

**REPUBLIC OF SOUTH AFRICA**

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**NATIONAL FORESTS AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75))*  
*(The English text is the official text of the Bill)*

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(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

## GENERAL EXPLANATORY NOTE:

[        ] Words in bold type in square brackets indicate omissions from existing enactments

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments

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## BILL

To amend the National Forests Act, 1998, so as to provide for a new Long Title; to provide for the amendment of the Arrangement of Sections; to provide for the amendment of definitions; to provide for the insertion of new definitions; to provide for public trusteeship of the nation's forestry resources; to provide for the assignment of administration, the delegation of powers and the assignment of duties to provincial Members of the Executive Council; to provide for the inventory of assignments and delegations; to provide for assignment between spheres of government; to provide for the legal effect of delegation of power; to provide for delegation proceedings to be in writing; to provide for a record of delegations; to provide for monitoring, evaluation and assessment and reporting; to provide for performance auditing; to provide for the national monitoring of provinces; to provide for the applicability of intergovernmental relations framework policy and legislation; to provide for categories, powers, functions and duties, as well as the dissolution and reconstitution of governance and other structures; to provide for the establishment, composition, powers, functions and duties of the Intergovernmental Forum on Forestry Resources; to provide for the establishment and functioning of the Forestry Resources Review Board; to provide for the submission of review applications to the Forestry Resources Review Board; to provide that decisions of the Forestry Resources Review Board are final; to provide for appeals against decision by the Forestry Resources Review Board to the High Court; to provide for public participation and coordination; to provide for administrative justice; to provide for the promotion of access to information; to provide that the Act, Regulations and Notices must be maintained and copies be made available; and to provide for matters connected therewith.

### Amendment of the Long Title of Act 84 of 1998

1. The Long Title of Act 84 of 1998 (hereinafter referred to as the "principal Act") is hereby amended by the substitution for the Long Title of the following:

**To reform the law on forests; to repeal certain laws, [and to provide for matters connected therewith.]to provide for public trusteeship of the nation's forestry**

resources; to provide for principles to guide decisions affecting forests; to make provision for the promotion and enforcement of sustainable forest management; to provide for the promotion of research; to provide for the duty to monitor forests and disseminate information; to provide for the prohibition on destruction of trees in natural forests and the power to set aside protected areas; to establish a procedure for declaring protected areas; to provide for the effect of setting aside protected areas and management of protected areas; to provide for the declaration of trees as protected; to make provision for a normal procedure for declaring protected trees; to provide for emergency procedure for protecting trees; to provide for the effect of declaration of protected trees and the registration against title deeds; to provide for the power to declare controlled forest areas and the right to apply for protection; to provide for access to State forests for recreation, education, culture or spiritual fulfilment; to make provision for regulation of access to State forests and access to forests other than State forests; to establish vesting of rights and activities which may be licensed in State forests; to provide for requirements for licensing; to provide for amendments, suspensions and cancellations; to provide for servitudes in State forests and leasing of State forests; to provide for agreements to sell forest produce in State forests; to provide for offers to enter into community forestry agreements; to provide for conclusion of community forestry agreements; to establish the content of community forestry agreements and the assistance for community forestry; to make provision for the establishment and objects of National Forests Advisory Council; to provide for the constitution of Council; to provide for conditions of appointment to Council; to provide for Committees of Council; to provide for Meeting of Council, funding of Council, staff of Council and report by Council; to provide for the establishment and objects of National Forest Recreation and Access Trust; to provide for the powers and duties of Minister as trustee, administration of Trust funds, to provide for reports by Minister as trustee; to provide for establishment of panel; to provide for development and implementation of policy; to provide for the assignment of administration, the delegation of powers and the assignment of duties to provincial Members of the Executive Council; to provide for the inventory of assignments and delegations; to provide for assignment between spheres of government; to provide for the legal effect of delegation of power; to provide for delegation proceedings to be in writing; to provide for a record of delegations; to provide for delegations of powers and assignment of duties to named officials and holders of office in the Department and to an organ of state or to a person who is not an organ of State; to provide for expropriation of property; to provide for reservation of State land for forestry; to provide for performance of functions on other land; to make provisions for extensions; to provide for the content of regulations and the procedure for making regulations; to provide for the transfer of officers and employees; to provide for penalties and compensatory orders in criminal proceedings; to provide for award of part of fine recovered to informant; to provide for offences relating to sustainable forest management, protection of forests and trees, use of forests, enforcement, and forest officers; to provide for the general powers of forest

officers; to provide for the power to enter and search, seize and arrest; to make provision for the delivery of documents and publication of notices in media; to provide for monitoring, evaluation and assessment and reporting; to provide for performance auditing; to provide for the national monitoring of provinces; to provide for the applicability of intergovernmental relations framework policy and legislation; to provide for categories, powers, functions and duties, as well as the dissolution and reconstitution of governance and other structures; to provide for the establishment, composition, powers, functions and duties of the Intergovernmental Forum on Forestry Resources; to provide for the establishment and functioning of the Forestry Resources Review Board; to provide for the submission of review applications to the Forestry Resources Review Board; to provide that decisions of the Forestry Resources Review Board are final; to provide for appeals against decisions by the Forestry Resources Review Board to the High Court; to provide for public participation and coordination; to provide for administrative justice; to provide for the promotion of access to information; to provide that the Act, Regulations and Notices must be maintained and copies be made available; and to provide for matters connected therewith.”

