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NOTICE NO. 21

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-

Act No. 7 of 1997: North West Youth Development Trust Act, 1997

Hierby word bekend gemaak dat die Premier sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:-

Wet No. 7 van 1997: Die Wet op die Noordwes Jeug Ontwikkelings Trust, 1997

ACT

To establish the North West Youth Development Trust Fund in order to assist in the promotion and development of the youth of the North West Province so as to fully realize their human rights and potential in relation to inter alia their educational, social, health, economic and basic human needs; to establish the North West Youth Development Fund for that purpose; to make provision for its financing and the administrative and financial control of the affairs of that Trust and that Fund by a Board of Trustees; to define the composition, power, functions, duties and responsibilities of that Board; and to provide for incidental matters. (English text signed by the Premier on 16 October 1997).

BE IT ENACTED by the Premier and the Legislature of the North West Province as follows:-

1. Definitions

In this Act, unless the context otherwise indicates -

“beneficiaries” means any natural person entitled to benefit from the Trust or any institution or organisation which may, from time to time, be selected by the trustees to be a beneficiary in respect of the income or capital or both under this Trust;

“Board” means the Board of Trustees referred to in subsection (1) of section 3, as constituted in terms of subsection (2) of that section;

“collect” in relation to contributions, means to collect, accept or solicit money, negotiable instruments or goods from the public, and “contributions” shall be construed accordingly;

“Fund” means the North West Youth Development Fund established by and credited with moneys in terms of section 13(1);

“year” means a period commencing on the first day of January in any one calendar year and terminating on the thirty first day of December of that year, or any other period of year as may be decided by the Trustees;

“Trust” means the North West Youth Development Trust established by section 2(1); and

“trustee” means any trustee appointed to the Board in terms of section 3(2).

2. Establishment and objects of North West Youth Development Trust

(1) There is hereby established the North West Youth Development Trust which shall under that name be a body corporate and, for the purposes of attaining its objects and exercising and performing its powers, functions and duties under this Act, be capable in law of suing and being sued, of purchasing or otherwise acquiring and holding and alienating movable and immovable property and any real or other rights or interests, of entering into contracts and concluding agreements and, generally, of performing such other acts and doing such other things as bodies corporate may by law perform and do, subject to the provisions of this Act.

(2) The objects of the North West Youth Development Trust shall be to assist in the promotion and development of the youth of the Province by way of -

- (a) promoting, fostering and nurturing the advancement of the economic cultural and artistic skills, educational, health and physical development of the youth;
- (b) creating an environment conducive for such development, multi-purpose centres, educational centres, and other related institutions of learning; and
- (c) supporting any organisation or association whose objects are similar to those of the trust.
- (d) supporting any other initiative aimed at developing the youth.

3. **Board of Trustees.**-(1) From and after the commencement of this Act and subject to the provisions thereof, the Trust shall be managed, controlled and represented by a Board of Trustees constituted and appointed in terms of this section, and all acts of that Board shall in law be regarded as the acts of the Trust.

(2) (a) The Board of Trustees shall consist of not less than five and not more than nine members (trustees), duly appointed by the Premier: Provided that the administrative heads of the

Department of the Premier and of Finance and Economic Affairs, shall be ex-officio members of the Board.

(b) The Premier shall from the number of trustees appointed in terms of paragraph (a), designate a chairperson, a vice-chairperson, a secretary and a treasurer.

(3) The trustees shall be appointed on such terms and conditions and for such period (not exceeding five years) as the Premier may in respect of each such trustee determine and cause to be specified in such trustee's letter of appointment: Provided that the remuneration of the chairperson and the members of the Board, shall be determined by the Premier in consultation with the Member of the Executive Council responsible for Finance and Economic Affairs: Provided further that the ex officio members shall not receive any remuneration for their membership of the Board.

(4) Upon the expiration of a trustee's term of office, he or she shall be eligible for re-appointment.

4. Disqualifications for membership of Board.- (1) Notwithstanding the provisions of section 3, a person shall be disqualified from being appointed or remaining a trustee-

- (a) if he or she is subject to a final order of court whereby his estate is sequestrated under the Insolvency Act, 1936 (Act 24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court of authority of such a country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (b) if he or she is subject to an order of a competent court declaring him or her to be of unsound mind or mentally disordered or defective; or
- (c) if he or she has been convicted of any offence whatsoever in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than six months irrespective of whether such imprisonment was wholly or partially suspended or not, unless it was a political offence or unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as a trustee.

to exercise and perform all the powers, functions and duties of the chairperson.

