

# NEW EASTERN CAPE TOURISM LEGISLATION

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## SUMMARY

At the end of 2003, the Eastern Cape Province brought its tourism legislation up to date with the recent relevant legislative developments in the country. After outlining the context of the reform, this article compares the new legislation with the legislation that it repeals and explains the innovations brought about by the new legislation, concluding by pointing out the challenge of implementation.

## 1 INTRODUCTION

After the nine provinces of post-apartheid South Africa were ushered in by the 1993 Constitution on 27 April 1994, the Eastern Cape Province was the second province<sup>1</sup> to enact tourism legislation, *in casu* the Eastern Cape Tourism Board Act, 1995.<sup>2</sup> During the years that followed, other provinces enacted, or made progress towards enacting, ever more sophisticated legislation going beyond the establishment and regulation of a tourism promotion body to deal with the registration, accreditation, classification and grading of tourism service providers, as well as the raising of tourism revenues mainly for the purpose of assisting in the transformation of the industry. As a result, the Eastern Cape legislation grew increasingly outdated and the need for law reform more compelling.<sup>3</sup> The process was particularly protracted and resulted in new members of the Tourism Board not being appointed in 2001 as required. To address that problem, the Eastern Cape Legislature passed the Eastern Cape Tourism Board (Extension of Term of Office of Members) Act, 2003.<sup>4</sup> The Act deemed all the actions and decisions of the Board made or taken since 2001 to have been validly made or taken.<sup>5</sup> The Act also extended the term of office of the members of the Board in office since 1998 up to the date of commencement of the Eastern

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<sup>1</sup> After the North West Province.

<sup>2</sup> Act 9 of 1995.

<sup>3</sup> See Vrancken "The Regulation of Tourism in the Province of the Eastern Cape" 1999 *Obiter* 367.

<sup>4</sup> Act 5 of 2003 published in *PG* 1109 of 2003-12-31.

<sup>5</sup> S 4.

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Cape Tourism Act, 2003,<sup>6</sup> and the resulting repeal of the Eastern Cape Tourism Board Act, 1995.<sup>7</sup>

## **2 EASTERN CAPE TOURISM BOARD**

The 2003 Act provides that “[t]here is a juristic person called the Eastern Cape Tourism Board”,<sup>8</sup> and does not contain any provision dealing with the transition between the Board established in terms of section 2 of the 1995 Act and the Board referred to in the 2003 Act, in contrast with the detailed provisions of section 14 of the 1995 Act which dealt with the transition between the Transkei National Tourism Board and the Ciskei Tourism Board, on the one hand, and the 1995 Board on the other hand.

The powers and duties of the Board are spelled out more precisely than in the 1995 Act.<sup>9</sup> Indeed, the Board must, in furtherance of tourism in the Province, promote or undertake publicity of tourism in any form; promote the development and management of the tourism industry in the Province; promote the participation of small, medium and micro enterprises (SMME’s) in the tourism industry in the Province; provide advisory and information services; promote and undertake research related to tourism; take such steps as the Board considers desirable for the encouragement of the development, achievement and maintenance of satisfactory standards in hotels, restaurants, or other places and of things affording or proposed to afford amenities or facilities to tourists within the Province; obtain and provide advice and guidance in connection with the establishment, expansion or conduct of hotels, restaurants, or other places and of things affording or proposed to afford amenities to tourists or tourism; and encourage the adoption of measures for providing training and instruction for persons employed or intending to take up employment in the hotel or catering industry.<sup>10</sup> On the other hand, the Board is authorised, within and outside the Province, to establish, equip and operate, or assist in the establishment, equipment and operation of tourist information bureaux or similar forms of agencies in connection with the promotion of tourism; with the approval of the member of the Province’s Executive Council responsible for tourism (MEC), contribute to or reimburse expenditure incurred by any other person or organisation in doing anything which the Board has power to do; purchase, take in exchange, hire or otherwise acquire movable property necessary for exercise of the functions or the performance of duties thereof; establish such branches or offices as the Board deems fit; or do all such things generally as are incidental to or necessary for the exercise of the abovementioned

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<sup>6</sup> Act 8 of 2003 published in *PG* 1109 of 2003-12-31.

<sup>7</sup> S 39.

<sup>8</sup> S 3.