#### **Amendment of the Arrangement of Sections of Act 84 of 1998**

2. The Arrangement of Sections of the principal Act is hereby amended by the substitution for the Arrangement of Sections of the following:

- “1. Purposes
2. Interpretation
- 2A. Public trusteeship of nation's forestry resources
3. Principles to guide decisions affecting forests
4. Promotion and enforcement of sustainable forest management
5. Promotion of research
6. Duty to monitor forests and disseminate information
7. Prohibition on destruction of trees in natural forests
8. Power to set aside protected areas
9. Procedure for declaring protected areas
10. Effect of setting aside protected areas
11. Management of protected areas
12. Declaration of trees as protected
13. Normal procedure for declaring protected trees
14. Emergency procedure for protecting trees
15. Effect of declaration of protected trees
16. Registration against title deeds
17. Power to declare controlled forest areas
18. Right to apply for protection
19. Access to State forests for recreation, education, culture or spiritual fulfilment
20. Regulation of access to State forests
21. Access to forests other than State forests

22. Vesting of rights
23. Activities which may be licensed in State forests
24. Requirements for licensing
25. Amendments, suspensions and cancellations
26. Servitudes in State forests
27. Leasing of State forests
28. Agreements to sell forest produce in State forests
29. Offers to enter into community forestry agreements
30. Conclusion of community forestry agreements
31. Content of community forestry agreements
32. Assistance for community forestry
33. Establishment and objects of National Forests Advisory Council
34. Constitution of Council
35. Conditions of appointment to Council
36. Committees of Council
37. Meeting of Council
38. Funding of Council
39. Staff of Council
40. Report by Council
41. Establishment and objects of National Forest Recreation and Access Trust
42. Powers and duties of Minister as trustee
43. Administration of Trust funds
44. Reports by Minister as trustee
45. Establishment of panel
46. Development and implementation of policy
47. **[Assignment of powers and duties]**Assignment of administration of matters pertaining to forests to MECs and municipal councils
- 47A. Delegation of powers and assignment of duties by Minister to MECs and municipal councils
- 47B. Inventory of assignments and delegations
- 47C. Assignment between spheres of government
- 47D. Legal effect of delegation of power
- 47E. Delegation proceedings in writing
- 47F. Record of delegations
48. Delegation of powers and assignment of duties
49. Expropriation of property
50. Reservation of State land for forestry
51. Performance of functions on other land
52. Extensions
53. Content of regulations
54. Procedure for making regulations
55. Tariffs and charges
56. Powers and duties
57. Transfer of officers and employees

- 58. Penalties
- 59. Compensatory orders in criminal proceedings
- 60. Award of part of fine recovered to informant
- 61. Offences relating to sustainable forest management
- 62. Offences relating to protection of forests and trees
- 63. Offences relating to use of forests
- 64. Offences in relation to enforcement
- 65. Appointment of forest officers
- 66. General powers of forest officers
- 67. Power to enter and search
- 68. Power to seize
- 69. Power to arrest
- 70. Documents and steps valid under certain circumstances
- 71. Delivery of documents
- 72. Publication of notices in media
- 73. Repeal of laws
- 74. Savings
- 74A. Monitoring, evaluation and assessment and reporting
- 74B. Performance auditing
- 74C. National monitoring of provinces and municipalities
- 74D. Applicability of intergovernmental relations framework policy and legislation
- 74E. Governance and other intergovernmental structures
- 74F. Categories of intergovernmental structures
- 74G. Powers, functions and duties of intergovernmental structures
- 74H. Dissolution and reconstitution of intergovernmental structures
- 74I. Establishment and composition of Intergovernmental Forum on Forestry Resources
- 74J. Powers, functions and duties of Intergovernmental Forum on Forestry Resources
- 74K. Establishment of Forestry Resources Review Board
- 74L. Operation of Forestry Resources Review Board
- 74M. Submission of review applications to Forestry Resources Review Board
- 74N. Decisions of Forestry Resources Review Board
- 74O. Appeals against decisions by Forestry Resources Review Board
- 74P. Public participation and coordination
- 74Q. Administrative justice
- 74R. Promotion of access to information
- 74S. Act, regulations and notices to be maintained and copies to be made available
- 75. ...
- 76. ...
- 77. ...
- 78. Amendment of Act 51 of 1994
- 79. Short title
- 80. Commencement
- Schedule 1 [Section 73]
- Schedule 2 [Section 78]".

