

[DRAFT FOR DISCUSSION AND REVIEW PURPOSES ONLY]

REPUBLIC OF SOUTH AFRICA

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NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. ... of ... 2018)*

*(The English text is the official text of the Bill)*

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(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B—2018]

**BILL**

To provide for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act, 1998; the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; the fair and equitable sharing of benefits arising from bioprospecting involving

**indigenous biological resources; the establishment and functions of a South African National Biodiversity Institute; and for matters connected therewith.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

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## Definitions

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

“**alien species**” means a species that is not an indigenous species;

“**biological diversity**” or “**biodiversity**” means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems;

“**Board**” means the board referred to in section 13;

“**buying or buy**” means to receive or obtain, whether for money or in kind, and includes bartering, or advertising or expressing an interest to buy;

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

“**conservation**” means the active management of the biosphere to ensure the—

- (a) survival of the maximum diversity of species;
- (b) maintenance of genetic variability within species; and
- (c) the maintenance of biosphere and ecosystem functions;

**“control”** means—

- (a) the systematic destruction of all specimens of invasive species from within a specified area of or the whole of the Republic; or
- (b) where such systematic destruction is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of invasive species;

**“delegation”** has the meaning assigned to it in section 1 of the National Environmental Management Act;

**“Department”** means the national Department responsible for environmental affairs;

**“derivative”** means any part, tissue or extract of an animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material or chemical compound derived from such part, tissue or extract;

**“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;

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

"**eradicate**" means the complete removal of invasive species from within the Republic, including all living parts of that species;

"**export**" means to take out or transfer, or attempt to take out or transfer, from the Republic to another country or to international waters;

"**extra-limital species**" means an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in the Republic, but excludes an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

"**Gazette**", when used—

(a) in relation to the Minister, means the Government Gazette; or

(b) in relation to the MEC for Environmental Affairs of a province, means the Provincial Gazette of that province;

"**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, characteristics or information of any species;

"**habitat**" means a place where a species or ecological community naturally occurs;

**“import”** means—

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

**“indigenous biological resource”** when used in relation to any matter other than bioprospecting, 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, and that has not been introduced in the Republic as a result of human intervention, and includes migratory species;

**“Institute”** means the South African National Biodiversity Institute;

**“introduction from the sea”** 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 alien or extra-limital species that—

- (a) threaten ecosystems, habitats or other species or have demonstrable

potential to threaten ecosystems, habitats or other species or cause any other environmental harm; or

(b) may result in economic, socio-economic or harm to human health;

**“issuing authority”** means—

(a) the Minister as contemplated in section 67(1) or (3);

(b) the MEC as contemplated in section 67(2) or (3); or

(c) an organ of state in the national, provincial or local sphere of government delegated in terms of section 42 of the National Environmental Management Act, 1998 or assigned in terms of section 41 of the National Environmental Management Act, 1998 as an issuing authority for a permit or registration of the kind in question;

**“listed ecosystem”** means any ecosystem listed in terms of section 42(1);

**“listed invasive species”** means any invasive species listed in terms of section 50(1);

**“listed species”** means any species listed in terms of sections 42(1) and 44(1);

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

**“management authority”** has the meaning assigned to it in the Protected Areas Act;

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

“**migratory species**” means a species that moves from one habitat or region to another, cyclically and predictably across 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 botanical garden**” means land declared or regarded as having been declared as a national botanical garden in terms of section 31(1), and includes any land declared in terms of section 33 as part of an existing botanical garden;

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

“**non-detriment findings**” means the determination of the non-detrimental impact of an action on the survival of a species in the wild;

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

“**permit**” means a permit issued in terms of section 67;

“**prescribe**” means prescribe by notice or regulation in terms of this Act;

**“protected area”** means a protected area defined in the Protected Areas Act;

**“Protected Areas Act”** means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

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

**“re-export”** means the export from the Republic of a specimen of a listed threatened or protected species previously imported into the Republic;

**“selling or sell”** means to give or hand over, whether for money or in kind, and includes bartering, or advertising, offering or presenting for sale;

**“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) contains 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;

**“this Act”** includes any regulation or notice made or issued under this Act; and

**“wildlife trafficking”** includes the illegal killing, collecting, harvesting, gathering, possession, transportation, importing, exporting, re-exporting, buying, selling or distribution of a specimen.

### **Objectives of Act**

2. Within the framework of the National Environmental Management Act, the objectives of this Act are—

- (a) to provide for the management and conservation of biological diversity within the Republic and of the components of such biological diversity including the well-being of any faunal biological resource;
- (b) to provide for the protection of the ecosystem as a whole, including species which are not targeted for exploitation;
- (c) to provide for the use of biological resources in an ecologically sustainable manner;

- (d) to provide for the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;
- (e) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic including appropriate measures and response to climate change;
- (f) to provide for co-operative governance in the sustainable use, management and conservation of biodiversity;
- (g) to give effect to the best available science;
- (h) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act;
- (i) to address historical imbalances and to achieve equity within all branches of the biodiversity sector; and
- (j) to provide for mitigation and adaptation measures in response to climate change.

### **State trusteeship of biological biodiversity**

**3.** In fulfilling the rights contained in section 24 of the Constitution, the State, through its functionaries and institutions implementing this Act, must—

- (a) act as the trustee of South Africa's biodiversity and its components and

genetic resources; and

- (b) in implementing this Act, take reasonable steps to achieve the progressive realisation of those rights.

(2) The Minister may, by notice in the *Gazette*, specify the species and the circumstances under which the State remains the custodian of faunal biological resources that escape from land under its control.

### **Application of Act**

4. (1) This Act applies—

(a) in the Republic, including—

- (i) its territorial waters, exclusive economic zone and continental shelf 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);

(b) to all persons, whether or not South African persons, and to all vessels and aircraft, on, in or in the airspace above or the waters defined in paragraph (a).

(2) This Act binds all organs of state.