<sup>9</sup> S 10 read with s 3.

<sup>10</sup> S 4(a).

powers.<sup>11</sup> An important difference between the 1995 Board and the 2003 Board is that the former had powers in the field of nature conservation<sup>12</sup> while the latter does not. Those powers are now vested in a new, separate statutory body, the Eastern Cape Provincial Parks Board established by the Provincial Parks Board Act, 2003.<sup>13</sup>

While the 1995 Board could consist of between seven and eleven members,<sup>14</sup> the 2003 Board consists of between five and seven members appointed by the MEC.<sup>15</sup> Before any appointment may be made, the 1995 Act required that the MEC invite interested parties or individuals, in languages widely spoken in the Province, in the Provincial Gazette as well as in the public media having a wide circulation or listenership in the Province, to apply or nominate candidates for consideration.<sup>16</sup> The 2003 Act retains this obligation to invite applications and nominations, but limits its scope by no longer requiring publication in the Provincial Gazette or the use of more than one language widely spoken, and merely demanding publication “in at least two newspapers having a wide circulation or listenership [sic] in the Province”.<sup>17</sup> Like the 1995 Act, the 2003 Act prescribes that one member must be an officer employed by the Province’s Department responsible for tourism; at least four members must be persons who are actively engaged, or who possess special knowledge or experience, in the tourism industry; and not more than two members may be appointed with a view to making the Board representative of the people of the Province.<sup>18</sup> While the 1995 Act did not prescribe any further qualifications for appointment, the 2003 Act provides that, in order to qualify for appointment, a candidate, on the one hand, must be a fit and proper person to hold office as a member, as well as having appropriate qualifications or experience<sup>19</sup> and, on the other hand, must not be a person holding office as a member of Parliament, a provincial legislature or a municipal council; a person who has been removed from office as a member of the Board; a public servant in a department other than the Province’s Department responsible for tourism; or a person convicted of a criminal offence of which dishonesty is an element.<sup>20</sup>

The 1995 Act provided that the members of the Board held office for a maximum of five years and were eligible for reappointment without

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<sup>11</sup> S 4(b).

<sup>12</sup> S 15.

<sup>13</sup> Act 12 of 2003 published in *PG* 1109 of 2003-12-31.

<sup>14</sup> S 4(1) read with s 1.

<sup>15</sup> S 5(1).

<sup>16</sup> S 4(2)(b).

<sup>17</sup> S 5(2).

<sup>18</sup> S 5(1).

<sup>19</sup> S 6(1).

<sup>20</sup> S 6(2) read with ss 5(1)(a) and 8.

limitation to the number of additional terms.<sup>21</sup> The 2003 Act is stricter in that regard in that members of the Board only hold office for such period, not exceeding three years, as the MEC determines at the time of their appointment, and are eligible for re-appointment for not more than one additional term.<sup>22</sup> The members must, however, vacate their office if they become insolvent or assign their estate for the benefit of creditors; they become of unsound mind; they are convicted of an offence and sentenced to imprisonment without the option of a fine; without the leave of the chairperson of Board, they have been absent from two consecutive meetings of the Board; they resign by written notice to the MEC; or they are removed individually from office by the MEC, if he or she is of the opinion that it is in the public interest to remove such members.<sup>23</sup> Two of the weaknesses of the 1995 Act were that it did not make provision for the dismissal of a member of the Board and for the issue of conflict of interests. Those matters have been addressed in the 2003 Act, which provides that the MEC may at any time remove from office any member of the Board for reasons of incompetence; nepotism; dishonesty; failure to act in the interests of the Board or attend to its matters; bringing the Board into disrepute; or conflict of interest.<sup>24</sup> In order to avoid the latter, a member must, within seven days of appointment and at any time during his or her term of office, disclose any direct or indirect financial interest which he or she, or his or her spouse, immediate family member, business partner or associate or employer has in the tourism industry.<sup>25</sup> In such a case, the member must not vote, attend or in any manner participate in the proceedings at any meeting or hearing of the Board if, in relation to any matter before the Board, he or she or his or her immediate family member, partner or business associate is a director, member or partner of or has a controlling interest or any financial or other interests in the business of the applicant for a licence, registration, certification, grading or any other right or privilege to be granted by the Board; he or she has any interest which precludes him or her from performing his or her functions as a member in a fair, unbiased and proper manner; and, if at any stage during the course of any proceedings before the Board, it appears that he or she has or may have any interest contemplated in this subsection.<sup>26</sup> Should there be doubt in that regard, the member must leave the meeting or hearing to enable the remaining members to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reason of a conflict of interest.<sup>27</sup> That decision must be recorded in the minutes of the

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<sup>21</sup> S 5(1).

