

CHAPTER 36:06

MATIMELA

ARRANGEMENT OF SECTIONS

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Act 23, 2018,

S.I. 117, 2018*,

S.I. 31, 2019.

An Act to re-enact, with amendments, the Matimela Act to provide for the collection, reporting and sale of matimela within districts and elsewhere in Botswana; and to provide for matters incidental thereto.

[Date of Commencement: 1st April, 2019]

1. Short title

This Act may be cited as the Matimela Act.

2. Application

This Act shall not apply within the area of a city or township.

3. Interpretation

In this Act, unless the context otherwise requires-

"AC brand" has the same meaning assigned to it in the Branding of Cattle Act (Cap. 36:02);

"animals" means horses, donkeys, mules, cattle, sheep, goats and pigs;

"brand" means any letter, character, sign or symbol or any combination thereof used or intended to be used for the marking of cattle or a council serial number, but does not include a distinctive mark, or an AC brand;

"council", in relation to any tribal area, means the District Council within the area in which the tribal area is situated;

"distinctive mark" has the same meaning assigned to it in the Branding of Cattle Act;

"Kgosi" has the same meaning assigned to it under the Bogosi Act (Cap. 41:01);

"matimela" means any stray animal and any animal which, having been a stray animal, continues to be matimela by virtue of section 15;

"matimela facility" means a facility established under section 4;

"matimela facility book" means the records kept by a matimela officer in accordance with section 20;

"matimela officer", in relation to any matimela facility, means a person appointed under section 5 as a matimela officer of that facility;

"repealed Act" means the Matimela Act (Cap. 36:06) repealed under section 27 of this Act; and

"tribal area" has the meaning assigned to it under the Tribal Land Act (Cap. 32:02).

4. Establishment of matimela facilities

A council may, by resolution, acquire or establish any kraal, enclosure or ranch as a matimela facility for the purposes of this Act.

5. Matimela officers

(1) Subject to the provisions of the Public Service Act (Cap. 26:01), a council may appoint such number of matimela officers as may be necessary for the purposes of this Act.

(2) In the exercise of their functions under this Act, matimela officers shall act in accordance with such instructions as may be given by the council.

6. Council to make arrangements for collection of matimela

(1) A council may at any time, and at least three times a year, in consultation with Kgosi, make arrangements for the collection of matimela and may, for the purpose, employ persons whose remuneration shall be paid out of moneys available in the general revenue of the council.

(2) Any matimela collected in terms of subsection (1) shall, as soon as is practicable, be placed in a matimela facility.

7. Reporting of matimela

(1) A person who keeps, kraals, encloses or in any other manner detains any animal knowing that such animal is matimela, or having reason to believe that such animal is matimela, shall, within one month of keeping, kraaling, enclosing or detaining such animal, report the presence of the animal to the nearest matimela officer or Kgosi.

(2) A Kgosi who receives a report in terms of subsection (1) shall forward such report to a matimela officer, within 14 days of receiving the report.

(3) A matimela officer shall, upon receiving a report under subsection (1) or (2), collect the matimela within 14 days of receiving the report.

(4) A person who fails to comply with the provisions of subsection (1), commits an offence and is liable to the penalties stipulated under section 25.

8. Driving or trucking fees

(1) The Council may, where it considers it necessary, outsource the collection of matimela to any person.

(2) Where the Council outsources collection of matimela under subsection (1)-

(a) outsourcing shall be done in writing by the Council; and

(b) a person awarded collection of matimela, other than a person employed in terms of section 5 or 6, who delivers matimela to a matimela facility shall be entitled to receive from the council, driving fees or trucking fees, at such rates as may be prescribed.

(3) A person referred to under subsection (2) shall not claim any driving fees or trucking fees where such person has failed to deliver matimela to any person responsible for collecting matimela in terms of section 6.

9. Collection of matimela

(1) A person responsible for collection of matimela in terms of section 6 shall, if so instructed by the Council, enter upon any land for the purpose of ascertaining the presence of matimela on such land and shall, if he or she finds any animals which he or she has reason to believe are matimela, seize such animals and take them to a matimela facility.

(2) A person referred to under subsection (1) shall not collect any matimela or animals he or she has reason to believe are matimela

from the land upon which such matimela or animals are found, unless he or she has-

(a) informed the owner or occupier of the land;

(b) informed an employee or agent of the owner or occupier of the land; or

(c) in the absence of all such persons referred to in paragraphs (a) and (b), informed the owner or occupier of any neighbouring land or any employee or agent of the owner or occupier thereof.

