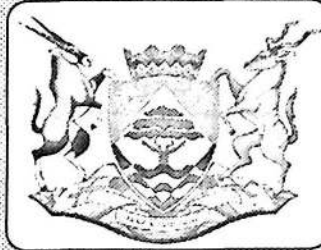


**PROVINCE OF THE NORTHERN CAPE**

**PROFENSI YA KAPA-BOKONE**



**DIE PROVINSIE NOORD-KAAP**

**IPHONDO LOMNTLA-KAPA**

**EXTRAORDINARY • BUITENGEWONE**

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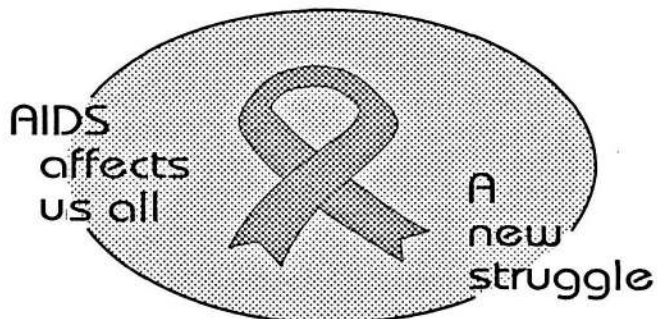
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**Vol. 8**

**KIMBERLEY, 10 SEPTEMBER 2001**

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## GENERAL NOTICE

### NOTICE 46 OF 2001

#### DRAFT NORTHERN CAPE LAND ADMINISTRATION BILL

To regulate the acquisition and disposal of provincial state land by the Northern Cape Provincial Government; to provide for the establishment and maintenance of a Consolidated Provincial State Land Register and the submission of an Annual Provincial State Land Acquisition and Disposal Report to the Provincial Legislature; and to provide for matters incidental thereto.

##### Preamble

Whereas it is reasonably necessary for or incidental to the effective exercise of its powers concerning certain matters listed in Schedule 4 to the Constitution that immovable property be acquired by the Northern Cape Provincial Government or that immovable property be disposed of by the said Government;

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of the Northern Cape, as follows: -

##### 1. Definitions

In this Act, unless the context otherwise indicates -

"accounting officer" means the head of department of the department which administers provincial state land;

"acquire" includes, but is not limited to the acquisition of immovable property by purchase, expropriation, exchange, donation or leasing, or as a result of the conclusion of any form of land availability agreement and "acquisition" has a corresponding meaning;

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

"dispose" includes but is not limited to the alienation, encumbrance, transfer or allocation of immovable property as a result of an agreement to sell, exchange, donate or let, or as a result of the conclusion of any form of land availability agreement, with regard to such property, and "disposal" has a corresponding meaning;

"immovable property" includes any right in or over immovable property;

"Premier" means the Premier of the Northern Cape acting in terms of the provisions contained in section 125(2) of the Constitution;

"Provincial State Land" means any immovable property which vests in the Northern Cape Provincial Government;

"Registrar" means the Registrar of Deeds as defined in the Deeds Registries Act, 1937 (Act 47 of 1937);

"this Act" includes the regulations;

"transferee" means any person or entity which acquires provincial state land in terms of section 3(1);

"Treasury" means the Provincial Treasury of the Northern Cape Provincial Government in terms of the Public Finance Management Act, 1999 (Act 1/1999) as amended; and

"Northern Cape Provincial Government" means the government of the province of the Northern Cape which is recognised as a province of the Republic of South Africa in terms of section 103 (1)(f) of the Constitution of the Republic of South Africa, 1996, and the "Province of the Northern Cape" has a corresponding meaning.

## **2. Acquisition of immovable property**

- (1) Unless expressly otherwise provided for in any other law, the Premier may acquire immovable property on behalf of the Northern Cape Provincial Government, provided that the prescripts issued by Treasury shall be adhered to.
- (2) Immovable property acquired in terms of subsection (1) must be registered in the name of the "Northern Cape Provincial Government".
- (3) The provisions of the Northern Cape Provincial Legislation regarding Expropriation shall apply to expropriation of land under subsection (1).

## **3. Disposal of provincial immovable property**

- (1) Unless expressly otherwise provided for in any other law, the Premier may dispose of provincial state land on such conditions as he or she determines in consultation with the provincial department responsible for the administration of the land; provided that if provincial state land is disposed of at less than the land's market-related value, it must be a condition of the disposal that if the person who acquired that land within a maximum period of 10(ten) years no longer wishes to utilise it for the purpose for which it was acquired, that provincial state land must first be offered for sale to the Provincial Government.
- (2) Any such offer shall be made in writing and shall be accepted or rejected by the Premier within a period of 60(sixty) days after receipt thereof.
- (3) if such offer is accepted, the purchase price shall be determined –
  - (a) by agreement between the Premier and the beneficiary; or
  - (b) if the Premier and the beneficiary are unable to come to an agreement within a period of 60(sixty) days after the acceptance of the offer, by an arbitrator appointed by agreement between the Premier and the beneficiary or failing agreement, by an arbitrator appointed by the Premier under provisions of the Arbitration Act, 1965 (Act No. 42 of 1965).
- (4) The Premier may at any time exempt a beneficiary from a condition imposed under subsection (1).
- (5) The Premier may not dispose of any immovable property unless she or he has caused a notice to be published in a newspaper circulating in the district in which the land is situated, calling upon interested parties to submit in writing to contemplated disposal, within a period mentioned in the notice, which period may not be shorter than 21 days, following the day upon which the notice appeared in the newspaper; provided