<sup>22</sup> S 8(1).

<sup>23</sup> S 8(2). Only the Executive Council may, if it considers it in the public interest, terminate *en bloc* the term of office of all the members of the Board [s 8(3)].

<sup>24</sup> S 8(4).

<sup>25</sup> S 9.

<sup>26</sup> S 10(1).

<sup>27</sup> S 10(2).

proceedings.<sup>28</sup> If any member fails to disclose any relevant interest or if, having such an interest, he or she attends or in any manner participates in the proceedings at the meeting or hearing concerned, the relevant proceedings at the meeting or hearing may be declared null and void. However, no decision in terms of the Act relating to the granting, amendment, renewal, transfer, revocation or withdrawal of a licence, or registration, certification or grading need be invalidated for that reason.<sup>29</sup>

While in terms of the 1995 Act the MEC only had to designate the chairperson of the Board,<sup>30</sup> the MEC must under the 2003 Act appoint a member of the Board as chairperson and another member as deputy chairperson.<sup>31</sup> In terms of both the 1995 Act and the 2003 Act, the chairperson determines the time and place of the ordinary and special meetings of the Board, which must be held at least once every two months. He or she is also compelled to convene a special meeting if four members of the Board have requested him or her in writing to do so and have indicated to him or her the purpose for which they desire such meeting.<sup>32</sup> Whenever the chairperson convenes a special meeting of the Board, he or she must do so in writing and must state the purpose for which the meeting is being convened.<sup>33</sup> At any meeting of the Board a majority of the total number of members constitutes a quorum.<sup>34</sup> On the other hand, decisions are taken by a majority of the members present at any meeting of the Board and, in the event of an equality of votes, the chairperson has a casting vote over and above his or her deliberative vote.<sup>35</sup> Such a deliberative vote did not exist under the 1995 Act.<sup>36</sup>

Like the 1995 Act, the 2003 Act empowers the Board to establish one or more advisory committees to assist it in the exercise of its functions and powers.<sup>37</sup> The chairpersons of such committees must be members of the Board and the latter may co-opt to those committees persons who are not members of the Board.<sup>38</sup> While both Acts provide that the Board must, with the approval of the MEC, appoint a Chief Executive Officer,<sup>39</sup> only the 2003 Act states that the CEO is an *ex officio* member of the Board but is not entitled to a vote. Both Acts also compel the Board to appoint as officers

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<sup>28</sup> S 10(3).

<sup>29</sup> S 10(4).

<sup>30</sup> S 4(3).

<sup>31</sup> S 5(3).

<sup>32</sup> Ss 6(1) and 11(1) respectively.

<sup>33</sup> Ss 6(2) and 11(2) respectively.

<sup>34</sup> Ss 6(3) and 11(3) respectively.

<sup>35</sup> S 11(4).

<sup>36</sup> S 6(4).

<sup>37</sup> Ss 7(1) and 12(1) respectively.

<sup>38</sup> Ss 7(4) and 12(4) respectively.

<sup>39</sup> Ss 9(1) and 13(1) respectively.

such persons as may be required for the carrying out of the objects of the Act and may, at its discretion, dismiss any officer or employee from its service subject to any procedure or disciplinary code it may prescribe.<sup>40</sup> Unlike the 1995 Act, which was silent on that matter, the 2003 Act authorises the Board to delegate powers and duties conferred upon it under the Act to any of its members, the Chief Executive Officer or a committee; or to assign any of its duties in terms of the Act to the Chief Executive Officer.<sup>41</sup> In turn, the Chief Executive Officer may delegate a power conferred on him or her by the Act; or assign a duty imposed upon him or her by the Act, to any member of staff.<sup>42</sup> Such a delegation or assignment must be in writing; does not prevent the Board or Chief Executive Officer from exercising that power or performing that duty; and may at any time be withdrawn in writing by the person who granted it.<sup>43</sup> A person to whom a power has been delegated or a duty assigned, must exercise the power or perform the duty subject to whatever conditions the Board considers necessary.<sup>44</sup>