### **Application of international agreements**

5. This Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.

### **Conflicts with other legislation [8]**

6. In the event of any conflict between a section of this Act and other national legislation relating with biodiversity, this Act prevails.

### **Application of National Environmental Management Act [6]**

7. (1) This Act must, in relation to biodiversity management, be read, interpreted and applied in conjunction with the National Environmental Management Act.

(2) This Act must be regarded as a specific environmental management Act as defined in section 1 of the National Environmental Management Act.

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

(4) The application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

## **CHAPTER 2**

### **SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE**

#### **Part 1**

##### **Establishment, powers and duties of Institute**

###### **Establishment of Institute [10]**

**8.** (1) The South African National Biodiversity Institute is established by this Act.

(2) The Institute is a juristic person.

## Functions

### 9. (1) The Institute—

- (a) must develop national biodiversity indicators, assess and monitor the status and trends in biodiversity at an ecosystem, species and genetic level;
- (b) must assess the status and trends in biological invasions, and may assess the status and trends related to other threats and pressures on biodiversity;
- (c) must report regularly to the Minister in respect of all matters in this paragraph;
- (d) must co-ordinate and promote the management of biodiversity information in the Republic, including—
  - (i) establishing and maintaining a national biodiversity information system; and
  - (ii) disseminating biodiversity information to enable research and to support better management and conservation of biodiversity;
- (e) must when requested, provide science-based advice and decision support to organs of state involved in managing and conserving biodiversity;
- (f) may provide science-based advice to other stakeholders engaged in or impacting on biodiversity;
- (g) must co-ordinate and promote the taxonomy of South Africa's biodiversity,

and upon request, must confirm in writing that the identification of a specimen of an indigenous biological resource is taxonomically accurate;

- (h) must develop, co-ordinate and maintain a national ecosystem classification system;
- (i) must manage, control and maintain all national botanical gardens and national zoological gardens declared in terms of section 31, and any other place or facility under its control, including-
  - (i) allowing, regulating or prohibiting access by the public, and
  - (ii) supplying plants, information, meals or refreshments or any other services to visitors;
- (j) must co-ordinate and promote biodiversity collections;
- (k) may establish, manage, control and maintain biodiversity collections;
- (l) must co-ordinate and promote research to support the management and conservation of biodiversity;
- (m) may undertake research to support the functions of the Institute, including taxonomy, assessment, provision of science-based advice, or management of national botanical gardens or national zoological gardens;
- (o) may convene or lead programmes to strengthen the management and conservation of biodiversity;

- (p) must host the Scientific Authority;
- (q) may host structures that support the execution and implementation of the Republic's obligations in terms of any international agreements;
- (r) on the Minister's request, must assist him or her in the performance of duties and the exercise of powers assigned to the Minister in terms of this Act;
- (s) on the Minister's request, must advise him or her 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 preparation and content of any planning tool developed in terms of this Act;
  - (iii) other aspects of biodiversity planning;
  - (iv) the management and conservation of biological diversity; and
  - (v) the sustainable use of biological resources;
- (t) must perform any other duties—
  - (i) assigned to it in terms of this Act; or
  - (ii) as may be prescribed; and

(u) must assess and monitor any other matter as prescribed.

(2) When the Institute gives advice on a scientific matter in terms of subsection (1), it—

(a) must, in the case of any scientific matter relating to the marine or coastal environment, provide such advice in consultation with the Department's relevant research components; and

(b) may, in respect of any other scientific matter, consult any appropriate organ of state, person or institution which has expertise in that matter.

### **General powers**

10. The Institute may, for the purpose of performing its duties—

(a) appoint its own staff, subject to section 27;

(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 30;
- (g) borrow money, subject to section 66 of the Public Finance Management Act;
- (h) charge fees—
  - (i) for access to national botanical gardens, herbaria and other places under its control;
  - (ii) for any work performed or services rendered by it;
  - (iii) for access to the results of, or to other information in connection with, any research performed by it;
- (i) collect royalties resulting from any discoveries, inventions or computer 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**

11. (1) The Institute is governed by a Board consisting of—
- (a) not fewer than seven and not more than nine members appointed in terms of section 13;
  - (b) the Director-General or an official of the Department designated by the Director-General; and
  - (c) the Chief Executive Officer and Chief Financial 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 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 performance of the duties and exercise of powers of the Institute, except—
- (a) those decisions taken in consequence of a delegation in terms of section 25;
- or

(b) where the Public Finance Management Act provides otherwise.

### **Qualifications**

**12.** (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 and experience in the field of biodiversity.

(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, a provincial legislature or a municipal council; or
- (b) a person who has been removed from office in terms of section 19.

### **Appointment procedure [15]**

**13.** (1) Whenever it is necessary to appoint members of the Board referred to in section 11(1)(a), the Minister must—

- (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and

(b) compile a list of the names of persons nominated, setting out the particulars of each individual nominee.

(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) nominee's qualifications or experience; and
- (c) any other information that may be prescribed.

(3) The Minister must, subject to subsection (4), appoint—

- (a) the required number of persons from the list compiled in terms of subsection (1)(b); and
- (b) if such list is inadequate, any suitable person.

(4) When making appointments the Minister must—

- (a) consult the MECs responsible for Environmental Affairs; and
- (b) have regard to the need for appointing persons to promote representivity.

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

**Chairperson**

14. (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 which is determined by the Minister which may, in the case of a member referred to in section 11(1)(a), not extend beyond the period of his or her term as a member.

(3) 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**

15. Members of the Board referred to in section 11(1)(a)—

(a) are appointed for a period of three years or, if section 20(2) applies, for a term determined in terms of that section;

(b) on completion of that term, are eligible for reappointment for one additional term of three years; 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**

16. (1) The Minister must determine the conditions of employment of members of the Board referred to in section 11(1)(a).

(2) The Minister may, with the concurrence of the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the Government.

(3) The members' remuneration and allowances must be paid by the Institute.

(4) Members who are in the employ of the Government are not entitled to remuneration and allowances and—

(a) must be compensated for out of pocket expenses by the Institute; and

(b) are appointed on a part-time basis.

