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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL NOTICES

NOTICE 49 OF 2003

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, MP, hereby publishes the draft National Environmental Management: Biodiversity Bill, which provides for the establishment of a National Biodiversity Institute to replace the current National Botanical Institute, and sets out an enabling regulatory framework for the integrated management of South Africa's biodiversity. More details are set out in the explanatory memorandum and the attached Bill.

Written comments and inputs are invited from interested parties and the general public, which must be submitted to:

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THE CLOSING DATE FOR COMMENTS IS 26 FEBRUARY 2003

BILL

The National Environmental Management: Protected Areas Bill, provides for the establishment of a National Biodiversity Institute (NBI), through provision of criteria for the selection and appointment of the governing board, defines functions, powers and operating procedures of the board and of the NBI, and provides provisions on general administration and financial matters. The Bill provides for biodiversity planning, monitoring and research, and for the co-ordination and alignment of biodiversity planning with other environmental and sectoral planning, and allows for the Minister to set norms and standards for the management of biodiversity. Requirements and procedures for consultation are set out and the need for concurrence of relevant Cabinet members is established. A regulatory framework, fully integrated with other regulatory frameworks, is created for the regulation of biological resources and activities involving biological resources to ensure the long-term sustainability of biological resources and the equitable sharing of benefits derived from them.

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NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL

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CHAPTER 1
INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates that another meaning is intended –

“alien species” means –

- (a) a species that is not an indigenous species; or
- (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but excludes an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

“biological diversity” or **“biodiversity”** means the diversity of animals, plants and other organisms, including the diversity of animals, plants or other organisms found within and between –

- (a) ecosystems;
- (b) habitats;
- (c) the ecological complexes of which these systems and habitats are part; and
- (d) species;

“bioprospecting” means the systematic search, collection, gathering, extraction, development or application of, or research on, genetic resources for commercial or industrial exploitation;

“Board” means the board referred to in section 12 which governs the Institute;

“competent authority”, in relation to the control of an alien or invasive species, means –

- (a) the Minister;

- (b) an organ of state in the national, provincial or local sphere of government designated by regulation in terms of section 74 (b) as a competent authority for the control of an alien species or a listed invasive in terms of this Act; or
- (c) any other organ of state which in terms of other legislation performs a duty or exercises a power relating to the control of the importation into the Republic, or the introduction into or combating in any area, of an alien or invasive species;

“components”, in relation to biodiversity, includes species, ecological communities, genes, genomes, ecosystems, habitats and ecological processes;

“control”, in relation to an alien or invasive species, means –

- (a) to combat or eradicate an alien or invasive species; or
- (b) where such eradication is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;

“critically endangered species” means any indigenous species facing an extremely high risk of extinction in the wild in the immediate future;

“delegation”, in relation to a duty, includes an instruction to perform the duty;

“Department” means the national Department of Environmental Affairs and Tourism;

“derivative”, in relation to an animal, plant or other organism, means any part, tissue or extract of an animal, plant or other organism, whether fresh, preserved or processed, including –

- (a) any meat, fat, blood, tooth, tusk, bone, horn, shell, claw, hoof, hide, skin, hair, egg, feather or other portion of an animal, whether fresh, preserved or processed;
- (b) any bark, flowers, fruit, seed, pollen, roots or bulbs or any other part of a plant, whether fresh, preserved or processed; or
- (c) any chemical compound found in an animal, plant or other organism;

“Director-General” means the Director-General of the Department;

“ecological community” means an integrated group of species inhabiting a given area;

“ecosystem” means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;

“endangered species” means any indigenous species facing a high risk of extinction in the wild in the near future, but which is not a critically endangered species;

“environmental management inspector” means a person authorised in terms of Chapter 9A of the National Environmental Management Act to enforce the provisions of this Act;

“export”, in relation to the Republic, means to take out or transfer, or attempt to take out or transfer, from a place within the Republic to another country or to international waters;

“genetic material” means any material of animal, plant, microbial or other biological origin containing functional units of heredity;

“genetic resource” includes –

- (a) any genetic material; or
- (b) the genetic potential or characteristics of any species;

“habitat” means the place or type of site where a species or ecological community naturally occurs;

“import”, in relation to the Republic –

- (a) means to land on, bring into or introduce into the Republic, or attempt to land on, bring into or introduce into the Republic; and
- (b) includes to bring into the Republic for re-export to a place outside the Republic;

“indigenous biological resource” means any resource consisting of –

- (a) any living or dead animal, plant or other organism of an indigenous species;
- (b) any derivative of such animal, plant or other organism; or
- (c) any genetic material of such animal, plant or other organism;

“indigenous species” means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity;

“Institute” means the National Biodiversity Institute established in terms of section 9;

“introduction”, in relation to a species, means the introduction by humans, whether deliberately or accidentally, of a species to a place outside the natural range or natural dispersal potential of that species;

“introduction from the sea”, in relation to a specimen of any species, means the transportation into the Republic of a specimen taken from a marine environment not under the jurisdiction of any state;

“invasive species” means any species whose establishment and spread outside of its natural distribution range –

- (a) threaten ecosystems, habitats or other species or has demonstrable potential to threaten ecosystems, habitats or other species; and
- (b) may result in economic or environmental harm or harm to human health;

“issuing authority”, in relation to permits regulating the matters mentioned in section 82, means –

- (a) the Minister; or

(b) an organ of state in the national, provincial or local sphere of government designated by regulation in terms of section 58 (a), 74 (a) or 81 (a) as an issuing authority for permits of the kind in question;

“listed invasive species” means any invasive species listed in terms of section 65 (1);

“listed threatened or protected species” means any species listed in terms of section 50 (1);

“local community” means any community of people living or having rights or interests in a distinct geographical area;

“management authority”, in relation to a protected area, means an authority to whom the management of the protected area has been assigned;

“MEC for environmental affairs” means the member of the Executive Council of a province who is responsible for the conservation of biodiversity in the province;

“migratory species” means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;

“Minister” means the Cabinet member responsible for national environmental management;

“municipality” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“national botanic garden” means land declared or regarded as having been declared as a national botanic garden in terms of section 33;

“National Environmental Management Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“national environmental principles” means the principles contained in –

- (a) section 2 of the National Environmental Management Act; and
- (b) section 2 of the National Environmental Management: Marine Living Resources Act, 1998 (Act No. 18 of 1998);

“organ of state” has the meaning assigned to it in section 239 of the Constitution;

“permit” means a permit issued in terms of Chapter 7;

“prescribe” means prescribe by the Minister by regulation in terms of section 93;

“protected area” means a protected area as defined in the National Environmental Management: Protected Areas Act, 2003;

“protected species” means any species which is of such high conservation value or national importance that it requires national protection, but which is not listed in terms of section 50 (1) (a), (b) or (c);

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“re-export”, in relation to the Republic, means the export from the Republic of something previously imported into the Republic;

“restricted activity” –

- (a) in relation to a specimen of a listed threatened or protected species, means –

- (i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lie in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;
 - (ii) gathering, collecting or plucking any specimen of a listed threatened or protected species;
 - (iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species;
 - (iv) importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species;
 - (v) exporting from the Republic, including re-exporting from the Republic, any specimen of a listed threatened or protected species;
 - (vi) having in possession or exercising physical control over any specimen of a listed threatened or protected species;
 - (vii) growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply;
 - (viii) conveying, moving or otherwise translocating any specimen of a listed threatened or protected species;
 - (ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or
 - (x) any other prescribed activity which involves a specimen of a listed threatened or protected species; and
- (b) in relation to a specimen of an alien species or listed invasive species, means –
- (i) importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species;
 - (ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species;
 - (iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;

- (iv) conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;
- (v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or
- (vi) any other prescribed activity which involves a specimen of an alien or listed invasive species;

“species” means a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population;

