

THE PROVINCE OF  
GAUTENG



DIE PROVINSIE  
GAUTENG

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ED

Vol. 3

PRETORIA, 24 DECEMBER 1997  
DESEMBER

No. 434

## PROCLAMATION

### PROCLAMATION

No. 43 (Premier's), 1997

#### EXAMINATIONS AND ASSESSMENT ACT, 1997 (ACT No. 7 OF 1997)

In terms of section 18 (1) of the Examinations and Assessment Act, 1997 (Act No. 7 of 1997), I hereby determine **24 December 1997** as the date on which the said Act, excluding section 5 (2), shall come into operation.

Given under my Hand at Johannesburg this Eighteenth day of December, One thousand Nine hundred and Ninety-seven.

**T. M. G. SEXWALE**

Premier

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## PREMIER'S NOTICE

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No. 59

24 December 1997

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

No. 7 of 1997: Examinations and Assessment Act

# ACT

To provide for an efficient and equitable system for the examination and assessment of learners in the Province, the establishment of an Examinations and Assessment Board to enable public scrutiny of and participation in the development of such a system, and matters connected therewith.

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*(English text signed by the Premier)*

*(Assented to 17 November 1997)*

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BE IT ENACTED by the Provincial Legislature of Gauteng, as follows:

### Definitions

1. In this Act, unless the context indicates otherwise-

- "Board" means the Examinations and Assessment Board established in terms of section 6;
- "Constitution" means the Constitution of the Republic of South Africa, 1996, (Act No. 108 of 1996);
- "Council" means the Gauteng Education and Training Council established in terms of section 32(1) of the School Education Act (Gauteng) 1995, (Act No. 6 of 1995);
- "Department" means the Gauteng department responsible for education;
- "Director" means the most senior Departmental officer whose specific responsibility is the implementation of examination and assessment policy;
- "Executive Committee" means the Executive Committee of the Board;
- "Head of Department" means the most senior officer employed in the Department;
- "legislature" means the legislature of the Province of Gauteng;
- "MEC" means Member of the Executive Council responsible for education matters in the province;
- "member" means a member of the Board;
- "national legislation" means an Act of Parliament or delegated legislation made in terms of an Act of Parliament and approved by the National Council of Provinces as contemplated by section 146(6) of the Constitution;
- "nominated member" means a member nominated in terms of section 6(2)(a) or (b); and
- "Province" means the Province of Gauteng.

### Application of Act

2. Subject to the Constitution, the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), the South African Certification Council Act, 1986 (Act No. 85 of 1986) and any applicable norms and standards prescribed in national legislation, this Act shall apply to the development and implementation of examination and assessment policy in the Province.

### Principles underpinning examinations and assessment

3. The following principles shall underpin examination and assessment policy and the implementation thereof in the Province-

- (a) Every learner has the right to fair and reasonable examination and assessment practices.

- (b) Every interested person has the right to information about the examination and assessment policies and plans of the Department subject to the following-
  - (i) the Department may not release any information the disclosure of which may affect the security required in the administration of examination and assessment procedures and instruments; and
  - (ii) the Department may refuse to release information when to do so will hamper the effective and efficient administration of examination and assessment procedures and instruments.
- (c) Representatives of stakeholders in education in the Province must be consulted with regard to examination and assessment policy.

**General powers of Member of Executive Council**

- 4. The Member of the Executive Council must determine examination and assessment policy in the Province.

**Duties and functions of Department**

- 5. (1) The Head of Department must be responsible for the implementation of examination and assessment policy in the Province, and-
  - (a) must ensure that the implementation of examination and assessment policy is guided by the principles set out in section 3;
  - (b) must deliver annually to the Board in writing the management strategy of the Department with regard to the implementation of examination and assessment policy in the Province; and
  - (c) may issue rules by Notice in the *Provincial Gazette* concerning the implementation of any aspect of examination and assessment policy.
- (2) The Head of Department may not issue any rules in terms of subsection (1)(c) unless at three weeks prior to the publication of the Notice contemplated by that subsection, he or she has delivered a copy of the Notice to the Board.
- (3) The Director must, at each meeting of the Board, report on the current state of implementation of examination and assessment policy in the Province.
- (4) The Director must report to the Board on any further matters in respect of which the Board has, in terms of paragraph (d) of section 10(1), instructed him or her to report.

