principal Act after section 44:

"Intervention by Cabinet member responsible for environmental affairs and tourism

44A. (1) The Cabinet member responsible for environmental affairs and tourism may by notice in the *Gazette* declare the whole or any specific provisions of Chapter 4 of the Protected Areas Act applicable to a particular world heritage site if the Authority for that site does not comply with any norms and standards or regulations prescribed in terms of section 11(1) of that Act.

(2) If the Cabinet member responsible for environmental affairs and tourism declares the whole or any specific provisions of Chapter 4 of the Protected Areas Act applicable to a particular world heritage site in terms of subsection (1), the Authority of the site must for purposes of such application be regarded as a management authority within the meaning of that Act."

Transitional matters

8. This Act does not affect the continuation of anything validly done in terms of the principal Act before the commencement of this Act.

Short title

9. This Act is called the World Heritage Convention Amendment Act, 2004.

Notes:

1. Transfer of administration of Act, functions or powers by President

If the transfer of the administration of the World Heritage Convention Act to the Department of Arts and Culture is a matter of urgency, it is not necessary to wait for the passing of the Amendment Bill. In such a case the transfer could, pending the adoption of the Amendment Bill, be effected in terms of section 97 of the Constitution which provides as follows:

"The President by proclamation may transfer to a member of the Cabinet-

- (a) *the administration of any legislation entrusted to another member; or*
- (b) *any power or function entrusted by legislation to another member."*

2. **Provisions of Protected Areas Act applicable to world heritage sites**

The following provisions of the Protected Areas Act are applicable to world heritage sites:

- (a) *s 9: **Kinds** of protected areas § 9 (b))*
- (b) *s 11: **Norms and standards** § 11 (I)*
- (c) *s 13: **World heritage sites***
- (d) *s 46: **Access to nature reserve and world heritage site***
- (e) *s 47: **Use of aircraft in special nature reserve or world heritage site***
- (f) *s 50: **Commercial and community activities in nature reserve and world heritage site***
- (g) *s 52: **Internal rules***
- (h) *s 53: **Certain rights and entitlements to be respected***
- (i) *s 86: **Regulations by Minister** § (1)(c)(v))*
- (j) *s 88: **General***
- (k) *s 89: **Offences and penalties** § (1)(a) and (2)).*