### **Conduct of members**

17. (1) A member of the Board—

- (a) must perform the duties 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**

**18.** (1) A member of the Board referred to in section 11(1)(a) ceases to be a member when that person—

- (a) is no longer eligible in terms of section 12 to be a member;

- (b) resigns; or
- (c) is removed from office in terms of section 19.

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

### **Removal from office**

**19.** (1) The Minister may remove a member of the Board referred to in section 11(1)(a) from office, but only on the one of the following grounds:

- (a) misconduct, incapacity or incompetence;
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on good cause shown;
- (c) insolvency; or
- (d) conviction of a criminal offence without the option of a fine.

(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**

**20.** (1) A vacancy in the Board is filled—

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 14(1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section 11(1)(a), by following the procedure set out in section 13.

(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**

**21.** (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 the Chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.

### **Procedures**

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

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

### **Quorum and decisions**

23. (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

24. (1) The Board may establish one or more committees to assist it in the performance of its duties 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 duties of a committee;

(b) must appoint a chairperson and other members of the committee;

(c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and

(d) may determine the procedure by which a committee will function.

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

(5) Section 16, read with the necessary change as the context may require, applies to the terms and conditions of employment of committee members.

(6) 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

with the Institute.

### **Delegation of powers and duties**

**25.** (1) Where necessary for the proper performance of its duties, 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 24; 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 reappointment of a person as the Chief Executive Officer in terms of section 26(1) or (2);
- (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 26
- (c) the determination of an employment policy in terms of section 27(1); and
- (d) the setting of financial limits in terms of section 27(2)(a) or (3).

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

- (a) is subject to any limitations, conditions and directions that 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 performance 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**

**26.** (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 five years; and
- (b) maybe reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five 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 him or her; and
- (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner, as the Board may determine.

(5) The Chairperson of the Board may appoint another employee of the Institute to act as Chief Executive Officer for a period not exceeding six months, whenever—

- (a) the Chief Executive Officer if for any reason absent or unable to perform his

or her duties; or

(b) there is a vacancy in the office of the Chief Executive Officer.

(6) While 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**

27. (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 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.

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

(6) 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**

**28.** The Institute is a public entity for the purposes of the Public Finance Management Act and must comply with the provisions of that Act.

## Funding

**29.** The funds of the Institute consist of—

- (a) income derived by it from the performance of its duties and the exercise of its powers;
- (b) money appropriated by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed in terms of section 10(g);
- (f) income derived from investments referred to in section 30; and
- (g) money derived from any other source, subject to the Public Finance Management Act.

## Investments

**30.** (1) The Institute may invest any of its funds that it does not immediately require subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act.

(2) The Minister may direct the manner in which the Institute invests

its funds in terms of subsection (1).

## Part 6

### National botanical and national zoological gardens

#### Declaration

**31.** (1) The Minister, acting with the approval of the Cabinet member responsible for the administration of the land in question may, by notice in the *Gazette*, declare any state land described in the notice as a—

- (a) national botanical garden;
- (b) national zoological garden; or
- (c) part of an existing national botanical or national zoological garden.

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

- (a) national botanical garden;

(b) national zoological garden; or

(c) part of an existing national botanical or national zoological garden.

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

(4) All notices in terms of subsections (1), (2) and (3) must be included in Schedule 1 to this Act, which will contain the name and definition of the land in question, of all proclaimed national botanical and national zoological gardens.

(5) The Minister must notify the relevant Registrar of Deeds in writing whenever a national botanical or zoological garden has been declared in terms of this section.

(6) The notification to the relevant Registrar of Deeds must—

(a) include a description of the land involved; or

(b) be accompanied by a diagram as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997), of the land involved and which is signed by a land surveyor.

(7) On receipt of the notification contemplated in subsection (6), the relevant Registrar of Deeds must in accordance with section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), make a note in the relevant register of the declaration.

**Amendment or withdrawal of declarations**

**32.** (1) The Minister may, by notice in the *Gazette* amend Schedule 1 in order to—

- (a) amend or withdraw a notice referred to in section 31, subject to subsection (2); or
- (b) amend the name assigned to a national botanical or national zoological garden.

(2) The declaration of state land as a national botanical or national zoological garden, or part of an existing national botanical or national zoological garden, may not be withdrawn and a part of a national botanical or national zoological garden on state land may not be excluded from it except by resolution of each House of Parliament.

**Part 7****General****Minister's supervisory powers**

**33.** (1) The Minister—

- (a) must monitor the exercise and performance by the Institute of its powers and duties;
- (b) may set norms and standards for the exercise and performance by the Institute of its powers and duties;
- (c) may issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;
- (d) must with the concurrence of the Minister of Finance determine limits on fees charged by the Institute in the exercise and performance of its powers and duties; and
- (e) may identify land for new botanical gardens and extensions to existing botanical gardens.

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

### **Absence of functional Board**

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

**Winding up or dissolution of Institute**

**35.** (1) The Institute may not be wound up or dissolved except by or in terms of an Act of Parliament.

(2) Upon its winding-up or dissolution the Institute must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to an equivalent Schedule 3A Public Entity which has the same objectives as the Institute and which itself is exempt from income tax in terms of section 10(1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962).

**CHAPTER 3****BIODIVERSITY PLANNING****National biodiversity framework and strategy**

**36.** (1) The Minister may prepare and adopt a national strategy or framework for biodiversity management within the Republic, to provide for an integrated, co-ordinated and uniform approach to biodiversity management including—

(a) identifying priority areas for conservation action and the establishment of protected areas;

- (b) matters relating to regional and international co-operation on issues concerning biodiversity management;
- (c) threats and pressures to species and ecosystems; and
- (d) any other matter which the Minister considers necessary.

(2) The Minister must, by notice in the *Gazette*, publish any national strategy or framework adopted in terms of subsection (1).