**Establishment of Board**

- 6. (1) The Member of the Executive Council must, within six months of the commencement date, establish a body known as the Examinations and Assessment Board.
- (2) The following persons must be appointed by the Member of the Executive Council as members of the Board after consultation with the Council-
  - (a) one person nominated by the Council;
  - (b) nine persons selected from persons nominated in accordance with subsection (3) by organisations representing stakeholders in education and training in the province;
  - (c) five persons whom the Member of the Executive Council in his or her discretion appoints as members of the Board; and
  - (d) the Head of Department and the Director.
- (3) The Member of the Executive Council must-
  - (a) within 30 days of the commencement date, and thereafter at least 60 days before the end of each term of office of the members of the Board, publish a Notice in the *Provincial Gazette* inviting nominations for members of the Board as contemplated in subsection (2)(b), and indicating the form which these nominations must take;
  - (b) state in the Notice contemplated in paragraph (a) the closing date for the submission of nominations in terms of paragraph (a), which date shall be 30 days from the date on which the Notice is published; and
  - (c) make his or her appointments in terms of subsection (2)(b) by Notice in the *Provincial Gazette* published within 30 days of the closing date for the submission of nominations in terms of paragraph (a).

- (4) Persons appointed in terms of paragraphs (a) to (c) of subsection (2) must be persons who are, by virtue of their experience or expertise, able to make a valuable contribution to examination and assessment policy in the Province.
- (5) Members of the Board must, for the performance of their duties on the Board, be accountable to the MEC.

#### **Term of office of members of Board and appointment of new members of Board**

7. Subject to section 8, the term of office of a member appointed in terms of paragraphs (a) to (c) of section 6(2) shall be two years.

#### **Withdrawal of appointment of member by Member of Executive Council and the filling of vacancies on the Board**

8. (1) The Member of the Executive Council for Education may, after consultation with the Board, withdraw the appointment of a member-
  - (a) if the member so requests;
  - (b) if the Board has passed a resolution requesting the Member of the Executive Council to withdraw the appointment of the member and-
    - (i) the member has failed to attend three consecutive meetings of the Board without valid cause;
    - (ii) the member fails to perform his or her functions as a member of the Board; or
    - (iii) the conduct of the member has been prejudicial to the best interests of the Board.
- (2) The Member of the Executive Council may not withdraw the appointment of a member unless he or she has given the member an opportunity to make representations relating to such withdrawal.
- (3) Vacancies on the Board must be filled as follows-
  - (a) A vacancy relating to the withdrawal of the appointment of a member contemplated in section 6(2)(a) must be filled by appointment by the Member of the Executive Council on recommendation of the Council;
  - (b) A vacancy relating to the withdrawal of the appointment of a member contemplated in paragraphs (b) or (c) of section 6(2) must be filled by appointment by the Member of the Executive Council after consultation with the Council.
- (4) The term of office of a member appointed to fill a vacancy on the board shall end when the term of office of the member whose withdrawal caused the vacancy would have ended.

#### **Co-option of members by Board**

9. (1) The Board may, with the consent of the Member of the Executive Council, co-opt any person as a member to assist it in the performance of its functions and duties;
- (2) The Board may at any time terminate the membership of a person co-opted in terms of subsection (1).
- (3) Co-opted members shall be non-voting members of the Board.

#### **Functions and duties of Board**

10. (1) In addition to any other functions and duties assigned to it by law, the Board-
  - (a) may make recommendations to the Member of the Executive Council concerning examination and assessment policy in the Province and to the Head of Department concerning the implementation thereof;
  - (b) may make recommendations to the Member of the Executive Council on any other matter referred to it by the Member of the Executive Council;
  - (c) may make recommendations to the Head of Department on any other matter referred to it by the Head of Department;

**Meetings of Board**

15. (1) The Board must meet at least four times a year.  
(2) The Executive Committee must meet at least four times a year.  
(3) The proceedings of the Board or of the Executive Committee shall not be invalid by reason only of the fact that there is a vacancy in the Board or the Executive Committee.