“specimen” means –

- (a) any living or dead animal, plant or other organism;
- (b) a seed, egg, gamete or propagule or part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits;
- (c) any derivative of any animal, plant or other organism; or
- (d) any goods which –
 - (i) contain a derivative of an animal, plant or other organism; or
 - (ii) from an accompanying document, from the packaging or mark or label, or from any other indications, appear to be or to contain a derivative of an animal, plant or other organism;

“subordinate legislation”, in relation to this Act, means –

- (a) any regulation made in terms of section 93; or
- (b) any notice published in terms of section 8, 33, 34, 39 (1), 41 (2), 42 (3), 44 (2), 50 (1), 51 (2), 52, 61 (1), 62 (1), 63, 65 (1) or 67;

“sustainable”, in relation to the use of an indigenous biological resource, means the use of such resource in a way and at a rate that –

- (a) would not lead to its long-term decline;

- (b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and
- (c) would ensure its continued use to meet the needs and aspirations of present and future generations of people;

“**this Act**” includes any subordinate legislation issued in terms of a provision of the Act;

“**threatening process**” means a process which threatens, or may threaten, the survival, abundance or evolutionary development of an indigenous species or ecological community;

“**vulnerable species**” means any indigenous species facing a high risk of extinction in the wild in the medium-term, but which is not a critically endangered species or an endangered species.

(2) In this Act, words or expressions derived from words or expressions defined in subsection (1) have corresponding meanings unless the context indicates that another meaning is intended.

Objectives of this Act

2. The objectives of this Act are –

- (a) to provide, within the framework of the National Environmental Management Act, for –
 - (i) the management and conservation of biological diversity within the Republic;
 - (ii) the use of indigenous biological resources in a sustainable manner; and
 - (iii) the fair and equitable sharing of benefits arising from the commercialisation through bioprospecting of traditional uses and knowledge of genetic resources;
- (b) to give effect to international agreements relating to biodiversity which are binding on the Republic;

- (c) to provide for co-operative governance in biodiversity management and conservation; and
- (d) to provide for a National Biodiversity Institute to assist in achieving the above objectives.

Public trusteeship of biological resources

3. In fulfilling the rights contained in section 24 of the Constitution, the state –
- (a) through the organs of state implementing this Act, must act as the public trustee of South Africa's biological diversity and its genetic resources; and
 - (b) must implement this Act to achieve the progressive realisation of those rights.

Application of this Act

4. (1) This Act applies –
- (a) in the Republic, including –
 - (i) its territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
 - (ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and
 - (b) to human activity affecting the biological diversity of the Republic.
- (2) This Act binds all organs of state –
- (a) in the national and local spheres of government; and
 - (b) in the provincial sphere of government, subject to section 146 of the Constitution.

Application of international agreements

5. This Act gives effect to the international agreements on biodiversity ratified and to which South Africa is a Party, and which –
- (a) bind the Republic; and
 - (b) is binding on all persons and organs of state.

Application of National Environmental Management Act

6. (1) This Act must be –
- (a) interpreted and applied in accordance with the national environmental principles; and
 - (b) read with Chapter 9A and other applicable provisions of the National Environmental Management Act.

(2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act

Conflicts with other legislation

7. (1) In the event of any conflict between a section of this Act and –
- (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (b) a municipal by-law, the section of this Act prevails.

(2) In the event of any conflict between subordinate legislation issued in terms of this Act and –

- (a) an Act of Parliament, the Act of Parliament prevails;
- (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
- (c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.

(3) For the proper application of subsection (2) (a) the Minister must in terms of section 146 (6) of the Constitution submit all subordinate legislation issued in terms of this Act and which affects provinces, to the National Council of Provinces for approval.

Norms and standards

8. (1) The Minister may by notice in the *Government Gazette* –

- (a) issue norms and standards for the achievement of any of the objectives of this Act, including for –
- (i) the management and conservation of biological diversity;
 - (ii) the restriction of activities which impact on biodiversity; and
- (b) set indicators to measure compliance with those norms and standards.

(2) Before issuing norms and standards and setting indicators to measure compliance with those norms and standards, the Minister must consult the MEC for environmental affairs in each province in which those norms and standards will apply.

- (3) Norms and standards may apply –
- (a) nationwide;
 - (b) in a specific area only;
 - (c) to a specific category of biodiversity only; or
 - (d) to a specific category of persons only.

- (4) Different norms and standards may be issued for –
- (a) different areas;
 - (b) different categories of biodiversity; or
 - (c) different categories of persons.

- (5) The Minister may in terms of section 93 make regulations necessary for –
- (a) monitoring compliance with the norms and standards; and
 - (b) enforcing the norms and standards.

CHAPTER 2**NATIONAL BIODIVERSITY INSTITUTE*****Part 1: Establishment, functions and powers of Institute*****Establishment**

9. (1) A National Biodiversity Institute is hereby established.
- (2) The Institute is a juristic person.

Functions

10. (1) The Institute –
- (a) must monitor and report regularly to the Minister on –
 - (i) the status of the Republic's biodiversity;
 - (ii) the conservation status of all listed threatened or protected species; and
 - (iii) the status of all listed invasive species;
 - (b) may act as an advisory and consultative body on matters relating to biodiversity to organs of state and other biodiversity stakeholders;
 - (c) must coordinate and promote the taxonomy of South Africa's biodiversity;
 - (d) must manage, control and maintain all national botanic gardens;
 - (e) may establish, manage, control and maintain herbaria;
 - (f) may establish facilities for horticulture display, environmental conservation education, visitor amenities and research;
 - (g) may establish, maintain, protect and preserve collections of –
 - (i) plants in national botanic gardens and in herbaria; or
 - (ii) animals and micro-organisms in appropriate enclosures;
 - (h) must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard;
 - (i) may allow, regulate or prohibit access by the public to national botanic gardens, herbaria and other places under the control of the Institute, and supply plants, information, meals or refreshments or render other services to visitors;
 - (j) may undertake and promote research on indigenous biodiversity and the sustainable use of indigenous biological resources;
 - (k) may coordinate programmes for the prevention, control or eradication of listed invasive species;

- (l) on the Minister's request, must assist the Minister in the discharge of duties and the exercise of powers assigned to the Minister in terms of this Act;
- (m) on the Minister's request, must advise the Minister on any matter regulated in terms of this Act, including –
 - (i) the implementation of this Act and any international agreements affecting biodiversity which are binding on the Republic;
 - (ii) the identification of bioregions and the contents of any bioregional plans;
 - (iii) other aspects of biodiversity planning;
 - (iv) the management and conservation of biological diversity;
 - (v) the sustainable use of indigenous biological resources; and
 - (vi) bioprospecting;
- (n) on the Minister's request, must advise the Minister on the declaration and management of, and development in, national protected areas, other than national parks; and
- (o) must perform any other functions –
 - (i) assigned to it in terms of this Act; or
 - (ii) as may be prescribed.

(2) When the Institute in terms of subsection (1) gives advice on a scientific matter it may consult any appropriate organ of state or other institution which has expertise in that matter.

General powers

11. The Institute may for the purpose of performing its functions –
- (a) appoint its own staff, subject to section 28;
 - (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
 - (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
 - (d) open and operate its own bank accounts;

- (e) establish a company which has as its object the production and supply of goods or the rendering of services on behalf of the Institute, subject to the Public Finance Management Act;
- (f) invest any of its money, subject to section 31;
- (g) borrow money, subject to section 66 of the Public Finance Management Act;
- (h) charge fees—
 - (i) for access to national botanic gardens, herbaria and other places under its control; or
 - (ii) for any work performed or services rendered by it, except for any such work performed or services rendered in accordance with section 10 (1) (l) (m) or (n);
- (i) collect royalties resulting from any discoveries, inventions or computer programmes, but excluding royalties from bioprospecting and registration of intellectual property rights on altered or improved biological material derived from breeding or propagation programmes;
- (j) insure itself against –
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act;
- (k) perform legal acts, including acts in association with or on behalf of any other person or organ of state; and
- (l) institute or defend any legal action.