(3) A person referred to under subsection (1) shall, in the exercise of the powers conferred upon him or her by subsection (1), have in his or her possession, and shall produce upon request, a letter or document issued by the council, as evidence of the authority conferred by the council on him or her and such letter or document shall be sufficient proof of such authority.

(4) A person shall not, without the authority of the council, collect matimela which are in the possession of another person unless-

(a) the person is the owner of the matimela;

(b) the person is an agent acting on behalf of the owner of the matimela;

(c) the person is an officer of a competent court executing a court order, or a police officer acting in execution of an order of magistrate's court or a customary court of competent jurisdiction; or

(d) the person is exercising a right to take possession under the Agricultural Charges Act (Cap. 35:01) or the Hypothecation Act (Cap. 46:05).

(5) Any person who obstructs a person collecting matimela in the exercise of the powers vested on such person in terms of subsection (1), or who contravenes the provisions of subsections (2), (3) and (4), commits an offence and is liable to the penalties stipulated under section 25.

10. Branding of matimela

A matimela officer shall, within five working days after any matimela has been placed in a matimela facility under his or her charge, brand the matimela with a council brand, in such manner as may be prescribed.

11. Notification of presence of matimela

(1) A matimela officer shall, within five working days after any matimela have been placed in a matimela facility under his or her charge, notify the council of the presence of such matimela, and

compile a list of such matimela disclosing any distinguishing marks which such matimela bear, including the particulars specified under section 20(1).

(2) The council shall, upon receiving notification in terms of subsection (1), display a notice containing details of such notification, in such form as may be prescribed, in a conspicuous position at the council offices and such other places as it may deem necessary, and take such steps to publicise the details of the notice in the Gazette.

12. Claiming of matimela

(1) The owner of an animal placed in a matimela facility may, notwithstanding the provision of sections 9(4)(c) and (d) claim such animal in such manner and upon payment of such fees as may be prescribed.

(2) A person who fails to pay the fees specified under subsection (1) within 14 days of claiming an animal placed in a matimela facility, shall be deemed to have abandoned the animal and the animal shall be sold in accordance with the provisions of section 13.

(3) An animal placed in a matimela facility may not be claimed after 1630 hours on the day before the sale of the matimela.

13. Sale of matimela

(1) Whenever-

(a) any animal has not been claimed under section 12(1) within three months from the date on which it was placed in a matimela facility;

(b) any animal is deemed to have been abandoned under section 12(2),

the council may direct the matimela officer to sell such matimela and, in such event, the matimela officer shall give notice of the date of such sale and the animals to be sold.

(2) Unless the Minister otherwise directs, matimela shall be sold in the following manner and the proceeds of the sale shall accrue to the general revenue of the council-

(a) by public auction;

(b) to the Botswana Meat Commission; or

(c) in any other manner that the council may direct.

(3) Matimela shall not be sold unless branded with a council brand in accordance with section 10.

(4) The title of the purchaser of any matimela sold under the provisions of this section shall not be impeachable in any court of law on any grounds other than fraud.

14. Revenue and expenses in connection with matimela

Any revenue accruing from the sale of matimela or any expenses incurred in connection with matimela shall be paid into or charged on the general revenue of the council.

15. Matimela to continue to be matimela

Any animals which become matimela shall continue to be matimela for the purposes of this Act, until they are recovered by their owners or sold under section 13.

16. Duty to care for matimela

A matimela officer shall take proper care of any matimela kept in a matimela facility in accordance with the provisions of this Act and in accordance with any instructions that the council may issue to such matimela officer.

17. Recording of details of injury or death of matimela

(1) Where any matimela dies or are injured under the charge of a matimela officer, the matimela officer shall make an entry in a matimela facility book kept by the matimela officer in accordance with section 20, detailing-

(a) a description of the animal which died or was injured; and

(b) the manner in which the animal died or was injured.

(2) Where a matimela officer fails to make an entry in accordance with subsection (1) or makes a false entry in the matimela facility book, it shall be deemed to be prima facie proof that the death or injury of the matimela was due to the negligence of such matimela officer.

