

**BUSINESSES ACT (EXTENSION OF APPLICATION OF THE BUSINESSES ACT, 1991),
1997 (EASTERN CAPE)
NO. 3 OF 1997**

[ASSENTED TO BY THE PREMIER ON THE 4 APRIL, 1997]

[DATE OF COMMENCEMENT: 11 APRIL, 1997]

ACT

To provide for the repeal of the law relating to the licensing of businesses in the territories of the former Republic of Transkei and the former Republic of Ciskei and for the incorporation of the Businesses Act, 1991, into the law of the said territories; and to provide for other matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:—

1. Definitions.—In this Act, unless the context otherwise indicates—

“**Businesses Act**” means the Businesses Act, 1991 (Act No. 71 of 1991);

“**Ciskei**” means the Constitution of the territory of the former Republic of Ciskei;

“**Constitution**” means the Republic of South Africa, 1996 (Act No. 108 of 1996);

“**district council**” means a district council as defined in section 9A of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

“**Province**” means the Province of the Eastern Cape;

“**Provincial Gazette**” means the *Provincial Gazette* of the Province of the Eastern Cape;

“**responsible Member**” means the member of the Executive Council responsible for economic matters in the Province;

“**Transkei**” means the territory of the former Republic of Transkei;

“**urban local authority**” means a transitional local council but excludes any transitional representative council or transitional rural council contemplated in Part VA of the Local Government Transition Act, 1993 (Act No. 209 of 1993).

2. Incorporation of Businesses Act, 1991.—Subject to the provisions of this Act—

- (a) the provisions of the Businesses Act, 1991, as may be amended from time to time, with the exception of section 7 and Schedule 3 thereto, shall, with effect from the date of commencement of this Act, be deemed to have been incorporated *mutatis mutandis* into the law of Transkei and Ciskei and the said Act shall be applied, implemented and interpreted in accordance with the provisions of section 3 and the schedule hereto;
- (b) all regulations made in terms of the Businesses Act which immediately before the commencement of this Act were in force in areas of the Province other than Transkei and Ciskei shall, with effect from the date of commencement hereof, be deemed to have been incorporated *mutatis mutandis* into the law of Transkei and Ciskei, subject to any repeal or amendment of such regulation by the responsible Member by notice in the *Provincial Gazette*.

3. Application of Act.—The provisions of section 2 shall, in the practical application and implementation thereof in Transkei and Ciskei, be interpreted as being intended—

- (a) to extend to the business sector in Transkei and Ciskei the benefits of the policy of deregulation reflected in the Businesses Act;
- (b) to introduce uniformity in the Province in respect of the control of business activities;
- (c) to provide for and facilitate the application and implementation of the provisions of the Businesses Act in Transkei and Ciskei and not as establishing parallel or dual structures or authorities in Transkei and Ciskei; and
- (d) not to interfere with the laws relating to shop hours in Transkei and Ciskei.

4. Non-exemption.—The provisions of this Act shall not *per se* relieve a business from having to comply with any law or legal requirements for the business or premises concerned and shall not *per se* exempt a business from liability for any payment prescribed under any other law.

5. Adaptation of laws.—(1) The provisions of the laws applicable in Transkei and Ciskei shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to conform with this Act.

(2) In the application of the Businesses Act any law referred to therein and which is not applicable in Transkei or Ciskei shall be construed and interpreted in accordance with Part A of the Schedule.

6. Power of Premier and responsible Member.—(1) The Premier may by proclamation in the *Provincial Gazette*—

- (a) provide for such further transitional or savings provisions as he or she may deem necessary with regard to the application of any law or provision thereof, or any regulation or by-law made thereunder; or
- (b) make such provisions as he or she considers necessary to remove any administrative difficulty which arises from the changes effected by this Act,

in order to facilitate the application or implementation of the Businesses Act.

(2) The responsible Member may, after consultation with the Premier—

- (a) make regulations not inconsistent with the provisions of this Act which are considered necessary for the better carrying out of the provisions of this Act and to facilitate the application of the Businesses Act in Transkei and Ciskei; and
- (b) amend or repeal any regulation referred to in section 2 (b).

7. Licensing authority.—(1) Subject to the provisions of subsection (3), an urban local authority having jurisdiction within an urban local authority area in Transkei and Ciskei shall be deemed to have been designated and appointed as a licensing authority within such area for the purposes of this Act and the Businesses Act.