Part 2: Governing board, composition and membership

Composition

12. (1) The Institute is governed by a board consisting of –
- (a) no fewer than seven and no more than nine members appointed in terms of section 14;
 - (b) the Director-General or an official of the Department designated by the Director-General;
 - (c) a person designated by the Cabinet member responsible for agriculture and land affairs;

- (d) a person designated by the Cabinet member responsible for science and technology; and
 - (e) the Chief Executive Officer of the Institute.
- (2) The Minister –
- (a) must determine the number of members to be appointed in terms of subsection (1) (a); and
 - (b) may alter from time to time the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.
- (3) The Board takes all decisions in the exercise of the duties and powers of the Institute, except –
- (a) those decisions taken in consequence of a delegation in terms of section 26; or
 - (b) where the Public Finance Management Act provides otherwise.

Qualifications

13. (1) A member of the Board must –
- (a) be a fit and proper person to hold office as a member; and
 - (b) have appropriate qualifications or experience.
- (2) The following persons are disqualified from becoming or remaining a member of the Board:
- (a) a person holding office as a member of Parliament or provincial legislature;
 - (b) a person who has been removed from office in terms of section 20.

Appointment procedure

14. (1) Whenever it is necessary to appoint members of the Board referred to in section 12 (1) (a), the Director-General must –

- (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member;
- (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee; and
- (c) submit the list to the Minister.

(2) Any nomination made pursuant to an advertisement in terms of subsection

(1) (a) must be supported by –

- (a) the personal details of the nominee;
- (b) particulars of the nominee's qualifications or experience; and
- (c) any other information that may be prescribed.

(3) The Minister must make the required number of appointments from the list submitted in terms of subsection (1) (c), but if the list is adequate, the Minister may appoint any suitable person of the Minister's choice.

(4) When making appointments the Minister must –

- (a) consult the MECs for environmental affairs; and
- (b) have regard to the need for appointing persons disadvantaged by unfair discrimination.

(5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise.

Chairperson

15. (1) Whenever necessary the Minister must appoint a member of the Board as the Chairperson of the Board.

(2) The Chairperson is appointed for a period as may be determined by the Minister which may, in the case of a member referred to in section 12 (1) (a), not extend beyond his or her term as a member.

(4) The Minister may appoint a member of the Board as acting chairperson of the Board if –

- (a) the Chairperson is absent for a substantial period; or
- (b) the appointment of a Chairperson is pending.

Term of office

16. Members of the Board referred to in section 12 (1) (a) –

- (a) are appointed for a period of three years;
- (b) are eligible for re-appointment for one additional term of three years, subject to section 20; and
- (c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.

Conditions of appointment

17. (1) The Minister must determine the conditions of appointment of members of the Board referred to in section 12 (1) (a).

(2) The conditions of appointment of members who are not in the employ of a national, provincial or local organ of state may provide for the payment of remuneration and allowances determined by the Minister in concurrence with the Minister for Finance. Such remuneration and allowances are payable by the Institute.

(3) Members who are in the employ of a national, provincial or local organ of state are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by the Institute.

(4) Members are appointed part-time.

Conduct of members

18. (1) A member of the Board –

- (a) must perform the functions of office in good faith and without favour or prejudice;
- (b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that Board member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;
- (c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and
- (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Institute.

(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

19. (1) A member of the Board referred to in section 12 (1) (a) ceases to be a member when that person –

- (a) is no longer eligible in terms of section 13 to be a member;
- (b) resigns; or
- (c) is removed from office in terms of section 20.

(2) A member may resign by giving at least three month's written notice to the Minister, but the Minister may accept a shorter period in a specific case.

Removal from office

20. (1) The Minister may remove a member of the Board referred to in section 12 (1) (a) from office, but only on the ground of –

- (a) misconduct, incapacity or incompetence; or
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on good cause shown.

(2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.

(3) The Minister may suspend a member under investigation in terms of this section.

Filling of vacancies

21. A vacancy in the Board is filled –

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 15 (1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section 12 (1) (a), by following the procedure set out in section 14.

(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating Chairperson or member.

Part 3: Operating procedures of Board

Meetings

22. (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a Board meeting at a time and place set out in the request.

(2) The Chairperson presides at meetings of the Board, but if absent from a meeting, the members present must elect another member to preside at the meeting.

Procedures

23. (1) The Board may determine its own procedures subject to the other provisions of this Act.

(2) The Board must keep records of its proceedings and of decisions taken.

Quorum and decisions

24. (1) A majority of the members of the Board serving at any relevant time constitutes a quorum for a meeting of the Board.

(2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

Committees

25. (1) The Board may establish one or more committees to assist it in the performance of its functions or the exercise of its powers.

(2) When appointing members to a committee, the Board is not restricted to members of the Board.

(3) The Board –

- (a) must determine the functions of a committee;
- (b) must appoint the chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time; and
- (d) must determine a committee's procedure.

(4) The Board may dissolve a committee at any time.

(5) Section 17 read with the necessary modifications as the context may require, applies to the conditions of appointment of committee members. A staff member of the Institute appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

Delegation of powers and duties

26. (1) When necessary for the proper performance of its functions, the Board may, subject to subsection (2), delegate any of its powers or duties to –

- (a) a member of the Board;
- (b) a committee referred to in section 25; or
- (c) a staff member of the Institute.

(2) The following powers and duties may not be delegated by the Board:

- (a) the appointment or re-appointment of a person as the Chief Executive Officer in terms of section 27 (1) or (2);
- (b) the determination of the conditions of service of the Chief Executive Officer in terms of section 27 (3); and
- (c) the determination of an employment policy in terms of section 28 (1); and
- (d) the setting of financial limits in terms of section 28 (2) (a) or (3).

(3) A delegation in terms of subsection (1) –

- (a) is subject to any limitations, conditions and directions the Board may impose;
- (b) must be in writing;
- (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the carrying out of the delegated duty; and
- (d) does not prevent the exercise of the delegated power or the carrying out of the delegated duty by the Board.

(4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Part 4: Administration of Institute**Appointment of Chief Executive Officer**

27. (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Institute.

(2) The Chief Executive Officer –

- (a) is appointed for a term not exceeding three years; and
- (b) may be re-appointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding three years.

(3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.

(4) The Chief Executive Officer –

- (a) is responsible for the management of the Institute;
- (b) must perform such duties and may exercise such powers as the Board may delegate to the Chief Executive Officer; and
- (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such frequency and in such manner, as the Board may determine.

(5) Whenever the Chief Executive Officer is for any reason absent or unable to carry out his or her functions, or whenever there is a vacancy in the office of the Chief Executive Officer, the Chairperson of the Board may appoint another employee of the Institute as acting Chief Executive Officer for a period not exceeding six months. Whilst acting as Chief Executive Officer, such employee –

- (a) has the powers and duties of the Chief Executive Officer; and

- (b) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).

Employment of staff

28. (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Institute.

(2) The Chief Executive Officer –

- (a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Institute; and
(b) may appoint persons in posts on the staff establishment.

(3) An employee of the Institute is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of and within the financial limits set by the Board.

(4) (a) A person in the service of another organ of state may be seconded to the Institute by agreement between the Chief Executive Officer and such organ of state.

(b) Persons seconded to the Institute perform their functions under the supervision of the Chief Executive Officer.

(5) A person in the service of the Institute may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

Part 5: Financial matters

Financial accountability

29. (1) The Institute is a public entity for the purposes of the Public Finance Management Act, and must to that end comply with the provisions of that Act.

(2) Despite section 49 (2) (a) of the Public Finance Management Act, the Chief Executive Officer is the accounting authority of the Institute.