further that this subsection and subsection (6) shall not apply where the disposal concerns the letting for a period not exceeding twelve months without an option to renew.

- (6) The Premier may, in addition to, and subject to the same time periods mentioned in subsection 5 cause written notice to be delivered to and call upon the following interested parties to submit in writing to the Premier any representations which they wish to make in respect of the contemplated disposal, namely -
- (a) the occupants of the immovable property to be disposed of;
  - (b) the chief executive officer of the Local Authority for the area in which the immovable property to be disposed of is situated;
  - (c) the Northern Cape Provincial directors of the National Departments of Land Affairs and of Public Works;
  - (d) the MEC of the Department which administers the immovable property;; and
  - (e) the Regional Land Claims Commissioner for the Northern Cape appointed in terms of section 4(3) of the Restitution of Land Rights Act 1994 (Act No. 22 of 1994), provided that the immovable property in question had been acquired by the Province or a previous owner pursuant to the dispossession of a person or community of such property after 19 June 1913 as a result of past racially discriminatory laws or practices as contemplated in section 25(7) of the Constitution, or, provided that a notice of a land claim had been published in the Government Gazette with regard to such land in terms of section 11 (1) of Act 22 of 1994; and
  - (f) any other party he or she deems relevant.
- (7) The notice contemplated in subsections 5 and 6 shall include the following information regarding the immovable property -
- (a) the full title deed description, including the title deed number, the administrative district, the extent and, if applicable, the nature of the right in or over such property;
  - (b) the person or entity who intends becoming the transferee;
  - (c) the nature of the agreement or other legal cause pursuant to which it is to be disposed of, including the consideration or payment to be received in lieu of the disposal and the terms for the tender of such consideration or payment;
  - (d) title deed conditions to be imposed;
  - (e) the provincial department responsible for the administration;
  - (f) the law in terms of which such property is being administered or applied;



- (g) the current use of the property and the purpose for which it is applied, or the purpose for which it was intended to be applied by the provincial department responsible for the administration of the immovable property;
  - (h) the number of persons in occupation of immovable property and the status of their tenure.
  - (i) any other information the Premier deems relevant.
- (8) The Premier shall not dispose of any land before the department responsible for the administration of the land has considered all representations received by virtue of subsections 5 and 6 and has made a recommendation to him or her.
- (9) The Premier may amend or cancel a condition imposed in terms of subsection (1), but in the case of an amendment, only less onerous conditions may be imposed upon any transferee.
- (10) The Premier may authorize the Registrar of Deeds in writing to endorse the amendment or cancellation on the relevant title deed and the Registrar shall give effect to the said authorization in such manner as he or she deems most practicable and convenient.

#### **4. Provincial Revenue Fund**

Unless expressly otherwise provided for in any other law, all money received from the disposal of provincial state land in terms of this Act, must be paid into the Provincial Revenue Fund.

#### **5. Co-operative Government**

- (1) The Premier shall co-ordinate the provincial government's actions regarding the administration of provincial state land with the national and local spheres of government as contemplated in Chapter 3 of the Constitution.
- (2) The co-ordination referred to in subsection (1) will, amongst others, be with a view to -
- (a) realise government's commitment to land reform, and the reforms to bring about equitable access to all South Africa's natural resources;
  - (b) rationalise the Province's state land custodianship, administration and disposal functions; and
  - (c) facilitate the establishment and maintenance of the register referred to in section 6(1).
- (3) The department concerned with the administration of state land must comply with the provisions of Schedule 6, Item 28 of the Constitution.

#### **6. Consolidated Provincial State Land Register**

The Head of the Department of Works, Provincial Administration: Northern Cape must establish and maintain a consolidated register of all provincial state

land, which shall be open for inspection to the public, and in which register the following information regarding such land will be contained, namely -

- (a) the administrative district;
- (b) the title deed description;
- (c) the title deed number;
- (d) the extent, or, if applicable, the nature of the right in or over immovable property;
- (e) the nature of the agreement or other legal cause for the acquisition, including the consideration or payment made, or to be made in lieu of the acquisition and the terms for the tender of such consideration or payment (where applicable);
- (f) the provincial department responsible for its administration;
- (g) the current use and the purpose for which it is utilised, or the purpose for which it is intended to be utilised by the provincial department responsible; and
- (h) whether the property is subject to an agreement for its disposal and the nature of such agreement; and
- (i) any other information he or she deems relevant.