### **Spatial biodiversity plans**

**37.** (1) The Minister or the MEC may, by notice in the *Gazette*, publish a spatial biodiversity plan.

(2) A spatial biodiversity plan must—

- (a) align with the boundaries of a municipality or a province;
- (b) identify a set of geographic biodiversity priority areas within the municipality or province, based on the best available science;
- (c) provide measures for the management and conservation of biodiversity in the priority areas identified;
- (d) provide for monitoring of the plan; and

- (e) comply with any other requirement prescribed by the Minister.

### **Biodiversity management plans**

**38.** (1) The Minister or MEC may, by notice in the *Gazette*, publish a biodiversity management plan for—

- (a) a listed ecosystem or any other ecosystem which warrants special conservation attention; or
- (b) a listed indigenous species or any other indigenous species which warrants special conservation attention.

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

### **Contents of biodiversity management plans**

**39.** A biodiversity management plan must—

- (a) be aimed at ensuring the long-term conservation and effective management of the species or ecosystems to which the plan relates;
- (b) provide for the responsible person, organisation or organ of state to monitor

and report on progress with implementation of the plan;

- (c) take into consideration—
- (i) any plans issued in terms of Chapter 3 of the National Environmental Management Act;
  - (ii) any municipal integrated development plan;
  - (iii) any applicable spatial biodiversity plan; and
  - (iv) any other plans prepared in terms of national or provincial legislation that are affected.

### **Biodiversity management agreements**

**40.** The Minister or MEC may enter into a biodiversity management agreement with a person, organisation or organ of state, regarding the implementation of any planning tool, any other matter relating to biodiversity management or other provision in terms of this Act.

### **Co-ordination and alignment of biodiversity plans**

**41.** (1) The preparation of—

- (a) an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act;
- (b) an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (c) any spatial development frameworks in terms of 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,

must—

- (i) be aligned with any planning tool prepared in terms of this Chapter;
- (ii) incorporate into that plan those provisions of any planning tool prepared in terms of this Chapter that specifically apply to it;
- (iii) demonstrate how any planning tool prepared in terms of this Chapter may be implemented; and
- (iv) align with the provisions relating to any listed ecosystem or listed species.

(2) The Institute may—

- (a) assist in the preparation of any planning tool prepared in terms of this

Chapter to comply with subsection (1); and

- (b) make recommendations to organs of state or municipalities referred to in subsection (1) to align their plans referred to in that subsection.

## CHAPTER 4

### ECOSYSTEMS AND SPECIES

#### Listed ecosystems and species

#### Species and ecosystems in need of conservation or protection

**42.** (1) The Minister may, by notice in the *Gazette*, publish a national list of species or ecosystems that are threatened or in need of conservation or protection, and may in such notice, impose conditions, controls, identify measures or activities including, but not limited to, prohibitions, restrictions, activities which require a permit, or any other measure, in relation to such listed eco-systems or species.

(2) A notice in terms of subsection (1) may—

- (a) apply generally—

- (i) throughout the Republic or a province, as the case may be, or only in a specified area or specified category of areas;
  - (ii) to all persons or only to a specified category of persons; or
  - (iii) to all species or ecosystems or only to a specified species or ecosystems or specified category of species or ecosystems; or
- (b) differentiate between—
- (i) areas or categories of areas;
  - (ii) persons or categories of persons; or
  - (iii) species or ecosystems or categories of species or ecosystems.

### **Management of species and ecosystems**

**43.** (1) The Minister may, prescribe in relation to any species or ecosystem, that is in need of management, any conditions, controls, measures or activities including, but not limited to prohibitions, restrictions, activities which require a permit, or any other measure, in relation to such eco-systems or species.

(2) Any provisions prescribed in terms of subsection (1) may—

- (a) apply generally—

- (i) throughout the Republic or a province, as the case may be, or only in a specified area or specified category of areas;
  - (ii) to all persons or only to a specified category of persons; or
  - (iii) to all species or ecosystems or only to a specified species or ecosystems or specified category of species or ecosystems; or
- (b) differentiate between—
- (i) areas or categories of areas;
  - (ii) persons or categories of persons; or
  - (iii) species or ecosystems or categories of species or ecosystems.

### **Listing of priority species**

**44.** (1) The Minister may, by notice in the *Gazette*, publish a national list of priority species or specimens, which—

- (a) require additional or preferential protection;
- (b) are vulnerable to poaching, organised crime, or wildlife trafficking;
- (c) require additional compliance and enforcement resources; or
- (d) require stricter penalty provisions,

and may in such notice, impose conditions, controls, identify measures or activities, including but not limited to prohibitions, restrictions, activities which require a permit, or any other measure, in relation to such listed species or specimens.

(2) A notice in terms of subsection (1) may—

(a) apply generally—

(i) throughout the Republic or a province, as the case may be, or only in a specified area or specified category of areas;

(ii) to all persons or only to a specified category of persons; or

(iii) to all species or only to a specified species or specified category of species; or

(b) differentiate between—

(i) areas or categories of areas;

(ii) persons or categories of persons; or

(iii) species or specimens, or categories of species or specimens.

## Trade in species

### Establishment of scientific authority

**45.** (1) The Minister must establish a scientific authority for the purpose of assisting in regulating and restricting the trade in specimens of species to which an international agreement regulating international trade; and trade in species listed in section 42 applies.

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

### Functions of scientific authority

- 46.** (1) The scientific authority must—
- (a) monitor and evaluate in the Republic the legal and illegal trade in specimens of species to which an international agreement regulating international trade applies and legal and illegal trade in species listed in terms of section 42;
  - (b) advise the Minister and any other interested organs of state on the matters contemplated in (a);
  - (c) make non-detriment findings as prescribed. relating to the international trade in specimens of species to which an international agreement regulating international trade applies, and must submit those findings to the Minister;

- (d) advise the Minister on—
  - (i) the registration of ranching operations, nurseries, captive breeding operations and other facilities;
  - (ii) whether an operation or facility meets the criteria for producing species considered to be bred in captivity or artificially propagated;
  - (iii) any amendments to a notice published in terms of section 42(1);
  - (iv) the nomenclature of species;
  - (v) species that require specific management intervention; or
  - (vi) any other matter as prescribed;
- (e) assist the Minister or an environmental management inspector in the identification of specimens for the purpose of enforcing the provisions of this Act;
- (f) perform any other function that may be—
  - (i) prescribed; or
  - (ii) delegated to it by the Minister in terms of the National Environmental Management Act; and
  - (iii) deal with any other matter necessary for, or reasonably incidental to, its powers and duties.