### Amendment of section 2 of Act 84 of 1998

3. Section 2(1) of Act 101 of 1998 (hereinafter referred to as the “principal Act”) is hereby amended—

(a) by the insertion of the following definition:

“assignment” means—

(a) the permanent or temporary transfer of a power, duty, role or function from the functional domain of national government to one or more provincial governments, and

(b) of the administration of a matter listed in Schedule 4 (Part A) of the Constitution,

and “assign” has a corresponding meaning;”;

(b) by the insertion after the definition of “indigenous” of the following definition:

“MEC” means a Member of the Executive Council of a Province responsible for forestry;”;

(c) by the substitution for the definition of “natural forest” of the following definition:

“natural forest” means a group of predominantly indigenous trees—

(a) whose crowns are largely contiguous in its undisturbed state; or

(b) occur in association with characteristic kinds of plants or animals; or

(c) are supported by accepted national scientific criteria and definitions to be natural forest which include species composition or stage of succession; or

(d) which have been declared by the Minister to be a natural forest in accordance with section 7(2);”;and

(d) by the substitution for the definition of “woodland” of the following definition:

“woodland” means a group of indigenous trees which are not a natural forest, but whose crowns cover [more than]at least five per cent of the area [bounded by the trees forming the perimeter of the group]they occupy, and which may in a degraded state have a crown cover less than five per cent.”.

### Insertion of section 2A in Act 84 of 1998

4. The following section is inserted in the principal Act after section 2:

**“Public trusteeship of nation's forestry resources**

**2A.(1) As the public trustee of the nation's forest resources the National Government, acting through the Minister, must ensure that these resources, together with the land and related ecosystems which they inhabit, are protected, conserved, developed, regulated, managed, controlled and utilised in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional and developmental mandate of government.**

**(2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that all forest resources are equitably accessed and used beneficially and in the public interest, while—**

**(a) ensuring long term—**

- (i) sustainability of all forest resources together with the land and related ecosystems which they inhabit; and
- (ii) food security;
- (b) promoting economic and social development; and
- (c) promoting environmental values.”.

#### **Amendment of section 3 of Act 84 of 1998**

5. Section 3 of the principal Act is hereby amended by the insertion of the following subsections:
- “(3A) Exceptional circumstances as contemplated in subsection (3)(a) are only applicable to land use or development which is of national, regional or local strategic significance.
  - (3B) The Minister must, within a year after the commencement of the Act—
    - (a) determine a prescribed format for applications for land use or development proposals to be considered as exceptional circumstances as contemplated in this section;
    - (b) appoint a committee within the department to consider such applications;
    - (c) publish a framework for the biodiversity offsets applicable to the destruction of natural forests.”.

#### **Amendment of section 4 of Act 84 of 1998**

6. Section 4 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:
- “(3) The Minister **[must]**may—
    - [and standards in the form of regulations made under section 53(2)(b)]**in the *Gazette*;
    - (b) publish standards in the form of regulations made under section 53(2)(b); and;
    - [(b)](c)** identify clearly **[where]**the circumstances in respect of which a breach of a standard may **[be]**constitute an offence.”.

#### **Amendment of section 7 of Act 84 of 1998**

7. Section 7 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following:
    - “(1) No person may cut, disturb, damage or destroy any indigenous tree, or receive any such tree from a natural forest, except in terms of—
      - (a) a license issued under
        - (i) section 7(4); or
        - (ii) section 23,
      - of this Act; or



- (b) an exemption from the provisions of this subsection granted by the Minister on the advice of the Council.”; and
- (b) by the insertion after subsection (1) of the following subsection:  
“(1A) An exemption contemplated in subsection (1)(b) must be published in the Government Gazette within one month after it was granted.”;
- (c) by the addition of the following subsections:  
“(5) If, in the opinion of the Minister, a person is in breach of section 7(1)(a), the Minister may, by written notice, inform that person of the—  
(a) nature of the alleged breach;  
(b) steps which the person must take to prevent or redress the said breach;  
and  
(c) period within which he or she must take the steps referred to in paragraph (b).
- (6) The Minister may, if a person fails to comply, whether in part or fully, with a written notice issued in accordance with section 7(5),—  
(a) take reasonable steps to—  
(i) remedy the situation; and  
(ii) recover consequential damages and costs from the person concerned; or  
(b) approach a competent court for appropriate relief.
- (7) The Minister must, by notice in the Government Gazette, within a period not exceeding six months, publish a framework for the management of natural forests in order to achieve the purpose of protecting those forests.”.

### **Amendment of section 8 of Act 84 of 1998**

8. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:  
**“(2) The Minister may declare [such an area only if he or she is of the opinion that it is not already adequately protected in terms of other legislation]predominantly non-forested natural land which—**  
(a) is located in a state forest, or  
(b) forms part of a state forest,  
as a state forest ecosystem.”; and
- (b) by the insertion after subsection (3) of the following subsections:  
“(3) The Minister may make the declaration contemplated in subsection (2) only if he or she is of the opinion that the land is not already adequately protected in terms of other legislation.  
(4) A person may not conduct any activity in a protected area which contradicts the conservation; recreation or management objectives of that area, except—  
(a) in circumstances determined by the Minister to be exceptional; and  
(b) where that activity is in the public interest.”.