Funding

30. The funds of the Institute consist of –

- (a) income derived by it from the performance of its functions and the exercise of its powers;
- (b) money appropriated for its purposes by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed by it in terms of section 11 (g);
- (f) income derived by it from investments; and
- (g) money derived from any other source, subject to the Public Finance Management Act.

Investments

31. The Institute may invest any of its funds not immediately required –

- (a) subject to any investment policy that may be prescribed in terms of section 7 (4) of the Public Finance Management Act; and
- (b) in such a manner as may be approved by the Minister.

Part 6: National botanic gardens

Declaration

32. (1) The Minister, acting with the concurrence of the Cabinet member responsible for the administration of the land in question, may by notice in the *Government Gazette* declare any state land described in the notice as –

- (a) a national botanic garden; or

(b) a part of an existing national botanic garden.

(2) The Minister, acting in accordance with an agreement with the owner of land described in the agreement, may by notice in the *Government Gazette* declare that land as –

- (a) a national botanic garden; or
- (b) a part of an existing national botanic garden.

(3) A notice in terms of subsection (1) (a) or (2) (a) must assign a name to the national botanic garden.

(4) The sites described in Schedule 1 of the Forest Act, 1984 (Act No.122 of 1984), must be regarded as having been declared as a national botanic garden in terms of this section.

Amendment or withdrawal of declarations

33. (1) The Minister may by notice in the *Government Gazette* –

- (a) amend or withdraw a notice referred to in section 32, subject to subsection (2) of this section; or
- (b) amend the name assigned to a national botanic garden.

(2) The declaration of state land as a national botanic garden, or part of an existing national botanic garden, may not be withdrawn and no part of a national botanic garden on state land may be excluded from it except by resolution of each House of Parliament.

Part 7: General

Minister's supervisory powers

4. (1) The Minister –
- (a) must monitor the exercise by the Institute of its functions and powers;

- (b) may determine norms and standards for the exercise by the Institute of its functions and powers;
- (c) may issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;
- (d) must determine limits on fees charged by the Institute in the exercise of its functions and powers; and
- (e) may identify land for new botanic gardens and extensions to existing botanic gardens

(2) The Institute must perform its functions and exercise its powers subject to any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

Absence of functional Board

35. In the event of the absence of a functional Board, the functions and powers of the Board revert to the Minister who, in such a case, must perform those functions and may exercise those powers until the Board is functional again.

CHAPTER 3

BIODIVERSITY PLANNING AND MONITORING

Purpose of this Chapter

36. (1) The purpose of this Chapter is –
- (a) to provide for integrated and co-ordinated biodiversity planning;
 - (b) to provide for monitoring the conservation status of various components of South Africa's biodiversity ; and
 - (c) to promote biodiversity research.

(2) Organs of state charged with biodiversity planning in terms of this Chapter and with land use planning in terms of the Land Use Management Act, 2003, must exercise their respective functions in co-operation with each other.

Part 1: Biodiversity planning

National biodiversity framework

37. (1) The Minister –
- (a) must prepare and adopt a national biodiversity framework within three years of the date on which this section took effect;
 - (b) must monitor implementation of the framework;
 - (c) must review the framework at least every five years; and
 - (d) may, when necessary, amend the framework.

(2) The Minister must publish the national biodiversity framework and each amendment of the framework by notice in the *Government Gazette*.

Contents of national biodiversity framework

38. (1) The national biodiversity framework must –
- (a) provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, other stakeholders and the public;
 - (b) be consistent with –
 - (i) this Act;
 - (ii) the national environmental principles; and
 - (iii) any relevant international agreements binding on the Republic; and
 - (c) reflect regional co-operation on issues concerning biodiversity management in Southern Africa.

(2) The national biodiversity framework may determine norms and standards for provincial and municipal environmental conservation plans.

Bioregions and bioregional plans

39. (1) The Minister may by notice in the *Government Gazette* –

- (a) specify a geographic area of any scale that contains whole or several nested ecosystems and which can be characterised by its landforms, vegetation cover, human culture and history, as a bioregion for the purposes of this Act; and
- (b) publish a plan for the management of biodiversity in such region.

(2) The Minister may specify a bioregion and publish a bioregional plan for that region either –

- (a) on own initiative but after consulting the MEC for environmental affairs in the relevant province; or
- (b) at the request of a province or municipality.

(3) Any person or organ of state, on request by the Minister, may assist in the preparation of a bioregional plan.

(4) The Minister –

- (a) may enter into an agreement with a neighbouring country to secure the effective implementation of the plan; and
- (b) must submit to Parliament a copy of any agreement entered into in terms of paragraph (a).

Contents of bioregional plans

40. A bioregional plan must –

- (a) contain measures for the effective management of biodiversity in the region in which the plan applies;
- (b) provide for monitoring of the plan; and
- (c) be consistent with –
 - (i) this Act;
 - (ii) the national environmental principles;
 - (iii) the national biodiversity framework;

- (iv) the directive principles set out in any legislation regulating land use management, land development and spatial planning administered by the Cabinet member responsible for land affairs; and
- (v) any relevant international agreements binding on the Republic.

Review and amendment of bioregional plans

41. (1) The Minister must review a bioregional plan published in terms of section 39 (1) (b) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.

(2) The Minister may, when necessary, by notice in the *Government Gazette*, amend a bioregional plan or the boundaries of the bioregion in which the plan applies.

Biodiversity management plans

42. (1) Any person, organisation or organ of state desiring to contribute to biodiversity management, may submit to the Minister, for the Minister's approval, a draft management plan for –

- (a) an indigenous listed species listed in terms of section 50;
- (b) an indigenous species not listed in terms of section 50 but which does warrant special conservation attention;
- (c) a migratory species to give effect to the Republic's obligations in terms of an international agreement binding on the Republic; or
- (d) a threatened ecosystem.

(2) Before approving a draft biodiversity management plan, the Minister must identify a suitable person, organisation or organ of state which is willing to be responsible for the implementation of the plan.

(3) The Minister must –

- (a) publish by notice in the *Government Gazette* a biodiversity management plan approved in terms of subsection (1);

- (b) determine the manner of implementation of the plan; and
- (c) assign responsibility for the implementation of the plan to the person, organisation or organ of state identified in terms of subsection (2).

Contents of biodiversity management plans

43. A biodiversity management plan must –

- (a) be aimed at ensuring the long term survival in nature of the species or ecosystem to which the plan relates; and
- (b) be consistent with –
 - (i) this Act;
 - (ii) the national environmental principles;
 - (iii) the national biodiversity framework;
 - (iv) any applicable bioregional plan;
 - (v) any plans issued in terms of Chapter 3 of the National Environmental Management Act;
 - (vi) any municipal integrated development plans;
 - (vii) any other plans prepared in terms of national or provincial legislation that are affected; and
 - (viii) any relevant international agreements binding on the Republic.

Review and amendment of biodiversity management plans

44. (1) The Minister must review a biodiversity management plan published in terms of section 42 (3) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.

(2) The Minister, either on own initiative or on request by an interested person, organisation or organ of state, may by notice in the *Government Gazette* amend a biodiversity management plan published in terms of section 42 (3).

(3) Before amending a biodiversity management plan, the Minister must consult –

- (a) the person, organisation or organ of state implementing the plan; and
- (b) any organ of state whose activities are affected by the implementation of the plan.

Consultation

45. Before adopting or approving the national biodiversity framework, a bioregional plan or a biodiversity management plan, or any amendment to such a plan, the Minister must follow a consultative process in accordance with sections 95 and 96.

Part 2: Co-ordination and alignment of plans, monitoring and research

Co-ordination and alignment of biodiversity plans

46. (1) The national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of this Chapter must be aligned with –

- (a) any environmental implementation or environmental management plans prepared in terms of Chapter 3 of the National Environmental Management Act;
- (b) any integrated development plans adopted by municipalities in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (c) any spatial development frameworks in terms of any legislation regulating land use management, land development and spatial planning administered by the Cabinet member responsible for land affairs; and
- (d) any other plans prepared in terms of national or provincial legislation that are affected.