- (2) In performing its duties, 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.

#### **Activities involving species to which an international agreement applies**

**47.** (1) No person may import, export, re-export or introduce from the sea, a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora without a permit issued in terms of section 67.

(2) Subsection (1) does not apply in respect of a specimen of a listed species or a species to which an international agreement regulating international trade applies conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place with the required original documentation from the country of origin accompanying the shipment.

(3) The Minister may in respect of any specimen of a species referred to in subsection (1) or to any specimen to which any other international agreement applies prescribe conditions, controls, identify measures or activities;

including but not limited to prohibitions, restrictions, activities which require a permit, or any other measure, in relation to such species.

### **Hunting of terrestrial species**

#### **Hunting seasons**

**48.** (1) The Minister may by notice in the *Gazette*, with the concurrence of an MEC, declare an open season during which period a person or category of persons, may hunt in the area and for the terrestrial species specified in the notice and may impose conditions, including but not limited to prohibitions, restrictions, requirements for a licence, or any other measure.

(2) No person may hunt any of the species specified in the notice contemplated in subsection (1) without a licence issued in terms of this Act.

## **CHAPTER 5**

### **BIO-SECURITY**

#### **Management of alien species**

**49.** (1) No person may import a specimen of an alien species

without a permit issued in terms of section 67.

(2) A permit referred to in subsection (1) may be issued only after a risk assessment on biodiversity is carried out.

(3) The Minister may prescribe any prohibitions, restrictions, requirements for a permit, or any other measure, necessary for the management of an alien species or category of alien species.

(4) Regulations in terms of subsection (3) may apply generally and differentiate—

(a) within the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;

(b) to all persons, to specific persons or only to a specified category of persons;  
or

(c) to all species or only to a specified species or a specified category of species.

### **List of invasive species**

**50.** (1) The Minister must by notice in the *Gazette*, publish a national list of invasive species, with any conditions, including but not limited to prohibitions, restrictions, requirements for a permit, or any other measure, necessary

for the management of such listed invasive species.

(2) The Minister may regularly review the list published in terms of subsection (1), as may be appropriate.

(3) A notice in terms of subsection (1) may apply generally and differentiate—

- (a) within the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
- (b) to all persons, to specific persons or only to a specified category of persons;  
or
- (c) to all species or only to a specified species or a specified category of species.

### **Invasive species control plans**

**51.** (1) The management authority of a protected area preparing a management plan for the area in terms of the Protected Areas Act, must incorporate into the management plan, invasive species control strategies.

(2) The Minister may prescribe when an organ of state or any other person may be required to prepare an invasive species control plan for land which they own, occupy or under their control; or any listed invasive species under their

control.

## CHAPTER 6

### GENETICALLY MODIFIED ORGANISMS

#### Genetically modified organisms

**52.** (1) If the Minister has reason to believe that the release of a genetically modified organism into the environment in terms of a permit applied for in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), may pose a threat to any indigenous species or the environment, no permit for such release may be issued in terms of that Act unless a risk assessment has been undertaken in terms of this Act and considered by the decision-maker in issuing that permit.

(2) The Minister must convey his or her belief referred to in subsection (1) to the authority issuing permits in terms of the Genetically Modified Organisms Act, 1997 before the application for the relevant permit is decided.

(3) For the purposes of subsection (1), “**release**” means trial release or general release as defined in section 1 of the Genetically Modified Organisms Act, 1997.

**CHAPTER 7****ACCESS TO INDIGENOUS BIOLOGICAL RESOURCES AND INDIGENOUS  
KNOWLEDGE, BIOPROSPECTING AND BENEFIT SHARING****Definitions**

53. In this Chapter—

“**Access Agreement**” means a written agreement concluded with a person who is lawfully entitled to grant access to an indigenous biological resource or indigenous knowledge for bioprospecting;

“**Benefit Sharing Agreement**” means a written agreement between an applicant for a commercial-exploitation bioprospecting permit and—

- (a) a person giving access;
- (b) an indigenous community; or
- (c) an organ of state,

to regulate the commercial exploitation of an indigenous biological resource or

indigenous knowledge;

**“bioprospecting”** means any discovery phase of bioprospecting or the commercial exploitation of an indigenous biological resource or indigenous knowledge;

**“commercial exploitation of an indigenous biological resource or indigenous knowledge”** means any activity referred to in section 59(2), or listed in terms of section 59(3);

**“commercial-exploitation bioprospecting permit”** means a permit issued in terms of section 59(4);

**“discovery-phase bioprospecting permit”** means a permit issued in terms of section 57(2);

**“discovery-phase of bioprospecting”** means any research on, or application of, indigenous biological resources or indigenous knowledge where the nature and extent of any actual or potential benefits is not sufficiently clear or known to begin the commercial exploitation of an indigenous biological resource or indigenous knowledge;

**“indigenous community”** means any recognisable community of people who—

- (a) originated in or who are historically settled in, a geographic area or areas located within the borders of the Republic;
- (b) who are characterised by social, cultural and economic conditions which distinguish them from other sections of the national community; and

- (c) who identify themselves and are recognised by other groups as a distinct collective;

**“indigenous biological resource”—**

(a) means—

- (i) any indigenous biological resources, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or altered in any way by means of technology;
- (ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species referred to in subparagraph (i); and
- (iii) any alien animal, plant or other organism, whether gathered from the wild or accessed from any other source, which have been altered to contain any genetic material or chemical compound found in any indigenous species referred to in subparagraph (i) or (ii); but

