

PROVINCE OF WESTERN CAPE

**WESTERN CAPE
HOUSING DEVELOPMENT
AMENDMENT BILL**

(As introduced)

(MINISTER OF LOCAL GOVERNMENT AND HOUSING)

[B 1—2005]

PROVINSIE WES-KAAP

**WES-KAAPSE
BEHUISINGSONTWIKKELINGS-
WYSIGINGSWETSONTWERP**

(Soos ingedien)

(MINISTER VAN PLAASLIKE BESTUUR EN BEHUSING)

[W 1—2005]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Western Cape Housing Development Act, 1999; to provide for the abolition of the Western Cape Housing Development Board; to provide for the establishment of an advisory panel to advise the Provincial Minister on housing matters; to regulate the transfer of assets of the Western Cape Housing Development Board, and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

Amendment of section 1 of Act 6 of 1999

- 1.** Section 1 of the Western Cape Housing Development Act, 1999 (Act 6 of 1999) (the principal Act), is amended— 5
- (a) by the insertion before the definition of “Board” of the following definition:
 “**‘accounting officer’** means the Head of Department.”;
 - (b) by the insertion after the definition of “accounting officer” of the following definition:
 “**‘Advisory Panel’** means the Western Cape Housing Advisory Panel established in terms of section 5.”; 10
 - (c) by the deletion of the definition of “Board”;
 - (d) by the insertion before the definition of “Department” of the following definition:
 “**‘Code’** means the National Housing Code.”; 15
 - (e) by the insertion before the definition of “provincial housing programme” of the following definition:
 “**‘Provincial Government’** means the provincial government of the Western Cape as indicated in section 103(1)(i) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).”; 20
 - (f) by the deletion of the word “and” at the end of the definition of “Provincial Minister”;
 - (g) by the insertion after the definition of “Provincial Minister” of the following definitions:
 “**‘Provincial Revenue Fund’** means the Provincial Revenue Fund of the Province as contemplated by the definition of ‘Revenue Fund’ in the Public Finance Management Act.”; 25

“**Public Finance Management Act**’ means the Public Finance Management Act, 1999 (Act 1 of 1999); and;”.

Substitution for “Board” of “Advisory Panel” in Act 6 of 1999

2. The principal Act is amended by the substitution for the word “Board”, wherever it occurs, of the words “Advisory Panel”, except if indicated otherwise. 5

Amendment of section 4 of Act 6 of 1999

3. Subsection (1) of section 4 of the principal Act is amended—
- (a) in paragraph (d), by the deletion of the word “and” at the end of that paragraph;
 - (b) by the substitution for paragraph (e) of the following paragraph: 10
 “(e) must appoint[s] the members of the [**Board**] Advisory Panel in accordance with section 8; and”; and
 - (c) by the addition of the following paragraphs:
 - “(f) must administer every national housing programme and every provincial housing programme which is consistent with national housing policy and for this purpose may, in accordance with that programme and the prescripts contained in the Code, approve-
 - (i) any projects in respect thereof; and
 - (ii) any financing thereof;
 - (g) must determine provincial housing development priorities in accordance with national housing policy; 20
 - (h) must, in respect of housing development, apply procurement policy determined by the National Minister; and
 - (i) must administer the assets contemplated in section 6.”. 25

Substitution of section 5 of Act 6 of 1999 25

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

“Establishment of Western Cape Housing Advisory Panel

5. There is established an advisory panel to be known as the Western Cape Housing Advisory Panel.” 30

Substitution of section 6 of Act 6 of 1999

5. The following section is substituted for section 6 of the principal Act:

“Abolition of Western Cape Housing Development Board

6. (1) The Western Cape Housing Development Board is abolished. 35
- (2) All movable and immovable property, including any right or claim in the latter property, and all the rights and liabilities of the Board abolished in terms of subsection (1), pass to the Provincial Government on the date on which the Western Cape Housing Development Amendment Act, 2005 comes into operation. 40
- (3) The Registrar of Deeds must, at the request of the Head of Department and on submission by him or her of the relevant title deeds and the certificate referred to in subsection (5), make the necessary endorsements in the deeds registry and on the title deeds to give effect to the passage of immovable property referred to in subsection (2). 45
- (4) No transfer duty, stamp duty or registration fee is payable in respect of the passage of immovable property referred to in subsection (2).
- (5) The Head of Department must, for the purposes of subsection (3), issue a certificate to the effect that the immovable property, claim or right mentioned in the certificate has passed to the Provincial Government.”. 50

Substitution of section 7 of Act 6 of 1999

6. The following section is substituted for section 7 of the principal Act:

Duties and functions of Advisory Panel

7. (1) The Advisory Panel must— 5
- (a) advise the Provincial Minister on provincial housing policy and strategy; and
 - (b) serve as a forum for informed decision-making regarding provincial housing policy and strategy;
 - (c) advise the Provincial Minister on housing development matters such as multiyear housing development plans and housing development proposals; and 10
 - (d) on instruction of the Provincial Minister, conduct and manage investigations for the benefit of informed decision-making.
- (2) The administrative functions of the Advisory Panel are performed by officers in the service of the Department.”. 15