The funds of the Board consist of money appropriated by the Legislature; levies and fees charged by the Board in terms of the Act; and money accrued by the Board from any other source.<sup>45</sup> In that regard, unlike the 1995 Act, the 2003 Act empowers the MEC to prescribe a levy payable in terms of the Act in respect of registered hotels, other accommodation establishments, conference centres, restaurants, tour operators, tour guides, couriers, and designated tourist amenities.<sup>46</sup> While the 1995 Act provided that the CEO was the accounting officer of the Board,<sup>47</sup> the 2003 Act provides that the Board is the accounting authority and is charged with accounting in respect of all monies received by, or accruing to, and all payments made by it.<sup>48</sup> For that purpose, the 2003 Act provides in more details than the 1995 Act<sup>49</sup> that the Board must keep full and proper records of its financial affairs; prepare financial statements for each financial year in accordance with generally accepted accounting practices; submit those financial statements within two months after the end of the financial year to the Auditor-General; and submit within five months of the end of a financial year to the Provincial Treasury, MEC and to the Auditor-General, if he or she did not perform the audit of the financial statements, an annual report on the activities of the Board during that financial year; the financial statements for that financial year after the statements have been audited; and the report of the auditors on

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<sup>40</sup> Ss 9(2) and 13(2) respectively.

<sup>41</sup> S 16(1).

<sup>42</sup> S 16(2).

<sup>43</sup> S 16(4).

<sup>44</sup> S 16(3).

<sup>45</sup> S 15.

<sup>46</sup> S 27(1).

<sup>47</sup> S 11(1).

<sup>48</sup> S 17.

<sup>49</sup> S 12.

those statements.<sup>50</sup> The abovementioned annual report and financial statements must fairly present the state of affairs of the Board, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and include particulars of any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year; any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure; any losses recovered or written off; any financial assistance received from the State and commitments made by the State on its behalf; and any other matters that may be prescribed.<sup>51</sup> The Board must submit the said report and statements to the MEC for tabling in the Legislature.<sup>52</sup>

### **3 EASTERN CAPE TOURISM DEVELOPMENT FUND**

An important innovation of the Act is the establishment of the Eastern Cape Tourism Development Fund,<sup>53</sup> controlled and managed by the Board.<sup>54</sup> The Fund must be used for the development or empowerment of previously disadvantaged persons or communities in the tourism industry with moneys appropriated by the Legislature for this purpose or from any other source,<sup>55</sup> in terms of an implementation plan developed by the Board in consultation with the MEC.<sup>56</sup>

### **4 REGISTRATION OF PROVIDERS OF TOURISM SERVICES**

Another major difference from the 1995 Act is that the 2003 Act<sup>57</sup> provides that, for the purposes of establishing a comprehensive database of the tourism industry, the Board must keep a register of tour guides;<sup>58</sup> tour operators;<sup>59</sup> couriers;<sup>60</sup> training providers;<sup>61</sup> hotels;<sup>62</sup> other accommodation

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<sup>50</sup> S 18(1).

<sup>51</sup> S 18(2).

<sup>52</sup> S 18(3). See also s 12(2) of the 1995 Act.

<sup>53</sup> S 14(1).

<sup>54</sup> S 14(4).

<sup>55</sup> S 14(2).

<sup>56</sup> S 14(3).

<sup>57</sup> S 19.

<sup>58</sup> The Act defines a "tour guide" as "any person who for a reward, whether monetary or otherwise accompanies any person who travels within or visits any place within the Province and who furnishes such person with information or comment with regard to any matter relating to tourism" [s 1].