(3) Whenever it comes to the notice of the Premier that in consequence of the existence of vacancies in the Board or the absence or incapacity of trustees or any refusal or failure to act, as contemplated by subsection (2), the number of remaining trustees do not, pending the filling of such vacancies or the termination of any of the circumstances hereinbefore mentioned, form a quorum, the Premier may appoint not less than such number of persons as are required to form such a quorum, but not more than such number of persons as are equal to the difference between the full complement of the Board and the remaining trustees, to act as trustees during the period that such vacancies exist or such circumstances subsist, in order to enable the Board to exercise and perform its powers, functions and duties under this Act.

8. Meetings of Board.-(1) The meetings of the Board shall be held on such dates and at such times and places as may be determined by resolution of the Board whenever it is necessary so as to conduct its business expeditiously, but not less than once every three months: Provided that the first meeting of a newly-constituted Board shall be held on such date and at such time and place as the Premier may by written notice to all trustees determine, which date shall not be later than twenty-one days (Saturdays, Sundays and public holidays excluded) after such constitution of the Board.

(2) The chairperson may at any time call for an extraordinary meeting of the Board if in his or her opinion it is justified by the circumstances and shall, upon having been presented with a requisition for that purpose signed by at least two trustees, forthwith call for an extraordinary meeting of the Board, and if the chairperson fails to convene such a lastmentioned meeting within seven days as from such presentation, such two trustees may, on the expiration of such seven days, convene such an extraordinary meeting.

(3) Notice of a meeting of the Board shall be given to all the trustees in such manner and form as the Board may from time to time determine.

(4) The chairperson or any other person who, in terms of section 7(2), acts as chairperson shall determine the procedure at the meeting over which he or she presides.

9. Quorum and decisions of the Board, and voting powers of chairperson and ex officio members:- (1) At any meeting of the Board the quorum shall be-

- (a) three where the Board consists of five trustees; or
- (b) four, where the Board consists of six or seven trustees; or
- (c) five, where the Board consists of nine trustees.

(2) The decision of a majority of the trustees present at any meeting of the Board, shall, subject to the provisions of subsection (1), constitute a decision, to be known as a resolution, of the Board: Provided that the ex officio members of the Board shall have the right to vote in regard to any matter before the Board.

(3) In the event of an equality of votes in regard to any matter, the chairperson of the Board or person acting as chairperson on the Board in terms of section 7(2) shall have a casting vote in addition to his or her deliberative vote.

10. Minutes of Board.-(1) The secretary of the Board shall prepare and keep the minutes of the proceedings of every meeting of the Board and cause copies of such minutes to be circulated to all the trustees.

(2) Every minute prepared in terms of subsection (1), when signed at a subsequent meeting of the Board by the chairperson or the person acting as chairperson in terms of section 7(2) and by the secretary, shall, in the absence of proof of error therein, be deemed to be a true and correct record of the proceedings which it purports to minute, and shall, at any arbitration proceedings or proceedings before a court of law or any tribunal or commission of inquiry, constitute *prima facie* evidence of the proceedings of the Board and the matters it purports to minute.

11. Procedure where Board unable to meet timeously in respect of urgent matters.-

(1) Whenever any matter to be dealt with by the Board is of such a nature that it requires the immediate and urgent decision of the Board and the circumstances are such that it would not be possible for the Board to meet timeously, then all the relevant documentation and memoranda setting out fully the matter to be dealt with shall be submitted to each trustee for consideration, and any decision agreed upon by a majority of the total number of trustees shall be regarded as the decision of the Board in regard to such matter.

(2) A decision contemplated by subsection (1) shall be ratified by the Board at its next

ensuing meeting and shall be recorded in the minutes of that meeting.

12. Acts, decisions and proceedings of Board not invalidated in certain circumstances.-

The acts, decisions and proceedings of the Board shall not be rendered invalid or illegal by reason only of any vacancy occurring therein as contemplated by section 6 or of any defect or irregularity in the appointment of a trustee or by reason of the disqualification of any trustee.