Amendment of section 8 of Act 6 of 1999

7. Section 8 of the principal Act is amended—
- (a) by the substitution for the heading of the following heading: 20

“Composition of [Board] Advisory Panel”;
 - (b) by the substitution for subsection (1) of the following subsection:

“(1) The [Board] Advisory Panel consists of not more than [nine] five members appointed by the Provincial Minister in accordance with subsection (2) and with due regard to the demography of the Province, but only persons with knowledge of, or qualifications or experience in the field of, housing development [housing matters] and who are resident in the Province may be appointed as members.”; 25
 - (c) by the substitution for subsection (4) of the following subsection:

“(4) Notwithstanding the provisions of paragraph (b) of subsection (2), the Provincial Minister may appoint officials of the department to the Advisory Panel, with due regard to paragraph (a) of subsection (2).”; and 30
 - (d) by the deletion of subsection (5).

Amendment of section 10 of Act 6 of 1999

8. Section 10 of the principal Act is amended by the deletion of subsections (1), (2), (4), paragraph (c) of subsection (5) and subsection (7). 35

Substitution of section 11 of Act 6 of 1999

9. The following section is substituted for section 11 of the principal Act:

Allowances of Advisory Panel members

11. A member of the Advisory Panel, except a member appointed in terms of section 8(4), must be appointed on such terms and conditions and may be paid such allowances and be reimbursed for such expenses as are determined by the Provincial Minister in concurrence with the Provincial Minister responsible for finance.”. 40

Repeal of section 12 of Act 6 of 1999 45

10. Section 12 of the principal Act is repealed.

Amendment of section 15 of Act 6 of 1999

11. Paragraph (b) of subsection (2) of section 15 of the principal Act is amended by the substitution for the word “Board” of the words “Provincial Minister”.

Amendment of section 16 of Act 6 of 1999

- 12.** Section 16 of the principal Act is amended—
- (a) in subsection (5), by the substitution for the word “Board” of the words “Provincial Minister”; and
 - (b) by the substitution for subsection (7) of the following subsection: 5
“**(7)** The Provincial Minister may, after consultation [**with the Board and**] with the accounting officer of the Fund, out of money paid into the Fund as contemplated in section 13(2), allocate to a local government accredited under subsection (2) such amounts as that Provincial Minister considers necessary.”. 10

Amendment of section 19 of Act 6 of 1999

- 13.** Section 19 of the principal Act is amended—
- (a) by the substitution for subsection (1) of the following subsection: 15
“(1) Any movable property that has passed to the [**Board**] Provincial Government in terms of section 6(2) and any rights, liabilities and obligations in respect of such movable property must, subject to this subsection and subsection (3), be transferred not later than a date determined by the National Minister, after consultation with the Provincial Minister, [**by the Board**] to the local government within whose area of jurisdiction such property is mainly utilised.”; 20
 - (b) in subsections (2) and (4), by the substitution for the word “Board”, wherever it occurs in those subsections, of the words “Provincial Government”; and
 - (c) by the substitution for subsection (6) of the following subsection: 25
“(6) Subsections (3) and (4), with the necessary changes, apply to immovable property or a registrable claim or right transferred in terms of this section.”.

Amendment of section 20 of Act 6 of 1999

- 14.** Section 20 of the principal Act is amended by the substitution for the word “Board”, wherever it occurs, of the words “Provincial Government”.

Amendment of section 21 of Act 6 of 1999 30

- 15.** Section 21 of the principal Act is amended by the substitution for the word “Board”, wherever it occurs, of the words “Provincial Government”.

Amendment of section 22 of Act 6 of 1999

- 16.** (1) Section 22 of the principal Act, with the exception of subsection (11), is amended by the substitution for the word “Board”, wherever it occurs, of the words “Provincial Government”. 35

(2) Subsection (11) of section 22 of the principal Act is amended by the substitution for “Western Cape Housing Development Board” of “Provincial Government”.

Amendment of section 23 of Act 6 of 1999

- 17.** Section 23 of the principal Act is amended by the substitution for the word “Board”, wherever it occurs, of the words “Provincial Government.”. 40

Amendment of section 24 of Act 6 of 1999

- 18.** Section 24 of the principal Act is amended by the deletion of subsection (2).

Amendment of section 25 of Act 6 of 1999

- 19.** Section 25 of the principal Act is amended by the deletion of paragraph (a) of subsection (1). 45

Savings

20. Anything done under or in terms of the principal Act by the Western Cape Provincial Housing Development Board abolished by section 6(1) of the principal Act (as amended) is deemed to have been done by the Provincial Minister.

Amendment of Arrangement of Act 6 of 1999 5

21. The arrangement of the principal Act is amended—

(a) by the substitution for the references to sections 5 and 6 of the following references:

“5. Establishment of Western Cape Housing Advisory Panel

6. Abolition of Western Cape Housing Development Board”;

(b) by the substitution for the reference to section 11 of the following reference:

“11. Allowances of Advisory Panel members”; and

(c) by the deletion of the reference to section 12.