(2) An organ of state that must prepare an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000, must –

- (a) align its plan with the national biodiversity framework and any applicable bioregional plan;

- (b) incorporate into that plan those provisions of the national biodiversity framework or a bioregional plan that specifically apply to it; and
 - (c) demonstrate in its plan how the national biodiversity framework and any applicable bioregional plan will be implemented by that organ of state or municipality.
- (3) The Institute may –
- (a) assist the Minister and others involved in the preparation of the national biodiversity framework, a bioregional plan or a biodiversity management plan to comply with subsection (1); and
 - (b) make recommendations to organ of states or municipalities referred to in subsection (2) to align their plans referred to in that subsection with the national biodiversity framework and any applicable bioregional plan.

Monitoring

47. (1) The Minister must for the purposes of this Chapter designate monitoring mechanisms, and set indicators, to determine –
- (a) the conservation status of various components of South Africa's biodiversity; and
 - (b) any negative and positive trends affecting the conservation status of the various components.
- (2) The Minister may require any person, organisation or organ of state involved in terms of subsection (1) in monitoring the matters referred to in that subsection, to report regularly to the Minister on the results of such monitoring measured against the predetermined indicators.
- (3) The Minister must –
- (a) annually report to Parliament on the information submitted to the Minister in terms of subsection (2); and
 - (b) make such information publicly available.

Research

48. (1) The Minister must promote research by the Institute and other institutions on biodiversity conservation, including the sustainable use, protection and conservation of indigenous biological resources.

(2) Research on biodiversity conservation may include –

- (a) the collection and analysis of information about –
 - (i) the conservation status of the various components of biodiversity;
 - (ii) negative and positive trends affecting the conservation status of various components; and
 - (iii) threatening processes or activities likely to impact on biodiversity conservation;
- (b) the assessment of strategies and techniques for biodiversity conservation;
- (c) the determination of biodiversity conservation needs and priorities; and
- (d) the sustainable use, protection and conservation of indigenous biological resources.

CHAPTER 4**THREATENED OR PROTECTED SPECIES****Purpose of this Chapter**

49. The purpose of this Chapter is –

- (a) to provide for the protection of species that are threatened or in need of national protection to ensure their survival in the wild;
- (b) to give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species; and
- (c) ensure that the commercial utilization of biodiversity is managed in an ecologically sustainable way.

Part 1: Protection of threatened or protected species**Listing of species that are threatened or in need of national protection**

50. (1) The Minister may by notice in the *Government Gazette* publish a list of –

- (a) critically endangered species;
- (b) endangered species;
- (c) vulnerable species; and
- (d) protected species.

(2) The Minister must regularly review the lists published in terms of subsection (1).

Restricted activities involving listed threatened or protected species

51. (1) No person may without a permit issued in terms of Chapter 7 carry out a restricted activity involving a specimen of a listed threatened or protected species.

(2) The Minister may by notice in the *Government Gazette* prohibit, or prohibit without a permit issued in terms of Chapter 7, the carrying out of any activity –

- (a) which is of a nature that may negatively impact on the survival of a listed threatened or protected species; and
- (b) which is specified in the notice.

Amendment of notices

52. The Minister may by notice in the *Government Gazette* amend or repeal any notice published in terms of section 50 (1) or 51 (2).

Part 2: Trade in listed threatened or protected species**Functions of Minister**

53. The Minister –

- (a) must monitor –
 - (i) compliance with section 51 (1) insofar as trade in specimens of listed threatened or protected species is concerned; and

- (ii) compliance in the Republic with an international agreement regulating international trade in specimens of endangered species which is binding on the Republic;
- (b) must consult the scientific authority on issues relating to trade in specimens of endangered species regulated by such an international agreement;
- (c) must prepare and submit annual and other reports and documents in accordance with the Republic's obligations in terms of such an international agreement;
- (d) may provide administrative and technical support services and advice to organs of state to ensure the effective implementation and enforcement in the Republic of such an international agreement;
- (e) may assist in the co-ordination of issues relating to meetings of the parties to such an international agreement, and attend such meetings on behalf of the Republic;
- (f) may make information and documentation relating to such an international agreement publicly available; and
- (g) may prescribe a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities.

Establishment of scientific authority

54. (1) The Minister must establish a scientific authority for purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species.

(2) The Institute must provide logistical, administrative and financial support for the proper functioning of the scientific authority.

Functions of scientific authority

55. (1) The scientific authority must –

- (a) monitor in the Republic –
 - (i) the conservation status in the wild of listed threatened or protected species; and

- (iii) the legal and illegal trade in specimens of listed threatened or protected species;
 - (b) advise the Minister and any other interested organs of state on matters it monitors;
 - (c) make recommendations to an issuing authority on applications for permits referred to in section 51 (1) or (2);
 - (d) make non-detriment findings on the impact of actions relating to the international trade in specimens of endangered species;
 - (e) advise the Minister on –
 - (i) the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities;
 - (ii) whether an institution, operation or facility meets the criteria for producing species considered to be bred in captivity or artificially propagated;
 - (iii) the choice of a rescue centre or other facility for the disposal of forfeited specimens;
 - (iv) any amendments to a notice published in terms of section 50 (1) or 51 (2);
 - (v) the nomenclature of species; or
 - (vi) any other matter of a specialised nature;
 - (f) assist the Minister or an environmental management inspector in the identification of specimens for the purposes of enforcing the provisions of this Act;
 - (g) issue certificates in which the identification of a specimen is verified as being taxonomically accurate;
 - (h) perform any other function that may be –
 - (i) prescribed; or
 - (ii) delegated to it by the Minister in terms of section 47D of the National Environmental Management Act; and
 - (i) deal with any other matter necessary for or reasonably incidental to its functions.
- (2) In performing its functions, the scientific authority must –
- (a) base its findings, recommendations and advice on a scientific and professional review of available information; and

- (b) consult, when necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations or giving any advice.

Annual non-detriment findings

56. (1) The scientific authority must publish by notice in the *Government Gazette* any annual non-detriment findings on trade in specimens of endangered species in accordance with an international agreement regulating international trade in specimens of endangered species which is binding on the Republic.

(2) Any interim findings of the scientific authority must be published in the *Government Gazette* for public information within 30 days after the decision has been made.

Part 3: General provisions

Consultation

56. Before publishing a notice in terms of section 50 (1) or 51 (2), or amending or repealing such a notice in terms of section 52, the Minister must follow a consultative process in accordance with sections 95 and 96.

Regulations

58. The Minister may in terms of section 93 make regulations –

- (a) designating organs of state which will be issuing authorities for permits referred to in section 51 (1) or (2);
- (b) to facilitate the implementation and enforcement of section 51 (1) or any notice published in terms of section 51 (2);
- (c) concerning the carrying out of a restricted activity involving a specimen of a listed threatened or protected species;
- (d) to facilitate the implementation and enforcement of an international agreement regulating international trade in specimens of endangered species which is binding on the Republic;

- (e) that may be necessary to minimise the threat to the survival in the wild of a listed threatened or protected species; or
- (f) to ensure that the commercial utilization of biodiversity is managed in an ecologically sustainable way.

CHAPTER 5

ALIEN AND INVASIVE SPECIES

Purposes of Chapter

59. (1) The purpose of this Chapter is –

- (a) to prevent where possible the introduction and spread of alien species and invasive species to ecosystems and habitats where they do not naturally occur;
- (b) to manage and control alien species and invasive species to prevent or minimize harm to the environment and to biodiversity in particular; and
- (c) to eradicate alien species and invasive species from ecosystems and habitats where they may harm such ecosystems or habitats.

(2) The provisions of this Chapter must –

- (a) be read without prejudice to the provisions of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983); and
- (b) be implemented in co-operation with the Department of Agriculture in accordance with an agreement between the Minister and the Cabinet member responsible for agriculture.