**Review of Board**

16. The existence and composition of the Board, and the harmonisation of its work with other existing and emerging structures which address examination and assessment policy and implementation, must be reviewed annually by the Legislature in the light of developments in national policy and legislation.

**Regulations**

17. The Member of the Executive Council may make regulations to promote the objects of this Act.

**Short title and commencement**

18. (1) This Act shall be called the Examinations and Assessment Act, 1997, and subject to subsection (2) shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.  
(2) Section 5(2) shall come into operation on a different date fixed by the Premier by proclamation in the *Provincial Gazette*.

- (d) may instruct the Director to report to it on any matter relating to the implementation of examinations and assessment policy in the Province;
  - (e) may bring to the notice of the Member of the Executive Council or Head of Department any matter concerning examinations and assessment in the Province;
  - (f) may make its own rules regulating its meetings and the meetings of the Executive Committee, and the procedures at such meetings, including the quorum for such meetings;
  - (g) must publish an annual report on examination and assessment policy in the Province and the implementation thereof; and
  - (h) must produce a report on any matter relating to examination and assessment policy in the Province if requested to do so by the Member of the Executive Council.
- (2) The Board may delegate any of its powers to its Executive Committee, but no delegation of a function by the Board shall divest it of the power to perform that function itself.

#### **Recommendations of Board**

11. (1) If the Member of the Executive Council decides not to implement a recommendation made by the Board in terms of paragraphs (a) or (b) of section 10(1), he or she must provide the Board with written reasons for his or her decision, and table such reasons before the Standing Committee on Education of the Legislature;
- (2) If the Head of Department decides not to implement a recommendation made by the Board in terms of paragraphs (a) or (c) of section 10(1), he or she must provide the Board with written reasons for his or her decision, and table such reasons before the Standing Committee on Education of the Legislature.

#### **Office bearers, executive committee and administrative officer of Board**

12. (1) At the first meeting of the Board, it must elect the following office bearers-
- (a) a Chairperson;
  - (b) a Vice-chairperson; and
  - (c) a Treasurer.
- (2) The Head of Department must preside over the election of a Chairperson of the Board, whereupon the Chairperson must take over the chairing of the meeting.
- (3) The office bearers elected in terms of subsection (1) shall be members of the Executive Committee of the Board.
- (4) At the first meeting of the Board, it may elect a maximum of two additional members of the Executive Committee.
- (5) The Head of Department must appoint a person designated in terms of section 14 as administrative officer for the Board and the Executive Committee.
- (6) The administrative officer must attend and keep minutes of meetings of the Board and the Executive Committee.
- (7) When the Executive Committee takes any decision in terms of a function delegated to it by the Board in terms of section 10(2), it must report that decision to the Board at the first meeting of the Board after the decision was taken.

#### **Finances of Board**

13. (1) The Board must be funded from money appropriated for this purpose by the Legislature.
- (2) The Director must-
- (a) control, in accordance with the directions of the Head of Department, all funds of the Board; and
  - (b) keep such books, records and statements as may be required by the Head of Department.

#### **Designation of staff by Department**

14. The Head of Department must designate such persons in the service of the Department as he or she deems necessary to assist the Board in the performance of its functions and duties.

**MEMORANDUM  
EXAMINATIONS AND ASSESSMENT BILL, 1997**

**A SOCIAL IMPACT STATEMENT**

Reasons for the Bill

In 1996 the Gauteng Department of Education amalgamated the examinations systems which it had inherited from the former apartheid departments. This amalgamation was an important step towards transformation in education in the province.

However, there were administrative difficulties in the implementation of the first non-racial examinations: security arrangements were inadequate, staff were poorly prepared, and the technology used was old and inadequate. These difficulties, together with recommendations to resolve them, were reported in the Khumalo Commission of January 1997.

Partly as a response to these recommendations, and partly as a strategy to transform and strengthen good educational practices in the Province, the Department has drafted the Examinations and Assessment Bill.

Possible Effects of the Bill

This legislation sets out the policy and principles underlying the administration of examinations and assessment in the Province. Furthermore, it provides for a system and structures which encourage effective, equitable and accountable administration. An Examinations and Assessment Board will comprise senior officials in the Department and members nominated by stakeholders and appointed by the MEC. This composition brings together experts and professionals in the education field who can make a valuable contribution to examination and assessment policy. In addition, the Board provides an avenue for both public scrutiny and government accountability.