Amendment of the long title of Act 6 of 1999

22. The following long title is substituted for the long title of the principal Act: 15

“To provide for the [**repeal**] abolition of the [**Western Cape Provincial Housing Law, 1994;**] Western Cape Housing Development Board; to determine general principles applicable to housing in the Province of the Western Cape; to define the role of the provincial and local spheres of government in housing development; to establish a [**Provincial Housing Development Board**] Western Cape Housing Advisory Panel and a Provincial Housing Development Fund; to ensure that housing development is integrated with all other facets of development in a holistic way, and to provide for matters incidental thereto.”. 20

Short title and commencement 25

23. This Act is called the Western Cape Housing Development Amendment Act, 2005 and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

EXPLANATORY MEMORANDUM WESTERN CAPE HOUSING DEVELOPMENT AMENDMENT BILL

Introduction

The aim of the Western Cape Housing Development Amendment Bill is to amend the Western Cape Housing Development Act of 1999 (Act 6 of 1999), to provide for the abolition of the Western Cape Housing Development Board; to provide for the establishment of an advisory panel to advise the Provincial Minister on housing matters; to regulate the transfer of assets of the Western Cape Housing Development Board, and to provide for matters incidental thereto.

Comment on Individual Clauses

Clause One

This clause amends section 1 of the principal Act by inserting definitions of “accounting officer”; “Advisory Panel”; “Code”; “Provincial Government”; “Provincial Revenue Fund”; “Public Finance Management Act”; and by the deletion of the definition of “Board”.

Clause Two

This clause provides for the substitution for the word “Board” with the words “Advisory Panel”, except if indicated otherwise.

Clause Three

This clause provides for the extension of the functions of the Provincial Minister to include those formerly performed by the disestablished Board.

Clause Four

This clause provides for the establishment of the Western Cape Housing Advisory Panel.

Clause Five

This clause deals with the abolition of the Western Cape Housing Development Board and the transfer of assets of the Board to the Provincial Government of the Western Cape.

Clause Six

This clause defines the duties and functions of the Advisory Panel and provides for the administrative functions of the panel to be performed by officers in the service of the Department.

Clause Seven

This clause deals with the composition of the Advisory Panel which should not consist of more than five members with knowledge of, or qualifications or experience in the field of housing development and who are resident in the Province. It also allows for the Minister to appoint officers to the Advisory Panel.

Clause Eight

This clause amends the meeting procedure of the former Board to that which applies to the Advisory Panel.

Clause Nine

This clause deals with the allowances of Advisory Panel members and reimbursement of expenses as determined jointly by the Provincial Minister in concurrence with the Provincial Minister responsible for finance.

Clause Ten

This clause repeals Section 12 of the principal Act, which allowed for the appointment of committees for the former Board.

Clause Eleven

This clause amends the principal Act by the substitution for the word “Board” of the words “Provincial Minister”.

Clause Twelve

This clause amends the principal Act by the substitution for the word “Board” of the words “Provincial Minister” and omits reference to consultation with the Board in allocating funds to accredited municipalities.

Clause Thirteen

This clause deals with the transfer of assets of the disestablished Board to the Provincial Government.

Clause Fourteen

This clause amends the principal Act by omitting all reference to “Board” in the writing off of old dispensation loans and replacing it with “Provincial Government”.

Clause Fifteen

This clause refers to the manner in which the net proceeds derived as a result of infrastructure that was provided by loans or advances must be utilised. It amends the principal Act by substitution for the expression “Board” for the expression “Provincial Government”.

Clause Sixteen

This clause deals with the management of the assets of the Board and amends the principal Act by substitution for the expression “Board” for the expression “Provincial Government”.

Clause Seventeen

This clause deals with the inspection of premises and amends the principal Act by substitution for the expression “Board” for the expression “Provincial Government”.

Clause Eighteen

This clause deals with the delegation of powers and deletes the section in the principal Act that makes reference to the delegation of powers of the Board.

Clause Nineteen

This clause deletes the requirement in the principal Act for regulations concerning the procedure for the performance of any function by the Board.

Clause Twenty

This clause makes provision for anything done under or in terms of the principal Act by the previous Board to be deemed to have been done by the Provincial Minister.

Clause Twenty-One

This clause deals with the amendment of the arrangement of the principal Act by the substitution for the references to the establishment of the Western Cape Advisory Panel, the abolition of the Western Cape Housing Development Board and allowances of Advisory Panel members.

Clause Twenty-Two

This clause is the amendment of the long title of the principal Act to provide for the repeal of the Western Cape Housing Development Board and to establish the Western Cape Housing Advisory Panel.

Clause Twenty-Three

This clause is the short title and commencement and allows for the Western Cape Housing Development Amendment Act, 2005 to come into operation on a date to be determined by the Premier by proclamation in the *Provincial Gazette*.