13. Establishment of North West Youth Development Fund.-(1) There is hereby established the North West Youth Development Fund, which shall be credited-

- (a) with all such moneys as may from time to time be appropriated to the Fund by the Provincial Legislature; and
- (b) the amount of all contributions collected from the public by or under the authority of the Board;
- (c) unconditional donations or bequests to the Trust accepted by the Board; and
- (d) interests derived from the investment of moneys in terms of section 15(2),
- (e) conditional donations and/or bequests shall be accepted by the Board only after obtaining specific approval of the responsible MEC, in consultation with the MEC for Finance and Economic Affairs.

and the moneys in the Fund shall be utilised for the purposes as determined by or in terms of this Act and in accordance with the provisions thereof: Provided that the Board shall in its utilization of the funds, take cognizance of the provisions of the North West Provincial Exchequer Act, 1994: Provided further that conditional donations or bequests to the Trust shall only be accepted by the Board after obtaining specific approach of the Premier, in consultation with the Member of the Executive Council for Finance and Economic Affairs.

(2) From and after the commencement of this Act and subject to the provisions thereof, the Fund shall be administered, managed and controlled by the Board as hereinafter provided.

14. Powers, functions and duties of Board in relation to financial or material assistance.-

(1) The principal functions of the Board shall be to render financial or material assistance from the Fund-

- (a) that any person, association, board, institution or organisation for or in connection with the development of the youth;
- (b) to any educational institution in order to establish, maintain, procure, improve, enhance, develop or extend the property, staff, facilities, equipment or requisites used or required by such educational institution for the purposes of or in connection with the due and effective education, and development of the students or pupils at such institution;
- (c) to any youth organisation in order to establish, provide, maintain, prove, enhance, develop or extend the property, staff, facilities, equipment, requisites, services or activities used, required or offered by such organisation in the pursuit of the development of the youth;
- (d) to provide and endow either wholly or in part, youth multi-purpose centres or similar educational institutions; and
- (e) to provide such assistance as the Board may deem fit, if the Board is satisfied that such assistance would be in furtherance of the objects of this Act.

(2) The financial or material assistance contemplated by subsection (1), may be rendered by the Board either *mero motu* or after an application has been made to it for that purpose, but shall, in any case where and in so far as any donation, bequest or any other contribution to the Fund had been made for a specified purpose or object of a nature provided for in subsection (1), be used only for such specified purpose or object: Provided that, on rendering financial assistance being contemplated by subsection (1) the Board shall take great care to ensure that the sustenance of the projects concerned shall not result into future undesirable and/or unaffordable financial contingencies upon either the trust itself or the Provincial fiscus.

(3) For the purposes of performing its functions and attaining its objects in terms of this Act, the Board shall-

- (a) be entitled to collect contributions from the public and accept bequests and any donations, whether *inter vivos* or *mortis causa*, for the credit of the Fund;
- (b) consider, and, in its discretion, grant, refuse or otherwise dispose of every application made to it for financial or material assistance contemplated by subsection (1);

- (c) realize, by way of public auction or sale or public tender, all contributions in kind received by it for the Trust, and in so far as it is not prohibited from doing so in the deed or instrument of donation or the testamentary disposition in question, all assets comprising any donation or bequest;
- (d) defray from the Fund all expenditure in respect of or in connection with its operations and the performance of its functions and duties and the attainment of its objects in terms of this Act, including the cost of administration, management and control of the Fund and the costs incurred in connection with any auction, sale or realization of goods and assets as contemplated by paragraph (c).

(4) In applying the provisions of subsection (1), the Board shall strive to appropriate the moneys of the Fund as beneficially as possible, due regard being had to the need for the development of the youth, educational or cultural needs and interests (whichever may be relevant), the nature or the purpose for which assistance from the Fund is intended or sought, the extent and scope of the benefits to be derived by the public should such purpose be achieved, and whether such purpose may be achieved without such assistance or whether assistance from any other source is or is likely to become available for such purpose.

(5) The Board may, for the purpose of disposing of any matter relating to financial or material assistance in terms of subsection (1), demand from the beneficiary in relation to which or whom such assistance is being considered, to furnish to the Board such particulars or information or to submit or make available to it such books, documents, statements or records as the Board may require, and the Board may, in addition thereto, approach any other person with a view to be assisted by him or her in connection with any matter mentioned in the preceding provisions of this subsection.

- (6) (a) The beneficiary under any financial or material assistance made available to him or her in terms of this section shall, subject to the provisions of the proviso to paragraph (d) of subsection (1), furnish to the Board a report, in the prescribed form, regarding his or her application of such assistance.
- (b) For the purposes of paragraph (a), the Board may demand from the beneficiary concerned to furnish to it such particulars and information or to submit or make available to it such books, documents, statements or

records as required by the Board, and the Board may, in addition thereto, approach any other person with a view to be assisted by him in connection with any matter mentioned in the preceding provisions of this paragraph.