(b) excludes—

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

**“indigenous knowledge”** means the customary utilisation, or traditional knowledge

of, indigenous biological resources in accordance with written or unwritten rules, usages, customs or practices, traditionally observed, accepted and recognised by an indigenous community or person, and include discoveries and applications about an indigenous biological resource by that community or person;

**“non-commercial research”** means research that is undertaken with the specific intention not to use any results of the research for the commercial exploitation of indigenous biological resources or indigenous knowledge;

**“person giving access”** means—

- (a) an indigenous community or the person representing that community who is authorised to give access to an indigenous biological resource owned by that community or indigenous knowledge belonging to that community;
- (b) the owner of land on which an indigenous biological resource occurs;
- (c) a person who is lawfully authorised or lawfully entitled to give access to an indigenous biological resource or indigenous knowledge; or
- (d) the Minister, on behalf of the State, as trustee for purposes of section 58(2); and

**“Prior Informed Consultation and Consent Process”** means to approach, enquire from, engage, discuss or consult with any person giving access in order to undertake bioprospecting.

## **Process for discovery-phase bioprospecting permit and commercial-exploitation bioprospecting permit**

**54.** Any person wanting to obtain a discovery-phase bioprospecting permit or a commercial-exploitation bioprospecting permit must first obtain the Minister's written approval of the—

- (a) Prior Informed Consultation and Consent Process undertaken in terms of section 55; and
- (b) Access Agreement in terms of section 56.

## **Prior Informed Consultation and Consent Process**

**55.** (1) No person may undertake a Prior Informed Consultation and Consent Process without—

- (a) notifying the Minister in writing of the intention to do so; and
- (b) obtaining the Minister's written permission to do so.

(2) No person may commence negotiations for, or conclude an Access Agreement, without first obtaining the Minister's written approval of the Prior Informed Consultation and Consent Process undertaken by the applicant.

(3) When considering an application to approve a Prior Informed Consultation and Consent Process, the Minister must consider—

- (a) the nature and extent of the access to the indigenous biological resource or indigenous knowledge which has been requested;
- (b) whether or not the applicant disclosed all material information relating to the proposed bioprospecting to the person giving access;
- (c) whether or not the person giving access or the applicant has been requested to sign a written non-disclosure agreement to protect any intellectual property belonging to any party to that agreement;
- (d) the cultural and historical characteristic, customs, rules and practices of the person giving access;
- (e) the nature of the consultation process undertaken;
- (f) the extent to which the person giving access understood the purpose of the consultation, and the consequences of providing access;
- (g) whether or not the person giving access approved or disapproved the nature of the consultation process; and
- (h) any other matter which may be prescribed.

(4) The Minister may—

- (a) approve a Prior Informed Consent and Consultation Process subject to conditions;
- (b) dismiss an application to approve a Prior Informed Consent and Consultation

Process if that process—

- (i) is not fair towards the person giving access given the considerations in subsection (3); or
- (ii) does not comply with any matter prescribed in terms of this Act.

### **Access Agreement**

**56.** (1) An applicant must—

- (a) conclude an Access Agreement; and
- (b) obtain the Minister's approval of the Access Agreement,

prior to applying for a discovery-phase bioprospecting permit or a commercial-exploitation bioprospecting permit.

(2) Sections 54, 55 and subsection (1) are not applicable to an applicant who owns the land on which the indigenous biological resource is located, except if the applicant intends to utilise indigenous knowledge belonging to an indigenous community or any other person.

(3) The Minister must consider the following in an application to approve an Access Agreement:

- (a) whether or not the terms of that agreement are fair towards the person giving

access;

- (b) the nature of the access to indigenous biological resources and indigenous knowledge given to the applicant;
- (c) whether or not the person giving access will receive fair compensation for that access;
- (d) whether or not the customary and traditional rights of the person giving access are adequately protected in terms of that agreement; and
- (e) any other matter which may be prescribed.

(4) The Minister may—

- (a) approve an Access Agreement subject to conditions; or
- (b) dismiss an application to approve an Access Agreement if the agreement—
  - (i) is not fair towards the person giving access, given the considerations in subsection (3); or
  - (ii) the Access Agreement does not comply with any matter prescribed for that agreement in terms of this Act.

**Discovery-phase bioprospecting permit**

57. (1) No person may—

- (a) undertake the discovery phase of bioprospecting;
  - (b) export an indigenous biological resource to undertake the discovery phase of bioprospecting; or
  - (c) undertake the discovery phase of bioprospecting outside of the Republic,
- without a permit issued by the Minister.

(2) The Minister may issue a discovery-phase bioprospecting permit if—

- (a) the Access Agreement has been approved in terms of section 56(4); and
- (b) the applicant has complied with any matter prescribed in terms of this Act.

(3) The Minister may issue the discovery-phase bioprospecting permit subject to conditions.

(4) The holder of a discovery-phase bioprospecting permit may not access any indigenous knowledge associated with the indigenous biological resource for which access has been granted in that permit, unless access to that indigenous knowledge is also specifically authorised in that permit.

## Benefit Sharing Agreement

58. (1) An applicant must—

(a) conclude a Benefit Sharing Agreement; and

(b) obtain the Minister's written approval of the Benefit Sharing Agreement,

prior to applying for a commercial-exploitation bioprospecting permit.

(2) An applicant for a commercial-exploitation bioprospecting permit who wants to commercially exploit an indigenous biological resource located on land owned by the applicant must conclude a Benefit Sharing Agreement with the Minister who, on behalf of the State, acts as trustee of the Republic's indigenous biological resources and any money resulting from that agreement must be transferred to the suspense bank account referred to in section 61(1).

(3) Subsection (2) is not applicable to an applicant landowner who wants to commercially exploit indigenous knowledge belonging to any person residing on that land.

(4) The Minister may approve a Benefit Sharing Agreement if—

(a) the applicant's Access Agreement was approved in terms of section 56(4)(a), if applicable;

(b) the applicant was issued with a discovery-phase bioprospecting permit in terms of section 57(2), if applicable;

(c) all applicable objectives in subsection (6) are satisfied by that agreement;  
and

(d) the applicant has complied with any matter prescribed in terms of this Act.