## Amendment of section 14 of Act 84 of 1998

### 9. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1)(a) If the Minister is of the opinion that any tree sought to be protected in terms of this Part may be damaged or destroyed before a declaration under section 12 could come into effect, he or she may act under this section[.]; or”;

(b) by the addition after subsection (1) of the following subsection:

“(b) The Minister may issue a written order to immediately terminate the felling, mutilation or destruction of an individual tree of group of trees if he or he has reasonable grounds to believe that such a tree or group of trees may qualify to be declared as—

- (i) protected as contemplated in section 12(a) and (b) until such time that a notice is published in the *Gazette* in accordance with section 14(2); or
- (ii) a controlled forest area in accordance with section 17.”.

## Amendment of section 15 of Act 84 of 1998

### 10. Section 15 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) possess, collect, remove, transport, export, import, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, or any forest product derived from protected tree, except—

- (i) under a licence granted by the Minister; or
- (ii) in terms of an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of the Council.”;

(b) by the addition after paragraph (b) of subsection (1) of the following paragraphs:

“(c) If, in the opinion of the Minister, a person is in breach of section 15(1)(b), the Minister may, by written notice, inform such person of the—

- (i) nature of the alleged breach;
- (ii) steps which the person must take to prevent or redress the said breach;
- and
- (iii) period within which he or she must take the steps referred to in subparagraph (ii).

(d) The Minister may, if a person fails to comply, whether in part or fully, with a written notice issued in accordance with section 15(1)(c),—

- (a) take reasonable steps to—
  - (i) remedy the situation; and
  - (ii) recover consequential damages and costs from the person concerned; or
- (b) approach a competent court for appropriate relief.

(c) by the insertion after subsection (1) of the following subsection:

“(1A) The Minister must, by notice in the *Government Gazette*, within a period not exceeding six months, publish a framework for the management and protection of particular trees, groups of trees, woodlands, or trees belonging to a particular species as contemplated in section 12.”; and

(d) by the substitution for (3) of the following subsection:

“(3) The Minister must, by notice in the *Gazette* and in two newspapers circulating nationally, publish—

(a) a list of all species protected under section 12; and

(b) an appropriate warning of the prohibition referred to in subsection (1) and the consequences of an infringement thereof,

**[annually]**every five years, or every time that the list contemplated in subsection (3)(a) is amended, whichever date is the earliest[in the *Gazette* and in two newspapers circulating nationally].”.

### **Amendment of section 17 of Act 84 of 1998**

11. Section 17 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2)(a) If the Minister is of the opinion that urgent steps are required to—

**[(a)](i)** prevent the deforestation or further deforestation of; or

**[b](ii)** rehabilitate,

a natural forest or a woodland which is threatened with deforestation, or is being or has been deforested, he or she may declare **[it]**that natural forest or woodland to be classified as a controlled forest area without prior consultation with, or affording a prior hearing to, any affected person.

(b) The Minister must, as soon as reasonably possible after the declaration contemplated in subsection (2)(a)—

(i) consult with, and afford a hearing to, any affected person;

(ii) consider any presentation received during such consultation or hearing;

and

(iii) confirm, vary or cancel the declaration concerned.”; and

(b) by the addition after subsection (12) of the following subsection:

“(13)(a) In the event that an owner is, in the opinion of the Minister, in breach of a provision of this Act, the Minister may, by written notice, inform such person of the—

(i) nature of the alleged breach;

(ii) steps which the person must take to prevent or redress the said breach;

and

(iii) period within which he or she must take the steps referred to in subparagraph (ii).

(b) If a person fails to comply, whether in part or fully, with the written notice issued in accordance with section 17(13)(a), the Minister may—

(i) take reasonable steps to—

(aa) remedy the situation; and

- (bb) recover consequential damages and costs from the person concerned; or  
(ii) approach a competent court for appropriate relief.”.

#### **Amendment of section 23 of Act 84 of 1998**

12. Section 23 of the principal Act is hereby amended by the addition of the following subsection:

“(4) No person may engage in any prospecting or mining activity in a State forest.”.

#### **Amendment of section 27 of Act 84 of 1998**

13. Section 27 of the principal Act is hereby amended by the substitution in subsection (2) for the word “may” of the word “must”.

#### **Amendment of section 34 of Act 84 of 1998**

14. Section 34 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (h) and (j) of subsection (2) of the following paragraphs:

“(h) the forest products industries;**[ and]**

(i) trade unions representing employees in the forest products industry**[.]; and**”;

(b) by the addition of the following paragraph to subsection (2):

“(i) youth and women.”.

#### **Amendment of section 35 of Act 84 of 1998**

15. Section 35 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) Members of the Council and members of a committee established in accordance with section 36[of the Council] who are not in the full-time employment of the State may be paid for their services, except for attending Council meetings.”;  
and

(b) by the substitution for subsection (5) of the following subsection:

“(5) The Minister must determine the remuneration and allowances payable to members of the Council and members of a committee established in accordance with section 36[of the Council] with the consent of the Minister of Finance.”.

### **Amendment of section 36 of Act 84 of 1998**

16. Section 36 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

- “(6) The functions of the Committee on Forest Access are to advise the Council, Department and the Minister on—
- (a) a ruling referred to in section 20(10);
  - (b) promoting the grant and exercise of access to forests;
  - (c) promoting education on the sustainable management and use of forests; and
  - (d) the use of the Trust funds.”.