The Board will have a structured formal relationship with the Department, yet enjoy independence from the Department, in that its members will be accountable to the Member of the Executive Council responsible for education.

The Bill sets out policy principles which conform with the spirit of the Constitution, regarding the right of learners to equitable, fair and reasonable examination and assessment practices, the right of every interested person to information, and the right of stakeholders to consultation. The Bill also takes cognisance of the South African Qualifications Authority and the National Qualifications Framework.

**B FINANCIAL IMPLICATIONS**

The Bill does not have major financial implications for the Department. The members of the Board will not receive a salary, although certain expenses for reimbursements and honoraria may be incurred.

**C SUMMARY OF PROVISIONS**

Section 1: Definitions

The Bill provides a definition of key terms.

Section 2: Application of Act

This Act will comply with the Constitution, the norms and standards prescribed in national legislation such as the South African Qualifications Authority Act and the South African Certification Council Act.

**Section 3: Principles underpinning examinations and assessment**

The principles of fairness for learners, accountability between the public and the Department, and consultation with education stakeholders underpin examination and assessment policy and implementation. Nonetheless, the Department is instructed to protect sensitive information which, if released, could compromise the validity of the test instrument or the security of the examination process.

**Section 4: General powers of Member of Executive Council**

The Member of the Executive Council determines examination and assessment policy in Gauteng.

**Section 5: Duties and function of Department**

The Head of Department has overall responsibility for the implementation of the policy and is guided in this regard by the principles expressed in section 3 above. The Head must prepare a management strategy for the Board, and may issue rules concerning the implementation of any aspect of examination and assessment policy. The Head of Department must make a copy of the Notice containing such rules available to the Board at least three weeks before publication.

The Director (the most senior officer in the Department who has specific responsibility for the implementation of examination and assessment policy) must report to the Board on the current state of implementation, as well as on any further related matters which the Board has instructed him or her to report on in terms of section 10(1)(d). The Department and Board will work together to create a sensible relationship between policy and implementation.

**Section 6: Establishment of Board**

The Member of the Executive Council must, within 6 months of the Gauteng Legislature passing this Act, establish a body known as the Examinations and Assessment Board. The MEC appoints the seventeen member Board after consultation with the Gauteng Education and Training Council. The members of the Board are accountable to the Member of the Executive Council for the performance of their duties on the Board. The Board will consist of the Head of Department, the Director, five persons appointed by the Member of the Executive Council, one person nominated by the Gauteng Education and Training Council, and nine persons selected from nominees of stakeholder organisations. The Member of the Executive Council will publish a Notice in the Provincial Gazette calling for nominations from organisations representing stakeholders, and the procedure and time periods for nomination and selection are set out in subsection 3. Members of the Board must, by virtue of their experience or expertise, be able to make a valuable contribution to examination and assessment policy in the Province.

**Section 7: Term of office of members of Board and appointment of new members of Board**

The Head of Department and Director will hold office permanently, while other members will hold office for two years. Membership may be withdrawn in terms of section 8 below.

**Section 8: Withdrawal of appointment of member by Member of Executive Council and the filling of vacancies on the Board**

The Member of the Executive Council may, after consultation with the Board, withdraw membership from members of the Board if the member so requests, or if the Board passes a resolution requesting the withdrawal on the grounds that the member's performance or conduct is unsatisfactory. Such a member will have an opportunity to make representations with regard to the proposed withdrawal of his or her membership. The Member of the Executive Council fills vacancies by appointing a new member after recommendation of, or consultation with, the Council.

**Section 9: Co-option of members of the Board**

The Board may co-opt members to assist it in carrying out various duties. Co-opted members have non-voting status.



**Section 10: Functions and duties of Board**

The key function of the Board is to make recommendations on policy to the Member of the Executive Council and recommendations on implementation to the Head of Department. The Board must publish an annual report on its work and on any other related matter at the request of the Member of the Executive Council.

**Section 11: Recommendation of Board**

If the Member of the Executive Council decides not to implement a recommendation made by the Board then the Member of the Executive Council must provide the Board with written reasons for that decision.