<sup>59</sup> The Act defines a "tour operator" as "any person who carries on the business of providing tours of any description with their own or other operators' approved vehicles, aircrafts and other facilities" [s 1].

establishments;<sup>63</sup> conference centres;<sup>64</sup> restaurants;<sup>65</sup> and designated tourist amenities.<sup>66</sup> In order to compile such a register, the MEC must, on the advice of the Board, by notice in the Provincial Gazette, and in two newspapers widely circulating in the Province, declare that, as from the date specified in the notice, being not less than twelve months from the date of publication of the notice, hotels, other accommodation establishments, conference centres, restaurants, designated tourist amenities, tour guides, tour operators, couriers and training providers of such class as are specified in the notice, must be registered in accordance with the procedure and criteria prescribed.<sup>67</sup> The MEC may, by notice in the Provincial Gazette, extend the registration period if, in the opinion of the Board, the registration process cannot be completed within the year prescribed.<sup>68</sup> Once the registration period has come to an end, no person may conduct a business that has to be registered unless it is indeed registered.<sup>69</sup> Failure to register may result in closure of the business.<sup>70</sup> Proof of registration takes the form of a certificate of registration issued by the Board upon payment of the prescribed fee.<sup>71</sup> A registration made in terms of the Act is renewable on an annual basis, subject to the payment of prescribed fees.<sup>72</sup>

The Act empowers the Board to refuse an application for registration; withdraw a registration; or cancel a registration.<sup>73</sup> Any person aggrieved by such a decision may appeal to the MEC.<sup>74</sup> In that case, the MEC is expressly

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<sup>60</sup> The Act defines a “courier” as “a person or business providing carriage for passengers” [s 1].

<sup>61</sup> The Act defines a “training provider” as “any person, organisation or institution providing training, guidance or education within the tourism industry in the Province” [s 1].

<sup>62</sup> The Act defines a “hotel” as “premises, wherein or whereon the business of supplying lodging and meals for a reward is or is intended to be conducted, and includes a motel, inn or boate!” [s 1].

<sup>63</sup> For purposes of the Act, the phrase “other accommodation establishment” means “any premises offering sleeping accommodation to the public for a fee, whether with or without meals and includes a boat or house boat, bed and breakfast, caravan, camping park, farmhouse, guest house, hostel and lodge” [s 1].

<sup>64</sup> The Act defines “conference centres” as “establishments in the business of providing facilities for the hosting of conferences, congresses, conventions, symposia, seminars and exhibitions, not forming part of a hotel or other accommodation establishment” [s 1].

<sup>65</sup> The Act defines a “restaurant” as “premises which are structurally adapted and used for the purpose of supplying meals as prescribed, for a fee, to the public for consumption on the premises” [s 1].

<sup>66</sup> The Act defines a “designated tourist amenity” as “a place or thing which has been classified as a designated tourist amenity” [s 1].

<sup>67</sup> S 20(1).

<sup>68</sup> S 20(2).

<sup>69</sup> S 20(3).

<sup>70</sup> S 37(b).

<sup>71</sup> S 21.

<sup>72</sup> S 26.

<sup>73</sup> S 22.

<sup>74</sup> S 23(1).



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authorised to require the Board to furnish him or her with the written reasons for its decision, and a record of the proceedings.<sup>75</sup> The MEC must, after considering the representation and reasons furnished by the Board for its decision, either uphold the decision of the Board; or set aside such decision and, if he or she decides to set the decision aside, substitute it with a proper decision.<sup>76</sup> The Act provides that the decision of the MEC is final.<sup>77</sup>

The Board must publish at least once a year, in such a manner as it may determine, a list of registered hotels, other accommodation establishments, conference centres, restaurants, tour guides, tour operators, couriers, designated tourist amenities and training providers together with such particulars as it may determine.<sup>78</sup>

## **5 ACCREDITATION, CLASSIFICATION AND GRADING**

A further innovation of the 2003 Act is its reference to the accreditation, classification and grading of hotels, other accommodation establishments, conference centres, restaurants, designated tourist amenities, tour guides, tour operators, couriers and training providers. It makes it clear that such a task is the responsibility of the (national) Minister of Environmental Affairs and Tourism or a body, structure or institution established or appointed by him or her in terms of the national legislation governing tourism that is, at present, the Tourism Act, 1993.<sup>79</sup>

## **6 INSPECTION OF PREMISES**

Unlike the 1995 Act, the 2003 Act further empowers the Board to appoint or designate any officer of the Board as an inspector.<sup>80</sup> Such an inspector is, in the exercise of his or her powers in terms of the Act, deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977.<sup>81</sup> A certificate of appointment issued by the Board provides *prima facie* proof of the appointment or designation.<sup>82</sup>

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<sup>75</sup> S 23(2).

<sup>76</sup> S 23(4).

<sup>77</sup> S 23(5).