18. Destruction of matimela

(1) Subject to the provisions of subsection (2), a matimela officer may destroy any matimela under his or her control that-

(a) suffer from a contagious disease;

(b) pose danger to human life or other animals; or

(c) are in such condition as to render their destruction a humane act.

(2) A matimela officer shall not destroy any animal in accordance with subsection (1) unless such animal has been examined by an official from the Ministry responsible for agriculture and such official is in agreement with the matimela officer as to the necessity of the destruction of the animal.

(3) A matimela officer may destroy any animal that is found to be wild and roaming in the area of the matimela facility which is under the control of the matimela officer.

(4) A matimela officer shall summon the owner of an animal that is to be destroyed in accordance with subsection (1), if such owner is known and if it is practicable to do so, to attend the examination provided for under subsection (2).

(5) A matimela officer shall notify the owner of an animal that is destroyed in accordance with subsection (3) of the destruction of the animal, if such owner is known and if it is practicable to do so.

19. Disposal of carcasses and hides

Where matimela dies while under the control of a matimela officer or are destroyed in accordance with section 18, such matimela's

carcasses and hides shall be disposed of by the matimela officer in a manner and subject to such conditions as the Council shall direct.

20. Matimela facility book

(1) A matimela officer shall keep a matimela facility book in which the following particulars shall be recorded-

(a) the date when all matimela were received into the matimela facility;

(b) the number and description of the matimela;

(c) the name and address of the person delivering the matimela to the matimela facility;

(d) the date and particulars of the release or sale of the matimela, as the case may be, and the name and address of the person to whom such animals were released or sold; and

(e) any other matter which the matimela officer may be directed by the council to ascertain and record.

(2) The matimela officer shall make the entries required to be recorded in the matimela facility book in accordance with subsection

(1), at the time when the acts in respect of which they are made were done or soon thereafter as possible.

21. Matimela facility book to be open for inspection

A matimela facility book shall be kept at the office of the matimela officer and shall at all reasonable times be open for inspection, to any person, free of charge.

22. Legal proceedings

(1) The council may bring an action against any person, in any court of competent jurisdiction, for the delivery to it of matimela.

(2) The council or any interested party may make an application to any Court of Law for declaration of the council's or interested party's rights in the matter, in the event of there being any dispute as to whether-

(a) any animal is or is not matimela;

(b) any person is or is not the owner of any animal kept in a matimela facility; or

(c) any person is entitled to the proceeds of the sale of carcasses or hides in accordance with section 19.

23. Variation of prescribed periods of time

(1) Where, under this Act, anything is required or permitted to be done within a specified period of time or after the lapse of a specified period of time, the council may vary such period of time depending on the exigency of the situation at hand-

(a) either generally or in relation to any tribal area; or

(b) in respect of specified matimela in any tribal area.

(2) The council shall notify the Minister, in writing, of a variation effected in accordance with subsection (1), within 14 days of the variation.

(3) The Minister may, by Notice published in the Gazette, publish a variation effected in accordance with subsection (1).

(4) Where a variation effected in terms of subsection (1) is in relation to the sale of matimela, the sale shall take place after 14 days, but within 21 days of the date of the publication of the Notice in accordance with subsection (3).

24. Protection from liability

A council, matimela officer or any person acting under the authority of the council shall not be subject to or liable to any action or proceedings for damages arising from any act or omission by the council, matimela officer or person in the exercise of their duties or functions under the Act, unless such act or omission was done mala fide.

25. Penalties

A person who commits an offence under section 7(4) or section 9(5) is liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding one year, or to both.

26. Regulations

The Minister may, after consultation with the appropriate council, make regulations providing for-

(a) the rates of driving or trucking fees to be paid in terms of section 8;

(b) the form of the notification of the presence of matimela by the council in terms of section 11(2);

- (c) the fees for the claiming of matimela in terms of section 12;
- (d) anything that under this Act requires to be prescribed; and
- (e) the better carrying out of the provisions of this Act.

27. Repeal of Cap. 36:06

The Matimela Act (Cap. 36:06) is hereby repealed.

28. Transitional and savings

(1) All rights, powers, obligations and liabilities in existence in terms of the repealed Act shall, upon this Act coming into force, continue to subsist and be dealt with in terms of this Act.

(2) Any disciplinary proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(3) Any legal proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Every contract under the repealed Act, being a contract between the Government and any other party immediately before the commencement of this Act, shall thereafter continue to subsist between the Government and such other party.