**Section 12: Office bearers, executive committee and administrative officer of Board**

The Board will elect its own office bearers - namely, a Chair, Vice-Chair and a Treasurer. These office bearers and two additional members make up the Executive Committee which is responsible for the management of the Board between meetings. The Head of Department must appoint a staff member from the Department to assist the Board in performing its administrative functions.

**Section 13: Finances of the Board**

The Legislature will appropriate finances for the functioning of the Board. The Director will ensure strict control over these finances and keep records.

**Section 14: Designation of Staff by Department**

The Head of Department must designate persons in the Department to assist the Board in performing its duties.

**Section 15: Meetings of the Board**

The Board and Executive Committee must meet at least four times a year. The decisions of the Board or Executive Committee will not be invalid for the sole reason that they have a vacancy.

**Section 16: Review of Board**

The Legislature will review the work of the Board annually and consider the direction which the Board takes in relation to new developments in national policy and legislation.

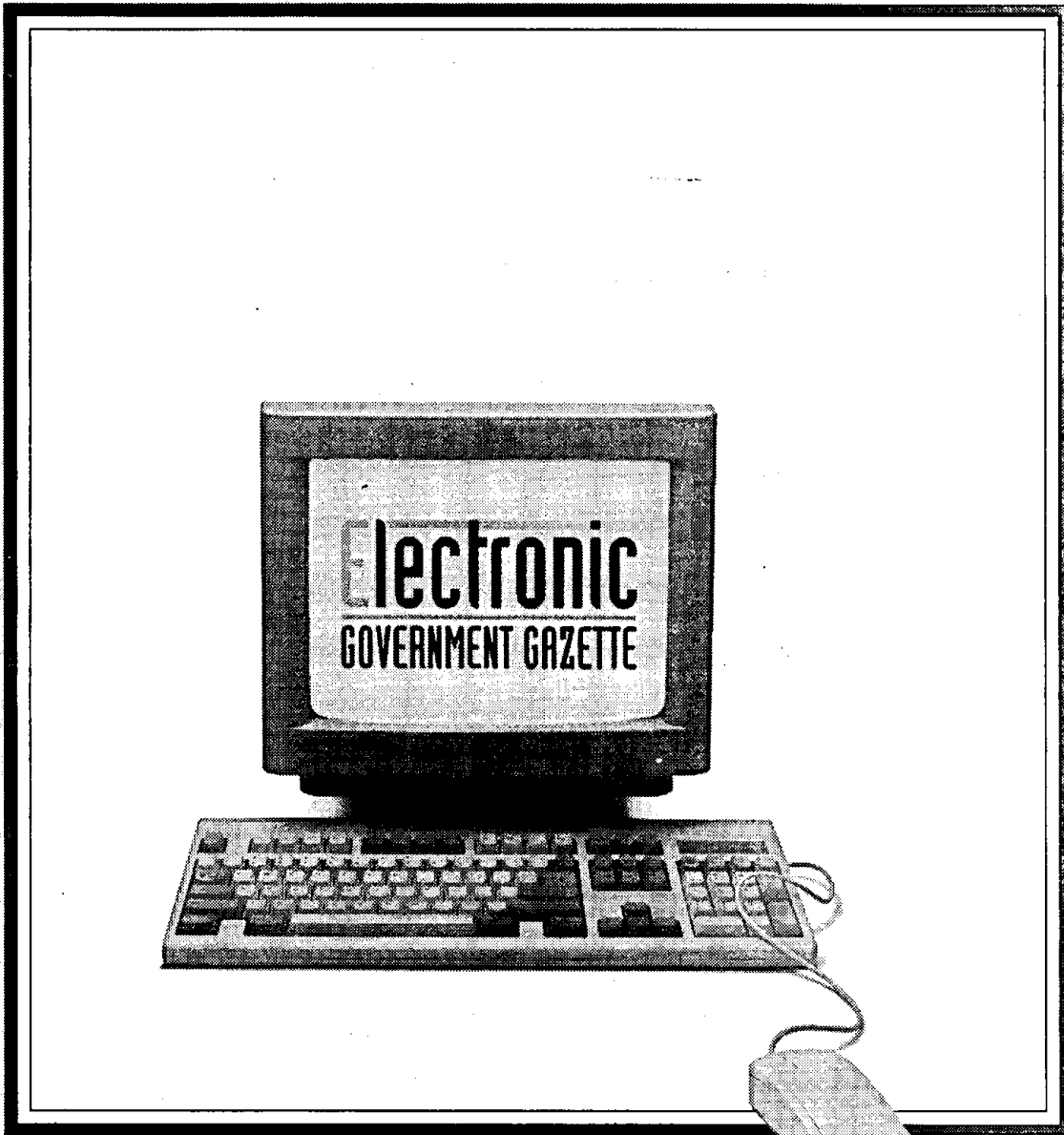