### **Amendment of section 37 of Act 84 of 1998**

17. Section 37 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) The chairperson of the Council must provide the Minister with advice or information emanating from any meeting within **[two weeks]**a period not exceeding a month.”.

### **Amendment of section 47 of Act 84 of 1998**

18. Section 47 of the principal Act is hereby amended by the substitution for section 47 of the following section:

- Assignment of administration of matters pertaining to forests to MECs and municipal councils**  
**47.** The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with an MEC responsible for forestry, in writing assign a matter or matters relating to the administration of matters pertaining to forestry to the MEC concerned or to a municipal council.”.

### **Insertion of sections 47A to 47F in Act 84 of 1998**

19. The following sections are inserted in the principal Act after section 47:

- Delegation of powers and assignment of duties by Minister to MECs and municipal councils**  
**47A.(1)** The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with an MEC responsible for forests, in writing delegate any power or assign any duty conferred on him or her by or under this Act, other than the power to—
- (a) publish a notice as contemplated in sections 7(3), 9(3), 13(3), 14, 17(3), 34(3), 54 and 58(7);
  - (b) make regulations contemplated in section 53(2); and

(c) appoint a member of the Council,  
to the MEC concerned or a municipal council, as the case may be.

(2) Such delegation or assignment, as the case may be, does not prevent the carrying out of the assigned duty, or the execution of such power, as the case may be, by the Minister.

(3) The Minister may at any time withdraw or amend, in writing, a delegation or assignment as contemplated in subsection (1).

(4) The delegation of any power or the assignment of any duty does not divest the Minister of the accountability concerning the execution of the delegated power or carrying out of the assigned duty, as the case may be.

### **Inventory of assignments and delegations**

**47B.(1) The Minister, and at provincial level, every MEC, and at a municipal level, the Municipal Manager, must establish and maintain an inventory of all assignments and delegations made in accordance with this Act by the Minister to—**

(a) an MEC;

(b) a municipal council;

(c) the head of the Department;

(d) an official of the Department;

(e) an official of another Department of the National Government in accordance with section 97 of the Constitution, a Provincial Government or an official in the employ of the municipal council concerned, as the case may be; and

(f) an entity established as contemplated in this Act.

(2) The inventories contemplated in this section must also include all sub-delegations.

(3) The head of the Department, the head of every Provincial Department and the Municipal Manager of every municipality, as the case may be, must publish an updated version of the inventory contemplated in this section on the departmental website concerned on the first day of every financial year.

### **Assignment between spheres of government**

**47C.(1) Any assignment to an MEC or a municipal council, as the case may be, of a matter contemplated in this Act must be in accordance with the assignment and delegation framework that must be developed by the Minister in consultation with all the MECs responsible for forestry and published in the Gazette within a period not exceeding six months after the commencement of this Act.**

(2) Any person or entity effecting an assignment must—

- (a) ensure the availability of sufficient funding and other resources required for the full and effective implementation of such assignment; and
- (b) monitor and review its implementation.

#### **Legal effect of delegation of power**

47E.(1) The delegation of a power does not prevent a competent authority from exercising that power, subject to sub-section (3).

(2) The delegation of a power does not relieve the competent authority from accountability for the exercise of the power.

(3) When an MEC or a municipal council, as the case may be, exercises a power that has been delegated in accordance with the Act, the exercise of the power has the same force as if it had been exercised by the competent authority.

(4) Any activity in the exercise of a power by an MEC or a municipal council, as the case may be, which was carried out within the scope of the delegation, remains in force and is not invalid by reason—

- (a) of the competent authority electing subsequent to the activity contemplated in this subsection, to exercise that power; or
- (b) a subsequent amendment to, or withdrawal of, the delegation.

#### **Delegation proceedings in writing**

47E.(1) All proceedings relating to any delegation contemplated in this Act must be in writing.

(2) The record of proceedings contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times.

#### **Record of delegations**

47F.(1) Both the competent authority and the organ of state to whom a power has been delegated, must compile and maintain an updated inventory of all delegations made as contemplated in this Act.

(2) The inventory contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times.”.

20. Section 48 of the principal Act is hereby amended by the substitution for section 48 of the following section:

**“Delegation of powers and assignment of duties**

48.(1) The Minister may delegate the exercise of any of his or her powers, other than a power referred to in subsection (4), and assign the performance of any of his or her duties, to—

- (a) a named official in the Department;
- (b) the holder of an office in the Department;
- (c) an organ of State;
- (d) a person who or which is not an organ of State.

(2) The Minister may permit a person or organ of State to whom a power or duty has been **[assigned or ]**delegated or assigned, to delegate or assign that power or duty further.

(3) A delegation or assignment referred to in subsection (1) and the permission referred to in subsection (2)—

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) must specify the period for which it lasts; and
- (d) do not prevent the exercise of the power or the performance of the duty by the Minister himself or herself.

(4) The Minister may not delegate the power or assign the duty—

- (a) to assign;
- (b) to make regulations;
- (c) to develop policy; or
- (d) to appoint a member of the Council.