(5) The Minister may approve a Benefit Sharing Agreement subject to conditions.

(6) When considering an application for the approval of a Benefit Sharing Agreement, the Minister must consider the following objectives:

(a) whether or not the terms of that agreement are fair towards all the parties to the agreement;

(b) whether or not the person giving access will receive fair compensation and share fairly in the benefits which may accrue as a result of the commercialisation of the indigenous biological resource or indigenous knowledge;

(c) if the agreement promotes the conservation, sustainable use and development of indigenous biological resources or indigenous knowledge for the benefit of the Republic;

(d) whether the person giving access will receive appropriate recognition in the commercialisation of the indigenous biological resource or the indigenous knowledge;

(e) if the agreement creates mechanisms to support further research on the

indigenous biological resource or indigenous knowledge;

- (f) if the agreement aims to enhance the scientific knowledge of and the technical capacity to, conserve, use and develop the indigenous biological resource or indigenous knowledge;
- (g) whether the agreement will improve the livelihood of the person giving access;
- (h) whether or not the agreement clearly sets out the conditions and the terms of the ownership of the intellectual property which may arise from and which may be registered as a result of the use of the indigenous biological resource or the indigenous knowledge;
- (i) whether or not the agreement unfairly excludes the person giving access from concluding another Benefit Sharing Agreement for the use of the same or any other indigenous biological resource or indigenous knowledge; and
- (j) any other matter which may be prescribed.

### **Commercial-exploitation bioprospecting permit, registration certificate and Biotrade Agreement**

**59.** (1) No person may

- (a) undertake the commercial exploitation of an indigenous biological resource

or indigenous knowledge;

- (b) export an indigenous biological resource in order to undertake the commercial exploitation of that resource; or
- (c) undertake the commercial exploitation of an indigenous biological resource or indigenous knowledge outside of the Republic,

without a permit issued by the Minister.

(2) The commercial exploitation of an indigenous biological resource or indigenous knowledge includes the following activities:

- (a) access to, the collection of, or use of an indigenous biological resource or indigenous knowledge in order to undertake an activity which may result in a financial benefit;
- (b) obtaining or transferring any intellectual property rights in respect of an indigenous biological resource or indigenous knowledge inside or outside of the Republic;
- (c) commencing with any activity to develop any part of, or extract any natural ingredient from, an indigenous biological resource, in order to sell a product inside or outside of the Republic, derived from that part or ingredient;
- (d) the submission of a request to a regulatory organisation for permission to sell any part of, or an extract from any natural ingredient, or product developed from an item referred to in paragraph (c) inside or outside of the

Republic;

- (e) the multiplication of an indigenous biological resource through cultivation, breeding or other means in order to develop and produce any product with financial value; or
- (f) any activity listed by the Minister as such in the *Gazette*.

(3) The Minister may, by notice in the *Gazette*, list activities which will be activities for the commercial exploitation of an indigenous biological resource or indigenous knowledge for purposes of this Chapter.

(4) The Minister may issue a commercial-exploitation bioprospecting permit if

- (a) a Benefit Sharing Agreement has been approved by the Minister in terms of section 58; and
- (b) the applicant has complied with any matter prescribed in terms of this Act.

(5) No person who lawfully obtains permission to use an indigenous biological resource or indigenous knowledge from the holder of a commercial-exploitation bioprospecting permit for activities referred to in subsections (2)(b), (c), (d), (e) and (f) may undertake the activities in those subsections without

- (a) obtaining a registration certificate from the Department; and
- (b) concluding a Biotrade Agreement with the Minister.

(6) The Minister may conclude a Biotrade Agreement with a person contemplated in subsection (5) to govern how the financial benefits which arise from the activities referred to in subsections (2)(b), (c), (d), (e) and (f) may be transferred to the person giving access in each respective instance.

(7) The Minister may prescribe the financial benefit, as a percentage of the financial value of any right, ingredient, product or resource sold as part of activities contemplated in subsections (2)(b), (c), (d), (e) and (f) respectively, that is payable in terms of a Biotrade Agreement to the person giving access in each instance.

(8) The Minister may prescribe a different financial benefit percentage for a Biotrade Agreement which applies in or to different—

- (a) areas or categories of areas;
- (b) persons or categories of persons;
- (c) indigenous biological resources or categories of indigenous biological resources; or
- (d) indigenous knowledge or categories of indigenous knowledge.

#### **Non-commercial research permit**

**60.** (1) No person may export an indigenous biological resource

from the Republic for non-commercial research purposes without a permit issued by the issuing authority.

(2) The issuing authority may issue a non-commercial research permit if the applicant—

- (a) has obtained the written consent from the landowner on whose land the indigenous biological resource occurs, to use that resource for non-commercial research; or
- (b) has obtained the written consent from the person giving access to use any indigenous knowledge for non-commercial research; and
- (c) has concluded a written non-commercial research agreement with the parties referred to in paragraphs (a) or (b) that specifically prohibits the sharing of any research results with third parties who could use it for the commercial exploitation of an indigenous biological resource or indigenous knowledge; and
- (d) complies with any matter prescribed in terms of this Act.

(3) No person may import or utilise, within the Republic, an indigenous biological resource or indigenous knowledge from another country, unless that person declares in writing that the regulatory requirements from the country in which the resource or knowledge is located, were complied with.

**Collection and payment of benefit sharing funds**

61. (1) The following funds must be paid into a suspense bank account administered by the Department and set up specifically for the administration of those funds:

- (a) funds arising from an Access Agreement which is lawfully owed to any party to that agreement, except for funds lawfully owed to the applicant who is party to that agreement;
- (b) funds arising from a Benefit Sharing Agreement which is lawfully owed to any party to that agreement, except for funds lawfully owed to the holder of a commercial-exploitation bioprospecting permit who is a party to that agreement;
- (c) funds arising from a Biotrade Agreement which is lawfully owed to a person giving access in terms of that agreement; and
- (c) any other funds which the Minister, in consultation with the Minister responsible for finance, may deposit into that account.