(3) For the purposes of this Chapter, “specimen” has the meaning assigned to it in paragraphs (a) and (b) of the definition of “specimen” in section 1 (1).

Part 1: Alien species

Restricted activities involving alien species

60. (1) No person may without a permit issued in terms of Chapter 7 carry out a restricted activity involving a specimen of an alien species.

(2) A permit in terms of subsection (1) may be issued only after any prescribed assessment of risks and potential impacts on biodiversity referred to in section 74 (e) has been carried out.

Exemptions

61. (1) Section 60 does not apply to an alien species which immediately before that section took effect was lawfully utilised in the Republic for the production of agricultural products.

(2) The Minister may by notice in the *Government Gazette* exempt from the provisions of section 60 –

- (a) any alien species specified in the notice; or
- (b) any alien species of a category specified in the notice.

(3) Any person may without a permit mentioned in section 60 (1) carry out a restricted activity involving a specimen of an exempted alien species referred to in subsection (1) or (2) of this section.

Restricted activities involving certain alien species totally prohibited

62. (1) The Minister may by notice in the *Government Gazette* publish a list of those alien species in respect of which no permit mentioned in section 60 (1) may be issued.

(2) No person may carry out any restricted activity involving a specimen of an alien species listed in terms of subsection (1).

(3) The Minister must regularly review a list published in terms of subsection (1).

Amendment of notices

63. The Minister may by notice in the *Government Gazette* amend or repeal any notice published in terms of section 61 (2) or 62 (1)

Duty of care relating to alien species

64. (1) A person authorised by permit in terms of section 60 (1) to carry out a restricted activity involving a specimen of an alien species must –

- (a) comply with the conditions subject to which the permit has been issued; and
- (b) take all reasonable steps to prevent or minimize harm to biodiversity.

(2) A competent authority may, in writing, direct any person who has failed to comply with subsection (1) of this section, or who has contravened section 60 (1) or 62 (2), to take such steps –

- (a) as may be necessary to remedy any harm to biodiversity caused by the actions of that person; and
- (b) as may be specified in the directive.

(3) If that person fails to comply with a directive issued in terms of subsection (2), the competent authority may –

- (a) implement the directive; and
- (b) recover from that person all costs reasonably incurred by the competent authority in implementing the directive.

(4) Should an alien species establish itself in nature as an invasive species because of the actions of a specific person, a competent authority may hold that person liable for any costs incurred in the control and eradication of that species.

Part 2: Invasive species**List of invasive species**

65. (1) The Minister may by notice in the *Government Gazette* publish a list of invasive species to which this Chapter applies.

- (2) The Minister must regularly review a list published in terms of subsection (1).

Restricted activities involving listed invasive species

66. (1) No person may without a permit issued in terms of Chapter 7 carry out a restricted activity involving a specimen of a listed invasive species.

(2) A permit in terms of subsection (1) may be issued only after any prescribed assessment of risks and potential impacts on biodiversity referred to in section 74 (e) has been carried out.

Amendment of notices

67. The Minister may by notice in the *Government Gazette* amend or repeal any notice published in terms of section 65 (1).

Duty of care relating to listed invasive species

68. (1) A person authorised by permit in terms of section 66 (1) to carry out a restricted activity involving a specimen of a listed invasive species must –

- (a) comply with the conditions subject to which the permit has been issued; and
- (b) take all reasonable steps to prevent or minimize harm to biodiversity.

(2) A person who is the owner of land on which a listed invasive species occurs must –

- (a) notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;
- (b) take steps to control and eradicate listed invasive species and to prevent it from spreading; and
- (c) take all other reasonable steps to prevent or minimize harm to biodiversity.

(3) A competent authority may, in writing, direct any person who has failed to comply with subsection (1) or (2), or who has contravened section 66 (1), to take such steps –

- (a) as may be necessary to remedy any harm to biodiversity caused by –
 - (i) the actions of that person; or
 - (ii) the occurrence of the listed invasive species on land of which that person is the owner; and
- (b) as may be specified in the directive.

(4) If that person fails to comply with a directive issued in terms of subsection (3), the competent authority may –

- (a) implement the directive; and
- (b) recover all costs reasonably incurred by the competent authority in implementing the directive–
 - (i) from that person; or
 - (ii) proportionally from that person and any other person who benefited from implementation of the directive.

Requests to competent authorities to issue directives

69. (1) Any person may request a competent authority, in writing, to issue a directive in terms of section 68 (3).

(2) The competent authority must reply to the request, in writing, within 30 days of receipt of the request.

(3) Should the competent authority fail to respond to the request within the stated period or refuses the request, the person who made the request may apply to a court for an order directing the competent authority to issue the directive.

Control and eradication of listed invasive species

70. (1) Control and eradication of a listed invasive species must be carried out by means of such methods as are appropriate for the species concerned and the environment in which it occurs.

(2) Any action taken to control and eradicate a listed invasive species must be executed with caution and in a manner that will cause the least possible harm to biodiversity and damage to the environment.

(3) The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.

Invasive species control plans of organs of state

71. (1) The management authority of a protected area preparing a management plan for the area in accordance with section 59 of the National Environmental Management: Protected Areas Act, 2003, must incorporate into the management plan an invasive species control and eradication strategy.

(2) All organs of state in all spheres of government must prepare an invasive species monitoring, control and eradication plan for land under their control, as part of their environmental plans in accordance with section 11 of the National Environmental Management Act. The invasive species control and eradication plans of municipalities must be part of their integrated development plans.

(3) The Minister may request the Institute to assist municipalities in complying with their duties in terms of subsection (2).

(4) An invasive species control and eradication plan must include –

- (a) a detailed list and description of any listed invasive species occurring on the relevant land;
- (b) a description of the parts of that land that are infested with such listed invasive species;
- (c) an assessment of the extent of such infestation;
- (d) a status report on the efficacy of previous control and eradication measures; and
- (e) the current measures to control and eradicate such invasive species.

Invasive species status reports

72. (1) The management authority of a protected area must at regular intervals prepare and submit to the Minister or the MEC for environmental affairs in the province a report on the status of any listed invasive species that occurs in that area.

(2) A status report must include –

- (a) a detailed list and description of all listed invasive species that occur in the protected area;
- (b) a detailed description of the parts of the area that are infested with listed invasive species;
- (c) an assessment of the extent of such infestation; and
- (d) a report on the efficacy of previous control and eradication measures.

Part 3: General provisions

Consultation

73. Before publishing a notice in terms of section 61 (2), 62 (1) or 65 (1), or amending or repealing such a notice in terms of section 63 or 67, the Minister must follow a consultative process in accordance with sections 95 and 96.

Regulations

74. The Minister may in terms of section 93 make regulations –

- (a) designating organs of state which will be issuing authorities for permits referred to in section 60 (1) or 66 (1);

- (b) designating organs of state which will be competent authorities for implementing and enforcing the provisions of this Chapter;
- (c) facilitating the implementation and enforcement of section 60, 62 or 66;
- (d) prescribing compulsory conditions for any permit issued in terms of section 60 (1) or 66 (1);
- (e) concerning the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; and
- (f) relating to the control and eradication of listed invasive species.

CHAPTER 6

BIOPROSPECTING, ACCESS AND BENEFIT-SHARING

Purpose of this Chapter

75. (1) The purpose of this Chapter is –

- (a) to regulate bioprospecting involving indigenous biological resources; and
- (b) to ensure the equitable sharing of benefits arising from the commercialisation through bioprospecting of traditional uses or knowledge of indigenous biological resources, with persons or communities practising those traditional uses or knowledge.