**Section 17: Regulations**

The MEC is empowered to make regulations to promote the objects of this Act.

**Section 18: Short title and commencement**

The Examinations and Assessment Act will come into operation on a date fixed by the Premier by proclamation in the Provincial Gazette. Section 5(2), which deals with the issuing of rules with regard to implementation of examination and assessment, will, however, come into operation on a different date so fixed.

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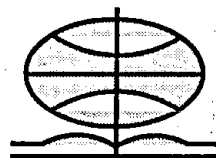
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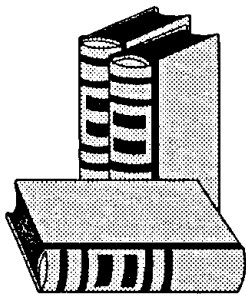
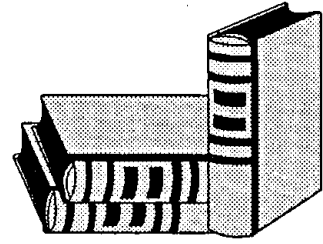
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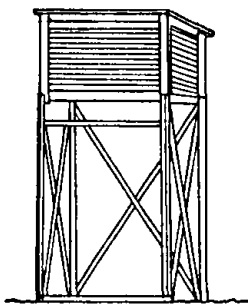
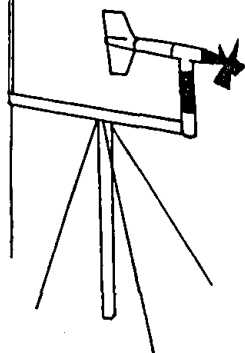
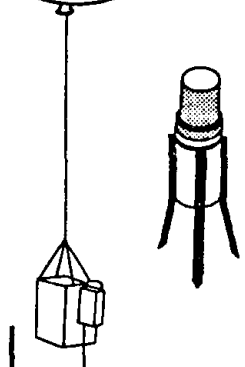
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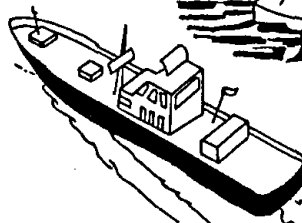
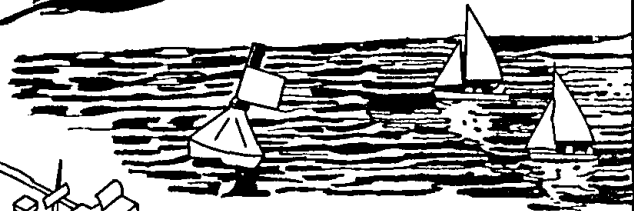
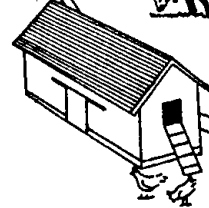
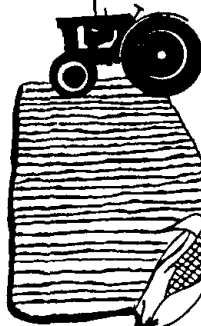
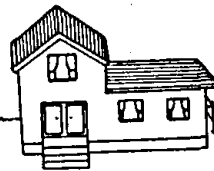
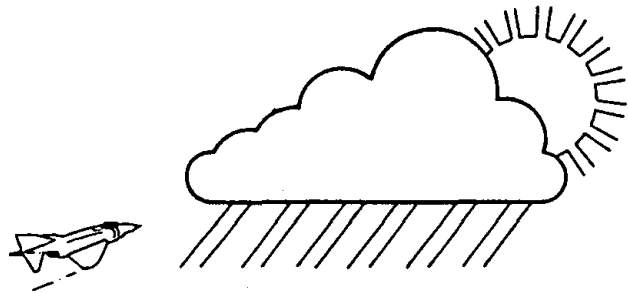
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Department of Environmental Affairs and Tourism  
Departement van Omgewingsake en Toerisme