(5) The Minister may withdraw any delegation or assignment in writing.”.

**Amendment of section 54 of Act 84 of 1998**

21. Section 54 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) The Minister must table the regulations in Parliament, together with any written comments and advice received on **[them]**the regulations concerned pursuant to subsection (1)—

- (a) **[within 30 days]**after publishing them in terms of subsection (2); or
- (b) if Parliament is not then in session,**[within 30 days]** after the next session starts.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) Parliament may reject the regulations**[ within 60 days]** after they have been tabled.”;



- (c) by the substitution for subsection (5) of the following subsection:  
“(5) If Parliament rejects any regulations, the Minister must—  
    (a) repeal **[them]**the regulations concerned; or  
    (b) table amended regulations in draft form in Parliament~~[,]~~.  
    **[within 60 days of the rejection, or, if Parliament is not then in session, within 60 days after the next session starts, failing which the regulations become invalid.]**”; and
- (d) by the addition of the following subsection:  
“(5A) If Parliament rejected regulations tabled by the Minister as contemplated in section 54(3) and (4), the Minister must table amended regulations during the next session of Parliament, failing which the regulations become invalid with effect from the last date of the said session of Parliament.”.

#### **Amendment of section 58 of Act 84 of 1998**

- 22.** Section 58 of the principal Act is hereby amended—
- (a) by the substitution for subsection (6) of the following subsection:  
“(6) A person who is guilty of a fifth category offence referred to in section 61 may not be sentenced to imprisonment, but may be sentenced to a fine **[up to]** not exceeding R~~[50 000]~~10 million.”; and
- (b) by the substitution for paragraph (b) of subsection (8) of the following paragraph:  
“(b) for any offence in terms of this Act, may suspend or revoke a licence granted to the offender under section 7, 15 or 23.”.

#### **Amendment of section 61 of Act 84 of 1998**

- 23.** Section 61 of the principal Act is hereby amended by the substitution for section 61 of the following section:  
“**61.** Any person who fails to take the steps which he or she has been instructed to take in terms of section 4(8), 14(1)(b) and 17(13) within the period or the extended period laid down, is guilty of a fifth category offence.”.

#### **Amendment of section 62 of Act 84 of 1998**

- 24.** Section 62 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:  
“(1) Any person who contravenes the prohibition of certain acts in relation to trees in natural forests referred to in section 7(1) is guilty of a **[second]**first category offence.”;
- (b) by the substitution for subsection (3) of the following subsection:

“(3) Any person who contravenes a prohibition or any other provision in a notice declaring a controlled forest area under section 17(3) and (4) is guilty of a **[second]**~~first~~ category offence.”; and

(c) by the addition of the following subsection:

“(6)(a) Any person who contravenes a condition in a licence issued in terms of sections 7(1) or 15(1) of this Act is guilty of a second category offence.

(b) Any person who fails to comply with a notice by the Minister as contemplated in sections 7(1)(b) and 15(1)(c) of this Act, within the period or the extended period provided for in the notice, is guilty of a fifth category offence.”.

### **Amendment of section 65 of Act 84 of 1998**

25. Section 65 of the principal Act is hereby amended—

(a) by the substitution for section 65 of the following section:

**“65.** The Director-General may—

(a) designate posts in the Department or in any provincial administration or municipality, whose incumbents are forest officers; **[and]**

(b) appoint any other suitably qualified persons as forest officers[.];

(c) define different levels of forest officers; and

(d) prescribe qualification criteria for forest officers.”.

### **Insertion of sections 74A to 74S in Act 84 of 1998**

26. The following sections are inserted in the principal Act after section 74:

#### **“Monitoring, evaluation and assessment and reporting**

**74A.** The Minister must, by notice in the *Gazette* and within six months after commencement of this Act, taking into account national and provincial norms and standards, publish a framework—

(a) providing for the minimum norms and standards in respect of the procedures for, and the frequency of, monitoring, evaluation and assessment of all matters relating to forestry; and

(b) establishing the necessary mechanisms, processes, procedures and indicators, to report on, monitor, evaluate, assess, and determine the impact of the exercise of powers, the performance of functions and the execution of duties in accordance with this Act and any other law by entities in the public and private forestry sector.

#### **Performance auditing**

**74B.(1)** All programmes and projects executed, grants allocated, funds allocated, delegations or assignments effected, service level agreements or public private partnerships entered into, or any other administrative action performed in terms of this Act, are subject to monitoring, evaluation, impact assessment and the submission of a written report by the structures as established in terms of section 74E of this Act.

- (2) The structures established in terms of section 74E of this Act must—
- (a) in respect of national and provincial frameworks for monitoring, evaluation and impact assessment—
    - (i) be guided by such frameworks;
    - (ii) develop structures and systems as required in terms of such frameworks;
    - and
    - (iii) submit reports as required in terms of such frameworks; and
  - (b) take into account any written—
    - (i) report that must be submitted from time to time by a forestry organisation;
    - and
    - (ii) submission, which relates to the provision of forestry services by an organisation, made by any interested party.
- (3) On receipt of the written report referred to in subsection (1), every Head of a Department—
- (a) may take whatever steps he or she may deem appropriate;
  - (b) must inform the Minister or the , as the case may be, in writing of the steps he or she has taken, and of the reasons for such steps; and
  - (c) must inform the organisation concerned in writing of the steps he or she has taken, and of the reasons for such steps.