<sup>78</sup> S 25.

<sup>79</sup> Act 72 of 1993.

<sup>80</sup> S 28(1).

<sup>81</sup> S 1 of 1977; and s 28(2).

<sup>82</sup> S 28(3).

The Act authorises an inspector to conduct an inspection,<sup>83</sup> and monitor and enforce compliance with the Act and any other law which authorises him or her to conduct an inspection, and monitor or enforce compliance of any tourism related matter.<sup>84</sup> More specifically, an inspector who conducts an inspection may question any person present on any land or premises in respect of any matter which may be relevant to the inspection; question any person whom the inspector believes may have information relevant to the inspection; inspect any document that a person is required to maintain in terms of the Act or any other law or that may be relevant to any tourism related inspection; copy any such document, or if necessary, remove it in order to copy it; take photographs or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises; issue compliance notices or close down premises; and do all things necessary for conducting the inspection.<sup>85</sup> Any person who is in possession of any document relevant to an inspection, must produce it at the request of the inspector.<sup>86</sup> On the other hand, any person who is questioned by an inspector must first be informed of his or her constitutional rights before any questioning commences and any voluntary answer thereafter by that person must be truthful and to the best of his or her ability.<sup>87</sup> An answer or explanation given to an inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to the administration or taking of an oath; the making of false statements; or the failure to answer a lawful question fully and satisfactorily.<sup>88</sup> Finally, an owner or occupier of any land or premises must provide any facility and assistance that is reasonably required by an inspector to perform his or her functions effectively.<sup>89</sup>

As a matter of principle, an inspector may only enter land or premises if a judge or magistrate has issued a warrant for that purpose<sup>90</sup> on the basis of information in writing on oath that led him or her to believe that it is necessary to obtain information, in the interest of the public, that cannot be obtained without entering the land or those premises; or there is non-compliance with the Act.<sup>91</sup> Such a warrant must specifically identify the land

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<sup>83</sup> While conducting an inspection, the inspector may be accompanied by a member of the SAPS, or any other person reasonably required to assist in conducting the inspection [s 33].

<sup>84</sup> S 29(1).

<sup>85</sup> S 29(2). S 29(3) stipulates that an inspector who removes anything from land or premises being inspected, must issue a receipt for it to the owner of or person in control of the land or premises; and return it as soon as practicable after achieving the purpose for which it was removed.

<sup>86</sup> S 34.

<sup>87</sup> S 35(1).

<sup>88</sup> S 35(2).

<sup>89</sup> S 35(3).

<sup>90</sup> S 30(1).

<sup>91</sup> S 30(2).

or premises that may be entered and inspected; and authorise the inspector to enter and inspect the land or premises and to do anything contemplated above.<sup>92</sup> Before commencing an inspection, the inspector who carries out a warrant must, if the owner, or a person apparently in control, of the land or premises is present, identify himself or herself and explain his or her authority to that person or furnish proof of his or her appointment or designation; and hand a copy of the warrant to that person or a person named in it.<sup>93</sup> If the owner or person apparently in control of the land or premises is absent or refuses to accept a copy, the inspector must attach a copy of the warrant to the land or premises in a prominent and visible place.<sup>94</sup> An inspector carrying out a warrant may overcome any resistance to entry or inspection by using force that is reasonably required, including breaking a lock, door or window of the land or premises to be entered.<sup>95</sup> However, before using force, the person carrying out the warrant must audibly demand admission and must announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with, any object or document that is the object of the inspection.<sup>96</sup>

The Act also empowers an inspector to enter land or premises between sunrise and sunset<sup>97</sup> without a warrant if he or she has the consent of the owner or person apparently in control of the land or those premises;<sup>98</sup> if he or she is authorised to do so by any other law; or if there is an outstanding compliance notice in respect of that land or premises.<sup>99</sup> In such cases, before commencing his or her inspection, the inspector must identify himself or herself and explain his or her authority or furnish proof of his or her appointment or designation to the person apparently in control of the land or premises or the person who gave permission to enter.<sup>100</sup> Subject to any other law, force may not be used to effect an entry or to conduct an inspection without a warrant unless it is a case of emergency.<sup>101</sup>

An inspector who is of the opinion that any provision of the Act has not been complied with, may issue a compliance notice to the owner or person apparently in control of the relevant land or premises<sup>102</sup> in which must be set out the provision that has allegedly not been complied with; details of the nature and extent of the alleged non-compliance; any steps that are required

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<sup>92</sup> S 30(3).