(2) Subject to the provisions of subsection (3), the district council having jurisdiction over an area of Transkei or Ciskei outside the area of jurisdiction of an urban local authority shall, with regard to its area of jurisdiction, be deemed to have been designated and appointed as a licensing authority for the purposes of this Act and the Business Act.

(3) The provisions of section 2 (2) of the Businesses Act shall *mutatis mutandis* be applicable to any authority designated as a licensing authority in Transkei or Ciskei in terms of this section.

8. Repeal of laws and savings.—(1) The laws mentioned in Part B of the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

(2) Subject to the provisions of subsection (3), (4), (5) and (6), anything done in terms of a provision of a law repealed by subsection (1) and which shall or may be done in terms of a provision of the Businesses Act shall be deemed to have been done in terms of the latter provision.

(3) Any person or body which, immediately before the commencement of this Act possessed a current business licence issued under an law repealed by subsection (1) shall, in the case of a business referred to in Schedule 1 of the Businesses Act and which is not referred to in Schedule 2 thereof, be deemed to be duly licensed under the said Businesses Act in respect of such business on the same conditions under which the licence was granted, *mutatis mutandis*.

(4) Any person or body which in terms of subsection (3) is deemed to be duly licensed in terms of the Businesses Act shall, subject to the provisions of subsections (5), (7), (8) and (9) of section 2 of that Act, be issued with an apposite licence contemplated in that Act within 12 months of the date of implementation of this Act and such licence shall be issued by the licensing authority concerned.

(5) (a) Any application in terms of any law repealed by subsection (1) which a licensing authority has approved before the date of commencement of the repeal shall, in the case of a business referred to in Schedule 1 of the Businesses Act and which is not referred to in Schedule 2 thereof, be deemed to have been granted on the same conditions as that licensing authority imposed, *mutatis mutandis*.

(b) Any application in terms of any law repealed by subsection (1), which a licensing authority has refused before the date of commencement of the repeal shall be deemed not to have been considered by that licensing authority.

(6) Any application or other matter which has been submitted before the date of commencement of this Act

to a licensing authority in Ciskei or Transkei and which has not been disposed of or is deemed not to be disposed of on that date shall, in the case of a business referred to in Schedule 1 of the Businesses Act which is not referred to in Schedule 2 thereof, be referred to the licensing authority of the relevant area for disposal in terms of the Businesses Act.

9. Short title.—This Act shall be called the Businesses Act (Extension of the Application of Businesses Act, 1991), 1997 (Eastern Cape).

SCHEDULE

PART A

CONSTRUCTION OF REFERENCES

Any reference in the Businesses Act, 1991 to—

- (a) "Administrator" shall be construed as a reference to the Member of the Executive Council responsible for Economic Affairs in the Province;
- (b) the "Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972)", shall be construed as a reference to the corresponding law applicable in Transkei and Ciskei, respectively;
- (c) "local authority" shall be construed as referring to an urban local authority as defined in section 1 of this Act and to a district council contemplated in section 9D of the Local Government Transitional Act, 1993 (Act No. 209 of 1993), as the case may be;
- (d) "Minister" shall be construed as a reference to the Member of the Executive Council responsible for Economic Affairs in the Province;
- (e) the "National Monuments Act, 1969 (Act No. 28 of 1969)", shall be construed as a reference to the corresponding law applicable in Transkei and Ciskei, respectively;
- (f) "officer" includes—
 - (i) a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
 - (ii) any person who, in terms of a law applicable in Transkei or Ciskei corresponding to the laws mentioned in the definition of "officer" in the Businesses Act, performs similar duties;
- (g) "Official Gazette" shall be construed as a reference to the *Provincial Gazette* of the Province;
- (h) the "Road Traffic Act, 1989 (Act No. 29 of 1989)", shall be construed as a reference to a corresponding law applicable in Transkei and Ciskei, respectively; and
- (i) "South African Police" shall be construed as a reference to the South African Police Service.

PART B

LAWS REPEALED

<i>Number and year of Law</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Proclamation R. 293 of 1962 (as it applies in Transkei and Ciskei)	Regulations for Administration and Control of Townships in Black Areas	The repeal of regulation 19 of Chapter 3
Act No. 26 of 1978	Licences Act, 1978 (Transkei)	The whole
Act No. 22 of 1982	Licences Act, 1982 (Ciskei)	The whole
Act No. 27 of 1984	Small Business Deregulation Act, 1984 (Ciskei)	In so far as it relates to the Licences Act, 1982 (Act No. 22 of 1982) (Ciskei)