(2) In this Chapter “**indigenous biological resources**” –

- (a) includes –
 - (i) any indigenous animals, plants and other organisms, including any indigenous animals, plants or other organisms cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology;
 - (ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any such indigenous animals, plants or other organisms; and
 - (iii) any exotic animals, plants or other organisms that, through the use of biotechnology, have been altered with any genetic material or chemical

compound found in any such indigenous animals, plants or other organisms; but

- (b) excludes –
 - (i) genetic material of human origin; and
 - (ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph (a) (iii).

Regulation of bioprospecting

76. No person may without a permit issued in terms of Chapter 7 engage in bioprospecting involving indigenous biological resources.

Benefit-sharing agreements

77. (1) No holder of a permit referred to in section 76 may for the purpose of bioprospecting apply or exploit any traditional uses or knowledge of any specific indigenous biological resource, unless that permit holder has entered into a benefit-sharing agreement with the person or community practicing that traditional use or knowledge.

(2) The person or community practicing that traditional use or knowledge may not unreasonably refuse to enter into such agreement with a permit holder if that traditional use or knowledge about such indigenous biological resources is in the public domain and not protected by legislation on intellectual property.

- (3) A benefit-sharing agreement must –
 - (a) be in a prescribed format;
 - (b) determine –
 - (i) the type of indigenous biological resources to which the relevant bioprospecting relates;
 - (ii) the area in which the indigenous biological resources will be collected;
 - (iii) the quantity of indigenous biological resources that will be collected; and

- (iv) the anticipated profits, revenues or other benefits that may accrue from such bioprospecting;
 - (c) set out the manner in which and the extent to which the traditional use of, or knowledge about, that indigenous biological resource is to be applied or exploited for purposes of such bioprospecting;
 - (d) set out the manner in which and the extent to which the person or community practising that traditional use or knowledge will share in any profits, revenues or other benefits that may arise from the commercialisation through bioprospecting; of such traditional uses or knowledge; and
 - (e) particulars of any such benefits.
- (4) A benefit-sharing agreement –
- (a) must be submitted to the Minister for approval; and
 - (b) does not take effect unless approved by the Minister.

Non-transferability of benefit-sharing agreements

78. The rights and obligations of a party to a benefit-sharing agreement may not be transferred to another person, except with the written approval of the Minister.

Bioprospecting functions of Institute

79. The Institute –
- (a) on request by the Minister, must make an appropriate recommendation to the Minister relating to an application for approval of a benefit-sharing agreement;
 - (b) may engage the applicant and the other party on the terms and conditions of the agreement before making any recommendation to the Minister;
 - (c) may facilitate negotiations between the applicant and the other party and ensure that those negotiations are conducted on an equal footing;
 - (d) on request by the Minister, must ensure that the benefit-sharing arrangement agreed upon between the applicant and the other party is equitable; and
 - (e) must perform any other functions that may be prescribed.

Establishment of Bioprospecting Trust Fund

80. (1) A Bioprospecting Trust Fund is hereby established into which all moneys accruing in terms of benefit-sharing agreements to persons and communities referred to in section 77 (1) must be paid, and from which all payments to those beneficiaries must be made.

(2) All moneys paid into the bioprospecting trust fund is trust money within the meaning of section 13 (1) (f) (ii) of the Public Finance Management Act.

(3) The Director-General –

- (a) must manage the Fund in the prescribed manner; and
- (b) is accountable for the money in the Fund, subject to the Public Finance Management Act.

Regulations

81. The Minister may in terms of section 93 make regulations relating to –

- (a) designating organs of state which will be issuing authorities for permits referred to in section 76;
- (b) the form and contents of, and the requirements and criteria for, benefit-sharing agreements;
- (c) moneys payable in connection with benefit-sharing agreements; and
- (d) the administration of the Bioprospecting Trust Fund.

CHAPTER 7

PERMITS

Purpose of this Chapter

82. The purpose of this Chapter is to provide for and regulate the issue of permits authorising –

- (a) restricted activities involving specimens of –
 - (i) listed threatened or protected species in terms of section 51 (1);
 - (ii) alien species in terms of section 60 (1); or

- (iii) listed invasive species in terms of section 66 (1);
- (b) activities regulated in terms of a notice published in terms of section 51 (2); or
- (c) bioprospecting involving indigenous biological resources in terms of section 76.

Part 1: Permit system

Application for permits

83. (1) A person may apply for a permit by lodging an application on the prescribed form to the authority determined as the issuing authority for permits of the kind in question.

(2) An issuing authority may –

- (a) request the applicant to furnish any additional information before it considers the application;
- (b) require the applicant to comply with such reasonable conditions as it may impose before it grants the application;
- (c) issue a permit unconditionally or issue it subject to conditions; or
- (d) refuse a permit.

(3) A decision of the issuing authority to issue or refuse a permit or to issue it subject to conditions, must be consistent with –

- (a) the applicable provisions of this Act;
- (b) the national biodiversity framework;
- (c) any other relevant plans adopted or approved in terms of Chapter 3;
- (d) the national environmental principles;
- (e) any applicable international agreements binding on the Republic; and
- (f) any requirements that may be prescribed.

(4) If compulsory conditions are prescribed for any kind of permit, an issuing authority may not issue a permit of that kind otherwise than subject to those conditions.

(5) If an application is rejected, the issuing authority must within a reasonable time give reasons for the decision to the applicant in writing.

Risk assessments and expert evidence

84. Before issuing a permit, the issuing authority may in writing require the applicant to furnish it, at the applicant's expense, with an independent risk assessment or expert evidence as the issuing authority may determine.

Permits

85. (1) A permit must specify –

- (a) the species for which the permit is issued;
- (b) the activity for which the permit is issued;
- (c) the period for which the permit will remain valid; and
- (d) the conditions subject to which it is issued.

(2) A permit issued in terms of section 83 does not absolve the holder or any other person from complying with the provisions of any other applicable legislation.

Additional requirements relating to alien and invasive species

86. An issuing authority may issue a permit for a restricted activity involving a specimen of an alien species or of a listed invasive species only if –

- (a) adequate procedures have been followed to assess the risks and potential impacts associated with the restricted activity;
- (b) the relevant species has been found to have negligible or no invasive potential;
- (c) the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment or biodiversity; and
- (d) it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.

Integrated permits

87. (1) If the carrying out of an activity mentioned in section 82 is also regulated in terms of other legislation, the authority empowered under that other legislation to authorise that activity and the issuing authority empowered under this Act to issue permits in respect of that activity may –

- (a) exercise their respective powers jointly; and
- (b) issue a single integrated permit instead of a separate permit and authorisation.

(2) An authority empowered under that other legislation may issue an integrated permit for the activity in question if that authority is designated in terms of this Act also as an issuing authority for permits in respect of that activity.

(3) An integrated permit may be issued only if –

- (a) the relevant provisions of this Act and that other legislation have been complied with; and
- (b) the permit specifies –
 - (i) the respective provisions in terms of which it has been issued; and
 - (ii) the authority or authorities that have issued it.

Cancellation of permits

88. An issuing authority which issued a permit may cancel the permit if –

- (a) the permit was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant; or
- (b) the applicant or permit holder has contravened or failed to comply with –
 - (i) any condition of the permit;
 - (ii) any provision of this Act or other legislation governing the permitted activity; or
 - (iii) any foreign law governing the permitted activity.

Part 2: Appeals

Appeals to be lodged with Minister

89. (1) An applicant who feels aggrieved by the decision of an issuing authority in terms of section 83 (2) (c) or (d), or a permit holder whose permit has been cancelled in terms of section 88, may lodge with the Minister an appeal against the decision.

(2) The Minister must either –

- (a) consider and decide the appeal;
- (b) redirect the appeal to the MEC for environmental affairs in the relevant province to consider and decide the appeal; or
- (c) designate a panel of persons to consider and decide the appeal.

(3) An appeal does not suspend the decision against which the appeal is lodged unless the Minister, MEC or appeal panel considering the appeal directs otherwise.