### **National monitoring of provinces and municipalities**

**74C.(1) The Minister must, in consultation with the MECs responsible for forestry, establish mechanisms, processes and procedures to monitor Provincial Governments and municipalities, as the case may be, in respect of their performance of the forestry services.**

(2) In the event of the Department submitting a report to the Minister in respect of the non-delivery or the insufficient delivery of forestry services by a Provincial Government or a municipality, as the case may be, the Minister may, after consultation with the MEC responsible for forestry—

- (a) issue a directive to the Provincial Government concerned or the municipality concerned, as the case may be, describing the extent of its failure to provide the specified forestry service and stating any steps such Provincial Government or such municipality, as the case may be, must follow in order to meet its required obligations; or
- (b) determine that one or more specified provincial forestry services must be performed by the Department or a forestry service provider or a forestry service provider appointed by the Department, for such period and subject to such conditions as the Minister may determine.

(3) In the event of the Minister electing to proceed in terms of subsection (2)(b), the Minister must send written notice to the Provincial Government concerned or the

municipality concerned, as the case may be, informing such Provincial Government or such municipality of—

(a) the nature and extent of services to be performed by the Department or forestry service provider;

(b) the reasons for the taking over of the performance of the specified services; and

(c) the date on which the service will be taken over.

### **Applicability of intergovernmental relations framework policy and legislation**

**74D.** All intergovernmental relations in respect of matters pertaining to forestry between the Department and every MEC responsible for forestry is governed by the—

(a) relevant national policy framework and legislation;

(b) provincial transversal policy framework; and

(c) legislation regulating intergovernmental relations.

### **Governance and other intergovernmental structures**

**74E.**(1) The Minister may, at the request of an MEC, a provincial Head of Department, or at the Minister's own discretion, establish by notice in the *Gazette*, one or more governance and other structures to assist in the promotion of the objects and the realisation of the provisions of this Act.

(2) The notice contemplated in subsection (1) must stipulate—

(a) the composition of the structure concerned;

(b) membership of the structure;

(c) the terms of reference;

(d) procedural matters;

(e) reporting requirements; and

(f) any other matter that the Minister may deem appropriate for the effective functioning of such structure.

### **Categories of intergovernmental structures**

**74F.** The structures contemplated in section 74E are—

(a) governance structures consisting of the Department, Provincial Government departments, municipalities, organs of state and public entities;

(b) stakeholder consultative forums consisting of the Department, forestry service providers and other interest groups, and in the discretion of the Minister, also other provincial government departments, organs of state, and public entities; and

(c) any other structures that the Minister may establish by notice in the *Gazette*.

### **Powers, functions and duties of intergovernmental structures**

**74G.** The structures established in terms of section 74E—

- (a) must, in respect of their specific functional domain, advise the Minister on—
- (i) forestry policy;
  - (ii) achieving operational uniformity of programs, projects and services relating to forestry;
  - (iii) any matter related to forestry or the rendering of related services in respect of which the Minister requests advice;
  - (iv) any other function related to the objects and other provisions of this Act as determined in the establishment notice of the structure concerned;
  - (v) any other matter related to the objects and other provisions of this Act as requested by the Minister; and
  - (vi) the performance of any other function or the execution of any duty imposed on it by this Act or any other law;
- (b) must—
- (i) liaise with national and provincial organisations concerned with forestry or the rendering of related services; and
  - (ii) exercise any power, perform any functions and execute any duty conferred on it by this Act or any other law; and
- (c) may generally do everything which is deemed necessary or expedient to achieve the objects of this Act as referred to in subsection (1).

#### **Dissolution and reconstitution of intergovernmental structures**

**74H.** The Minister may, after consultation with the structure concerned, at any time, by notice in the *Gazette*, dissolve or reconstitute any of the structures provided for in section 74E.

#### **Establishment and composition of Intergovernmental Forum on Forestry Resources**

**74I.(1)** The Intergovernmental Forum on Forestry Resources is hereby established.

(2) The Intergovernmental Forum on Forestry Resources consists of the—

- (a) Ministers responsible for—
- (i) Agriculture, Forestry and Fisheries;
  - (ii) Environmental Affairs;
  - (iii) Finance;
  - (iv) Rural Development and Land Reform;
  - (v) Trade and Industry;
  - (vi) Health;
  - (vii) International Relations and Cooperation;
  - (viii) Water Affairs;
  - (ix) Public Enterprise;
  - (x) Public Works;
  - (xi) Transport;
  - (xii) Cooperative Governance; and
  - (xiii) Any other department as identified by the Minister; and

(b) Chairperson of the National Planning Commission.