- (c) The Board has the power, and may decide, to discontinue or withdraw any financial or material assistance previously granted by itself if the performance of the beneficiary has judged not to be supportive of, or otherwise in compliance with, the provisions and/or objects of this Act.

15. Moneys standing to credit of Fund to be deposited in bank or similar account, and investment of surplus moneys.-(1) The Board shall open and maintain with a registered commercial or other bank in the Republic or with any other financial institution approved by the Premier, an account to be known as the North West Youth Development Aid Trust Account, in which shall be deposited all the moneys received by it as contemplated by section 13(1) and from which all payments by the board from the Fund shall be effected.

(2) The monies which, at any time, stand to the credit of the Fund and are not required for immediate use or as a reasonable balance for current commitments and expenditure may, on the authority of a resolution specially adopted by the Board for that purpose, and to such extent as may be specified in such resolution, be invested on call or short-term deposit at any bank or other financial institution registered in the Republic and approved in writing by the Member of the Executive Council for Finance and Economic Affairs.

16. Board to keep proper record and books of account, and submission of annual report and financial statements.-(1) The Board shall cause proper records and books of account to be kept, in accordance with generally established accounting practice and procedure, of all the moneys with which the Fund is credited in terms of section 13(1), all moneys deposited and invested in terms of section 15 and all interest received and accrued in respect of the moneys so invested, and of all costs and expenditure defrayed, financial and material assistance given and payments made (and the nature and purposes thereof) from the Fund during every financial year, which shall be from the first day of April in any year to the thirty-first day of March, first following, both days inclusive.

(2) There shall be submitted to the Premier, not later than thirty days after the end of

each financial year-

- (a) a full report by the chairperson of the Board regarding all the transactions involving the moneys of the Fund, the projects, operations and activities of the Board and the assistance given from the Fund, during such financial year; and
- (b) fully audited financial statements comprising a statement which sets out in full the state of the Fund, and the assets and liabilities of the Trust as at the end of the said financial year, and a statement which sets out the receipts and accruals of the Fund and the payments therefrom, and the income and expenditure of the Trust, during such financial year.

17. Audit.- The statements, records, books, accounts and documents of the Trust relating to the activities and operations and the financial affairs, position and transactions of the Trust, and the report of the chairperson of the Board contemplated by section 16(2)(a), shall annually, at the end of each financial year, be fully audited by the Auditor-General or such auditor as may be appointed by the Auditor-General from time to time: Provided that the Premier may, in his or her discretion and without prior notice to the Board, order an audit of the matter referred to in this section and appoint an auditor for that purpose, who shall submit his or her report to the Premier and a copy thereof to the Board.

18. Report of chairperson of Board, and financial statements of Trust, to be tabled in Provincial Legislature.- The Premier shall, within fourteen days after he or she has received the audit report and financial statements contemplated by section 16(2), lay such report and statements on the table in the Provincial Legislature then in session, or, if it is not then in session, within fourteen days after the commencement of its next ensuing session.

19. Appointment of officers in Public Service to assist Board with administrative, clerical and secretarial functions and duties.-(1) (a) The Board shall, in concurrence with the Director-General of the North West Provincial Administration appoint an officer in the Public Service as the executive officer for the Trust for the purposes of performing all such administrative, clerical and secretarial functions and duties of the Board and in relation to the

Trust and the Fund as may be determined by the Board from time to time.

(b) The executive officer appointed in terms of paragraph (a) shall be directly responsible to the Board and keep the Board fully informed as regards the performance of the functions and duties entrusted to him or her under paragraph (a).

(2) The Board, in concurrence with the Director-General may appoint officers in the Public Service to assist the executive officer in the performance of his or her functions and duties in terms of subsection (1).

(3) All expenditure arising from or in connection with the performance of the functions and duties referred to in subsection (1) by officers of the Public Service, shall be dealt with in accordance with the provisions of the Public Service Act and the Regulations made thereunder.

20. **Patrons of Trust.**- The Premier may from time to time appoint the persons as patrons of the Trust.

21. **Short title and date of commencement.**- This Act shall be called the North West Youth Development Trust Act, 1997, and shall come into operation on a date to be determined by the Premier by notice in the Provincial Gazette.,