Appeal panels

90. (1) If the Minister decides that the appeal must be considered and decided by an appeal panel, the Minister must designate –

- (a) a number of persons with appropriate knowledge as members of the panel; and
- (b) one of the panel members as the presiding member.

(2) The presiding member of the appeal panel decides when and where the panel meets.

(3) An appeal panel must –

- (a) consider and decide the appeal in accordance with a prescribed procedure; and
- (b) keep a record of its proceedings and decisions.

Decisions

91. (1) The Minister, MEC or appeal panel considering an appeal may –

- (a) either uphold or refuse the appeal; and

- (b) when upholding or refusing the appeal, make such other orders as may be appropriate.
- (2) If the appeal is upheld against –
- (a) a refusal to issue a permit, the Minister, MEC or appeal panel may issue the permit unconditionally or subject to conditions;
 - (b) a condition subject to which the permit was issued, the Minister, MEC or appeal panel may withdraw or amend the condition; or
 - (c) the cancellation of a permit, the Minister, MEC or appeal panel may restore the permit.

Part 3: General provisions

Regulations

- 92.** The Minister may in terms of section 93 make regulations prescribing –
- (a) the conditions subject to which issuing authorities may issue permits in terms of this Act;
 - (b) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for permits;
 - (c) the powers of issuing authorities when considering and deciding such applications;
 - (d) the conditions with which applicants must comply before or after the lodging of their applications;
 - (e) appropriate consultation processes;
 - (f) the authorities whose consent is required before permits may be issued;
 - (g) the factors that must be taken into account when deciding applications;
 - (h) the circumstances in which applications must be refused or may be approved;
 - (i) the form and contents of permits;
 - (j) the conditions on which permits must be issued, or guidelines as to determining conditions on which permits may be issued;
 - (k) methods, procedures and conditions of enforcing compliance with the conditions of a permit;
 - (l) the giving of security in respect of any obligation that may arise from carrying out

- a restricted activity authorised by a permit, and the form of such security;
- (m) the period of validity of permits;
 - (n) the transferability of permits;
 - (o) the duties of the permit holders;
 - (p) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals; and
 - (q) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 8

ADMINISTRATION OF ACT

Part 1: Regulations

Regulations by Minister

93. (1) The Minister may make regulations relating to –
- (a) the matters listed in sections 8 (5), 58, 74, 81 and 92 and;
 - (b) any other matter that may be prescribed in terms of this Act; and
 - (c) any other matter that may be necessary to facilitate the implementation of this Act.
- (2) Any regulation with direct fiscal implications may be made only with the concurrence of the Minister of Finance.
- (3) Before publishing any regulations in terms of subsection (1), or any amendment to the regulations, the Minister must follow a consultative process in accordance with sections 95 and 96.
- (4) Subsection (3) need not be applied to a minor or a mere technical change to the regulations.

General

94. (1) Regulations made in terms of section 93 may –
- (a) restrict or prohibit any act either absolutely or conditionally;
 - (b) apply –
 - (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas;
 - (ii) generally to all persons or only to a specified category of persons;
 - (iii) generally with respect to all species or only to a specified species or category of species; or
 - (iv) generally with respect to all permits or appeals or only to a specified category of permits or appeals; or
 - (c) differentiate between different –
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons;
 - (iii) species or categories of species; or
 - (iv) categories of permits or appeals.
- (2) Regulations made in terms of section 93 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to –
- (a) imprisonment for a period not exceeding five years;
 - (b) an appropriate fine; or
 - (c) both a fine and imprisonment.

Part 2: Consultation process**Consultation**

95. (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 96, the Minister must follow a consultative process as may be appropriate in the circumstances.
- (2) The Minister must, as may be appropriate in terms of subsection (1) –

- (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;
- (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult –
 - (i) the MEC for environmental affairs of each province that will be affected by the exercise of the power; and
 - (ii) allow public participation in the process in accordance with section 96.

Public participation

96. (1) The Minister must give notice of the proposed exercise of the relevant power –
- (a) in the *Government Gazette*; and
 - (b) in at least one newspaper distributed nationally, or if the exercise of the power will affect only a specific area, in at least one newspaper distributed in that area.
- (2) The notice must –
- (a) invite members of the public to submit to the Minister, within 21 days of publication of the notice in the *Government Gazette*, written representations on or objections to the proposed exercise of the power; and
 - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections.
- (3) The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.
- (4) The Minister must give due consideration to all representations or objections received or presented before exercising the power.

CHAPTER 9
OFFENCES AND PENALTIES

Offences

97. (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of –

- (a) section 51 (1), 60 (1), 62 (2), 66 (1) or 76;
- (b) a notice published in terms of section 51 (2); or
- (c) a directive issued in terms of section 64 (2) or 68 (3).

(2) A person who is the holder of a permit is guilty of an offence if that person –

- (a) contravenes or fails to comply with a provision of 64 (1) or 68 (1);
- (b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which the permit was issued; or
- (c) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b).

(3) A person is guilty of an offence if that person –

- (a) fraudulently alters any permit;
- (b) fabricates or forges any document for the purpose of passing it as a permit;
- (c) passes, uses, alters or has in possession any altered or false document purporting to be a permit; or
- (d) knowingly makes any false statement or report for the purpose of obtaining a permit.

Penalties

98. (1) Any person who is convicted of an offence in terms of section 97 is liable –

- (a) in the case of an offence involving a specimen of a listed threatened or protected species –
 - (i) on a first conviction, to a fine not exceeding R250 000 or imprisonment for a period not exceeding two years, or to both a fine and imprisonment; and

- (ii) on a second or subsequent conviction, to a fine not exceeding R500 000 or imprisonment for a period not exceeding five years, or to both a fine and imprisonment, or to imprisonment without the option of a fine; or
- (b) in case of any other offence, to a fine not exceeding R10 000 or imprisonment for a period not exceeding one year, or to both a fine and imprisonment.

CHAPTER 10 MISCELLANEOUS

Repeal of legislation

99. (1) The Forest Act, 1984 (Act No. 122 of 1984), is hereby repealed

Savings

100. (1) Anything done in terms of the Forest Act, 1984 (Act No. 122 of 1984), which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

(2) A person who immediately before the repeal of the Forest Act, 1984, by section 99 of this Act was –

- (a) a member of the board of the National Botanical Institute, becomes a member of the Board of the National Biodiversity Institute and remains such a member until the Minister appoints the members of the Board in terms of section 14;
- (b) the chief executive officer of the National Botanical Institute becomes the acting chief executive officer of the National Biodiversity Institute and remains the acting chief executive officer until the Board appoints a person as the chief executive officer of the Institute in terms of section 28; and
- (c) all staff members of the National Botanical Institute, including its chief executive officer, must be regarded as having been appointed in terms of section 29 as staff members of the National Biodiversity Institute subject to the same service conditions which applied to them immediately before the repeal of the Forest Act, 1984.

(3) Subsection (2) (c) does not affect pension, leave and other benefits which accrued to staff members referred to in that subsection before the repeal of the Forest Act, 1984, and such benefits must be respected as if there were no break in their service.

(4) As from the date of repeal of the Forest Act, 1984 –

- (a) all assets and liabilities and all rights and obligations of the National Botanical Institute are vested in the National Biodiversity Institute; and
- (b) any balance in the National Botanical Institute Fund referred to in section 64 of that Act must be paid to the National Biodiversity Institute.

Existing bioprospecting projects

101. (1) Any party involved at the commencement of Chapter 6 in a bioprospecting project to which section 77 applies, may despite that section continue with the project pending the negotiation and entry into force of an appropriate benefit-sharing agreement in terms of that Chapter.

(2) Subsection (1) lapses one year after Chapter 6 took effect.

Short title and commencement

102. (1) This Act is called the National Environmental Management: Biodiversity Act, 2003, and takes effect on a date determined by the President by proclamation.

(2) Different dates may in terms of subsection (1) be determined for different provisions of the Act.