**Powers, functions and duties of Intergovernmental Forum on Forestry Resources**

**74J.** The Intergovernmental Forum on Forestry Resources must ensure cooperation between national and provincial government departments responsible for, or involved in, matters pertaining to forestry and related matters.

**Establishment of Forestry Resources Review Board**

**74K.(1)** The Forestry Resources Review Board is hereby established.

(2) The Review Board is an independent body which—

- (a) has jurisdiction in all the provinces of the Republic; and
- (b) may conduct hearings anywhere in the Republic.

(3) The Review Board consists of a chairperson, a deputy chairperson and three other members.

(4) The Chairperson of the Review Board must have at least—

- (a) an LLB degree conferred by a South African University; and
- (b) 15 years' legal experience in South Africa as a—
  - (i) retired judge;
  - (ii) senior advocate in private practice; or
  - (iii) legal academic with professorial status employed at a South African University.

(5) The deputy chairperson and the other three members must have at least—

- (a) an appropriate Honours degrees conferred by a South African University; and
- (b) 15 years' experience in South Africa in forestry, forestry resource management and related fields of knowledge: Provided that the persons contemplated in this subsection may, for the last five years, not have been employed in any or more of the three spheres of government or in an organ of state, excluding a higher education institution.

(6) The chairperson, the deputy chairperson and the other members of the Review Board are appointed by the Minister.

(7) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the other members must be appointed in a part-time capacity.

(8) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Review Board in consultation with the Minister of Finance.

### **Operation of Forestry Resources Review Board**

**74L.(1)** Administrative support for the Review Board must be provided by officials of the Department designated by the head of the department, subject to the laws pertaining to the secondment of officers in the Public Service.

**(2)** The expenditure of the Review Board must be defrayed out of money appropriated by Parliament for that purpose or from any other source.

**(3)** The Review Board, the chairperson, the deputy chairperson or any other member is not liable for an act or omission committed in good faith while performing a function in terms of this Act.

### **Submission of review applications to Forestry Resources Review Board**

**74M.(1)** Following a decision by the Minister or his or her delegatee, or the head of department or his or her delegatee, or the municipal council or his or her delegatee, or any person or entity who has a direct interest in such decision, may submit an application in writing in the prescribed format to the Forestry Resources Review Board to have such matter reviewed.

**(2)** An application for review must be commenced within 30 days after—

**(a)** notice of the decision is sent to the appellant; or

**(b)** reasons for the decision are given.

**whichever occurs last.**

**(3)** The chairperson must make rules which—

**(a)** govern the procedure of the Review Board, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Review Board; and

**(b)** must be approved and published in the *Gazette* by the Minister.

### **Decisions of Forestry Resources Review Board**

**74N.** A decision of the Forestry Resources Review Board—

**(a)** is final; and

**(b)** must, together with the reasons for the decision, be communicated in writing to the all the parties involved in the review application as contemplated in section 74M.

### **Appeals against decisions by Forestry Resources Review Board**

**74O.(1)** A party to a matter in which the Forestry Resources Review Board has given a decision on review under section 74N, may appeal to a High Court against that decision.

(2) The appeal must be noted in writing within 21 days after the decision of the Review Board has been communicated in accordance with section 74N(b) to all the parties involved in the review application.

(3) The notice of appeal must—

(a) set out the grounds for the appeal;

(b) be lodged with the relevant High Court and with the Forestry Resources Review Board; and

(c) be served on every party to the matter.

(4) The appeal must be prosecuted as if it were an appeal from a magistrate's court to a High Court.

### **Public participation and coordination**

74P.(1) The Minister, in consultation with the MEC responsible for forestry within each province, must, in respect of the development and coordination of forestry resources, as regards the —

(a) formulation of policy;

(b) drafting of legislation;

(c) determination of priorities; and

(d) establishment of structures,

implement systems to provide for consultation and inclusive participation of civil society, communities, individuals, and organs of state.

(2) The Minister, in consultation with the MEC responsible for forestry within each province, must, in respect of the development and coordination of forestry resources at national, provincial and municipal level, take into consideration the —

(a) national policy and statutory framework; and

(b) transversal provincial policy and statutory framework as applicable in the province concerned.

### **Administrative justice**

74Q The Department responsible for forestry, every provincial department responsible for forestry, every municipality exercising forestry functions and every intergovernmental government structure established as contemplated in this Act, must exercise its powers, perform its functions and carry out its duties in full compliance with the constitutional, national legislative and common law framework relating to administrative justice.

### **Promotion of access to information**

74R. The Department responsible for forestry, every provincial department responsible for forestry, every municipality exercising forestry functions and every intergovernmental lo



structure established as contemplated in this Act, must comply with the constitutional and national legislative framework that promotes access to information.

**Act, regulations and notices to be maintained and copies to be made available**

**74S.** The Minister must ensure that an electronic version of this Act and all regulations made under, and all notices issued in terms of, this Act, are—

(a) maintained and updated on a monthly basis; and

(b) made available to the public at large for their access and perusal, which may be downloaded electronically in digital format free of charge.”.

**Short title and commencement**

**27.** This Act is called the National Forests Amendment Act, 2013 and comes into operation on a date fixed by proclamation in the *Gazette*.