**7. Annual Provincial State Land Acquisition and Disposal Report**

- (1) The Premier shall, subject to subsection (2), not later than 1 June of each year, for the preceding twelve month period up to 31 March, submit to the Northern Cape Provincial Legislature a report on the acquisition and disposal of provincial state land, which shall include -
  - (a) a consolidated report on the consideration or payment received or to be received in lieu of the disposal of provincial state land and the terms for the tender of such consideration or payment;
  - (b) a report on the functioning of the consolidated Provincial State Land Register;
  - (c) a consolidated report and a statement of account on the monies appropriated by the Northern Cape Provincial Legislature from time to time for the acquisition of provincial state land;
  - (d) a report and statement on any other money received for the purposes of acquiring provincial state land;
  - (e) the following information regarding the provincial state land disposed of, namely -
    - (i) the current title deed number, the administrative district, the extent of the property or, if applicable, the nature of the right in or over immovable property;

- (ii) the name of the person or entity in whose favour a disposal was made;
  - (iii) the nature of the agreement or other legal cause for the disposal, including the consideration or payment received, or to be received in lieu of the disposal and the terms for the tender of such consideration or payment (where applicable);
  - (iv) a summary of the section 3(1) conditions subject to which the disposal was made, if any; and
  - (v) the purpose for which it was utilised prior to the disposal and the current or intended purpose for which it will be used.
- (2) The first report shall cover the financial year immediately preceding the coming into operation of this Act.

#### **Provincial land not subject to acquisitive prescription**

8. Notwithstanding any rule of law to the contrary, provincial state land shall not be capable of being acquired by any person by prescription as contemplated by section 1 of the Prescription Act, 1969 (Act 68 of 1969).

#### **Execution of documents in connection with the disposal of provincial state land**

9. (1) The Premier must sign all the documents required to be registered in the Deeds Registry Office to effect the acquisition or disposal of the immovable property, or, the Premier must in writing authorise an officer in the service of the Northern Cape Provincial Government to sign such documents on behalf of the Northern Cape Provincial Government, either generally or specifically with regard to specified provincial state land, or in any specified case.
- (2) The agreement effecting the acquisition or disposal shall be signed by the accounting officer, provided that sections 2 and 3 of this Act has been complied with.

#### **Delegation of powers and duties**

10. (1) The Premier may, either generally or in a particular case or in cases of a particular nature and on such conditions as he or she may determine -
- (a) delegate to a member of the Executive Council any power conferred upon the Premier by or under this Act, except the power under section 11 to make regulations;
  - (b) authorise any such member of the Executive Council to perform any duty imposed upon the Premier by this Act.
- (2) A Member of the Executive Council may, subject to such conditions as the Premier may determine, either generally or in a particular case or in cases of a particular nature and on such conditions as he or she may determine -
- (a) delegate to an officer in the service of the Northern Cape Provincial Government any power delegated to such member in terms of subsection (1);



- (b) authorise any such officer to perform any duty which the Member is authorized to perform under subsection (1).
- (3) The Premier may, with the concurrence of a Municipal Council, either generally or in a particular case or in cases of a particular nature and on such conditions as he or she may determine -
  - (a) delegate to a Municipal Council any power conferred upon the Premier by or under this Act, except the power under section 11 to make regulations;
  - (b) authorise any such Municipal Council to perform any duty imposed upon the Premier in terms of this Act.
- (4) Any delegation of a power or authorisation to perform any duty under this section -
  - (a) shall be done in writing;
  - (b) shall not prevent the person who effected the delegation or granted the authorisation from exercising that power or performing that duty himself or herself;
  - (c) may at any time be withdrawn in writing by that person.

#### **Regulations**

- 11. (1) The Premier may make such regulations considered necessary or expedient for the achievement of the purpose or objectives of this Act, provided that such regulations shall not be in conflict with the prescripts issued by Treasury from time to time.
- (2) The Premier may issue such policy directives as he or she considers necessary to guide the activities of officials in the employ of the Northern Cape Provincial Government, for the achievement of the purposes and objectives of this Act, provided that such policy directives shall not be in conflict with the prescripts issued by Treasury.

#### **Validation of acts**

- 12. Any transaction in relation to provincial state immovable property which occurred after 27 April 1994 and prior to the commencement of this Act and which would have been lawfully undertaken but for the lapsing of powers of attorney or the absence of delegated authority to either the Premier, a Member of the Executive Council or any officer in the service of the Northern Cape Provincial Government, shall be deemed to have been lawfully effected.

#### **Short title**

- 13. This Act shall be called the Northern Cape Land Administration Act, 2001 and shall come into operation on a date fixed by the Premier by proclamation in the Provincial Gazette.