<sup>93</sup> S 30(5)(a).

<sup>94</sup> S 30(5)(b).

<sup>95</sup> S 32(1).

<sup>96</sup> S 32(2).

<sup>97</sup> S 31(4).

<sup>98</sup> S 31(1).

<sup>99</sup> S 31(2).

<sup>100</sup> S 31(3).

<sup>101</sup> S 32(3).

<sup>102</sup> S 36(1).

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to be taken and the period within which those steps must be taken; and any penalty that may be imposed in terms of section 40 in the event of non-compliance with those steps.<sup>103</sup> The compliance notice then remains in force until an inspector who is satisfied that the owner or person apparently in control of any land or premises has satisfied the terms of the compliance notice, has issued a compliance certificate to indicate that compliance.<sup>104</sup> On the other hand, an inspector may close down any registered or other premises where the registered owner or person concerned, or his or her manager or agent, fails to comply with a compliance notice.<sup>105</sup>

The Act makes it an offence to refuse to grant an inspector access to premises to which the inspector is duly authorised to have access; obstruct, interfere, or hinder an inspector who is exercising a power or performing a duty in terms of the Act; refuse to provide an inspector with a document or information that the person is lawfully required to provide in terms of the Act; furnish false or misleading information to an inspector; unlawfully prevent the owner of any land or premises, or a person working for that owner, from entering the land or premises in order to comply with a requirement of the Act; pretend to be an inspector; falsify an authorisation or a warrant, compliance notice or compliance certificate; fail to comply with a compliance notice; enter any land or premises without a warrant in circumstances requiring a warrant; act contrary to a warrant; without authority enter or inspect land or premises; and to disclose any information relating to the financial or business affairs of any person which was acquired in the exercise of any power or performance of any duty in terms of the Act except to a person who requires that information in order to exercise a power or perform a duty in terms of the Act, where the disclosure is ordered by a competent court, or where the disclosure is in compliance with the provisions of any law.<sup>106</sup>

## **7 OFFENCES AND PENALTIES**

In terms of the Act, a person is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment, if that person, over and above committing any of the abovementioned offences relating to inspections, in the opinion of the Board wilfully publishes or causes or allows to be published in any manner false or misleading information relating to any hotel, restaurant, tour operator, tour guide, courier, other accommodation establishment, or tourist amenity; being the person responsible, therefore fails or refuses to pay any levy or to collect and or remit any such levy in terms of the Act; hinders or

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<sup>103</sup> S 36(2).

<sup>104</sup> S 36(3)-(4).

<sup>105</sup> S 37(a).

<sup>106</sup> S 38.

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obstructs the Board, an officer of the Board or a designated officer in the exercise of his or her powers or performance of his or her duties; wilfully furnishes to the Board, officer of the Board or designated officer, false or misleading information; carries on a business that must be registered in terms of the Act without registration; or contravenes any provision of the Act, which is not elsewhere specifically declared to be an offence.<sup>107</sup>

## **8 REGULATIONS**

Finally, the Act empowers the MEC to make regulations by notice in the Provincial Gazette, after having caused the publication of draft regulations in the Gazette for comments,<sup>108</sup> with regard to the payment of levy by the person liable, collection of levy by the person responsible, the manner of payment, collection and remittal; the fees payable in respect of registration for tour operators, tour guides and couriers, on a cost recovery basis; the procedure and criteria for registration; the records and accounts to be kept by any registered hotel, conference centre, restaurant, tour operator, tour guide, courier, other accommodation establishment and tourist amenity;<sup>109</sup> as well as any other matter he or she deems necessary to prescribe for achieving the objects of the Act.<sup>110</sup>

## **9 CONCLUSION**

With the adoption of the Eastern Cape Tourism Act, the province has caught up with most other provinces as far as its statute book is concerned. The challenge now is to find the political will and expertise to administer a piece of legislation much more complex and challenging than the legislation that it repealed.

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<sup>107</sup> S 40(1).

<sup>108</sup> S 41(3).

<sup>109</sup> S 41(1).

<sup>110</sup> S 41(2).