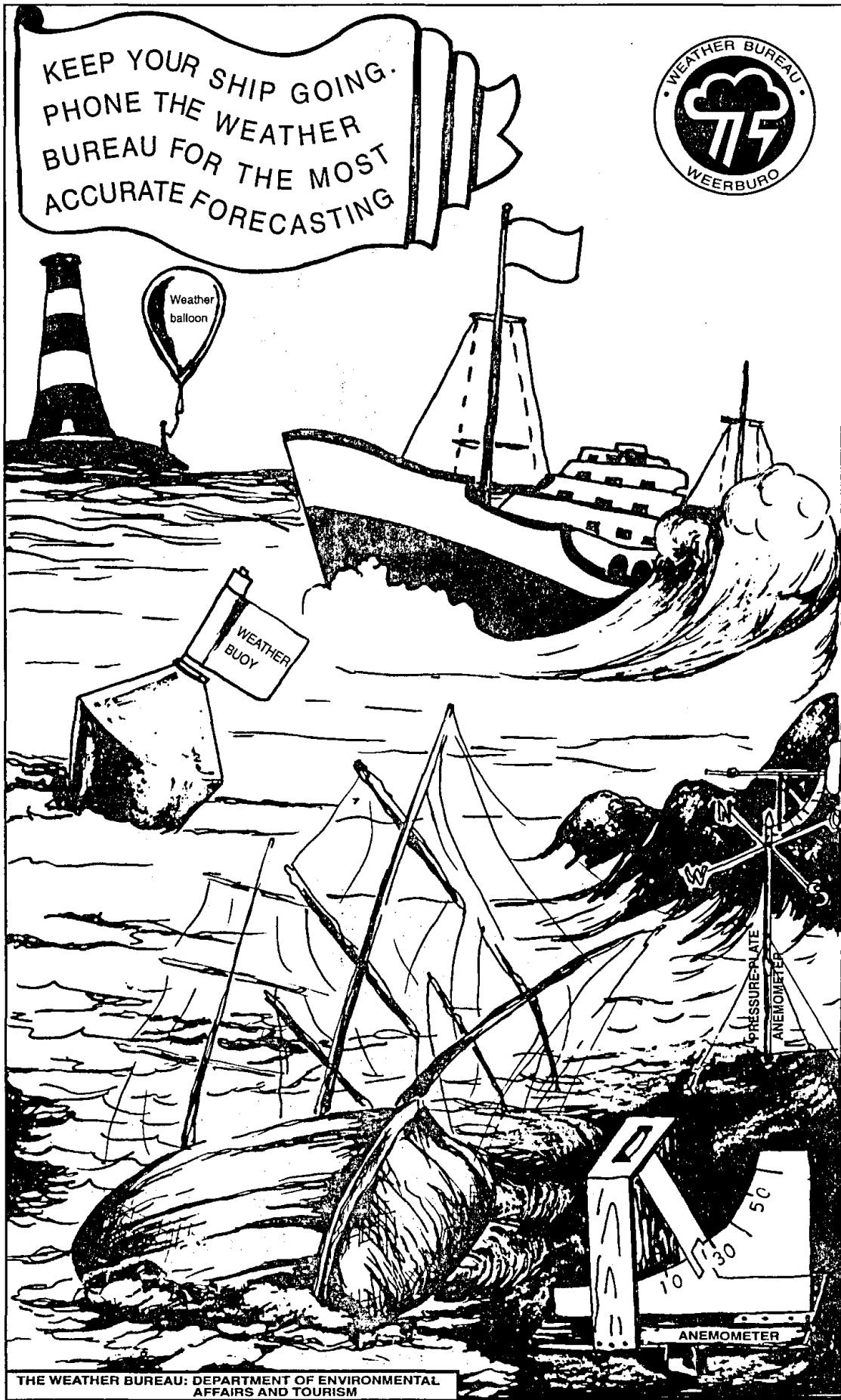
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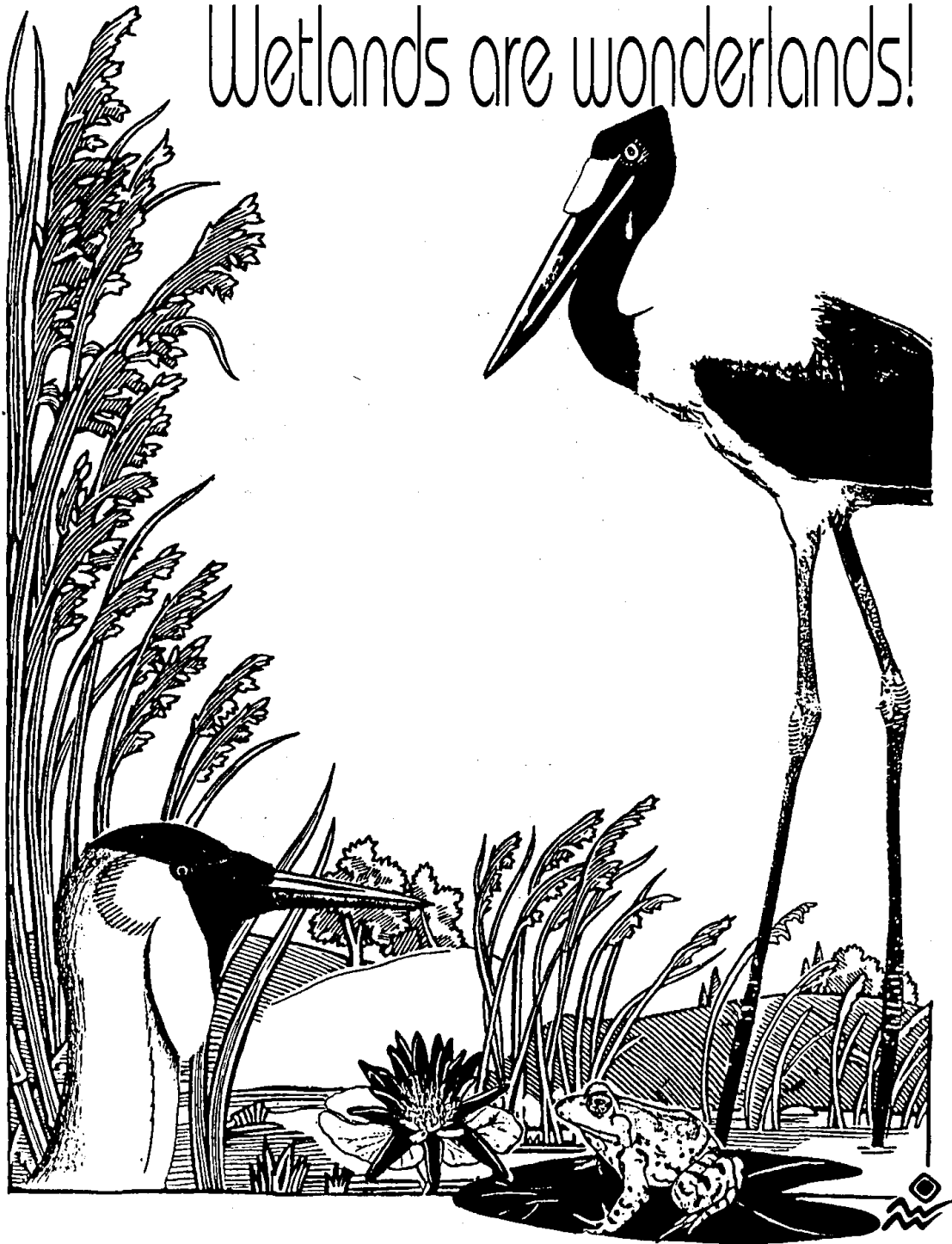


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THE WEATHER BUREAU: DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

# Wetlands are wonderlands!



Department of Environmental Affairs and Tourism

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