(2) The Director-General is the accounting officer responsible for funds paid into the suspense bank account and for payment of funds from that account.

(3) All funds paid into the suspense bank account must be managed in accordance with the Public Finance Management Act, 1999.

(4) The Director-General may pay, from the suspense bank account, funds arising from an Access Agreement, Benefit Sharing Agreement or Biotrade Agreement, to any party who is lawfully owed funds in terms of any of those agreements, except to—

- (i) an applicant in the case of an Access Agreement;
- (ii) the holder of a commercial-exploitation bioprospecting permit; or
- (iii) any person who concluded a Biotrade Agreement with the Minister in terms of section 59(6).

## CHAPTER 8

### GENERAL PROVISIONS

#### **Consultation**

**62.** Before publishing or amending a notice in terms of this Act, the Minister must follow an appropriate consultation process including consulting affected organs of state.

## **Recognition of associations and organisations and establishment of fora**

**63.** (1) The Minister may recognise any industrial, body, association or organisation which, in the opinion of the Minister, is representative of any part of the biodiversity sector and may prescribe the application process, requirements and any other criteria.

(2) The Minister may establish fora to coordinate and assist with the management of any aspect of biodiversity.

## **Honorary biodiversity officers**

**64.** (1) The Minister or the MEC of a province may appoint any member of the public who has appropriate expertise as a honorary biodiversity officer.

(2) A honorary biodiversity officer must exercise the powers and perform the duties assigned to him or her by the Minister or MEC in a manner that conserves and protects the environment.

(3) The Minister or the MEC may—

- (a) prescribe the powers and duties of honorary biodiversity officers;
- (b) clearly define the responsibilities and duties of each honorary biodiversity officer in his or her letter of appointment; and

- (c) issue each honorary biodiversity officer with an identity card that confirms his or her appointment.

### **National coordination**

**65.** (1) The Minister may, by notice in the *Gazette*, coordinate specific activities or matters on a national level if it is necessary—

- (a) to ensure compliance with the Republic's obligations in terms of international agreements;
- (b) for national security purposes; or
- (c) to ensure effective implementation and enforcement of the provisions of this Act.

(2) The Minister may prescribe the measures necessary to facilitate the national coordination of specific activities or matters contemplated in subsection (1).

(3) No person may contravene any measure prescribed in terms of subsection (2).

**Application for permits**

**66.** (1) Any permit issued in terms of this Act, may—

- (a) be issued for a specified period;
- (b) be issued subject to the conditions determined by the Issuing Authority in the permit;
- (c) be renewed for a specific period; or
- (d) be issued against the payment of any prescribed fees.

(2) A permit to exercise an existing right in terms of this Act may be refused if the conditions of a previously issued permit had not been adhered to.

(3) An issuing authority may defer a decision to issue a permit if the applicant is under investigation for the contravention or failure to comply with any provision of this Act, until such time that the investigation is concluded and—

- (a) no prosecution in respect of such contravention or failure is instituted against the applicant concerned;
- (b) the applicant concerned is acquitted or found not guilty, if a prosecution in respect of such contravention or failure has been instituted; or
- (c) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to

appeal or review.

### **Issuing authority**

**67.** (1) The Minister is the issuing authority responsible for deciding an application for a permit—

(a) involving a specimen of a listed threatened or protected species—

(i) in a national protected area;

(ii) that is a marine species; or

(iii) applied for by an official, on behalf of—

(aa) a provincial department or provincial organ of state responsible for the conservation of biodiversity in a province;

(bb) a national protected area;

(cc) the South African National Biodiversity Institute; or

(dd) an organ of state in the national sphere of government;

(b) the import, export, re-export or introduction from the sea, of a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora—

- (i) originating from a national protected area;
- (ii) that is a marine species; or
- (iii) applied for by an official, on behalf of—
  - (aa) a provincial department or provincial organ of state responsible for the conservation of biodiversity in a province;
  - (bb) a national protected area;
  - (cc) the South African National Biodiversity Institute; or
  - (dd) an organ of state in the national sphere of government;
- (c) a specimen of an alien species or a listed invasive species;
- (d) permits for the commercial exploitation of an indigenous biological resource or indigenous knowledge; and
- (e) the export of any indigenous biological resources from the Republic for the purpose of bioprospecting.

(2) The MEC is the issuing authority responsible for deciding an application for any permit not listed in subsection (1).

(3) The Minister and the MEC may, in writing, agree that any application for a permit or a type of permit—

- (a) contemplated in subsection (1), may be decided by the MEC; or
- (b) contemplated in subsection (2), may be decided by the Minister.

## **Exemptions**

**68.** (1) The Minister may, in writing or by notice in the *Gazette*, exempt any person or group of persons or organ of state from a provision of this Act, provided that such exemption does not conflict with the objects of the Act.

(2) An exemption granted in terms of subsection (1) may

- (a) be subject to conditions;
- (b) be subject to payment of a fee; and
- (c) be amended or cancelled at any time by the Minister.

## **Risk assessments and expert evidence**

**69.** (1) Before issuing a permit, the issuing authority may, in writing, require the applicant to furnish it, at the applicant's expense, with such independent risk assessment or expert evidence as the issuing authority may determine.

(2) The Minister may prescribe the requirements for and the circumstance in which a risk assessment in respect of any species, ecosystem or other matter in terms of this Act, is required.

### **Integrated permits**

**70.** (1) If the carrying out of an activity that is subject to the requirement to obtain a permit in terms of this Act is also regulated in terms of another law, the authority empowered under that other law 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 law may issue an integrated permit for the activity if that authority is also designated as an issuing authority for permits in terms of this Act in respect of that activity.

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

- (a) the relevant provisions of this Act and that other law have been complied with; and

- (b) the permit specifies the—
- (i) provisions in terms of which it has been issued; and
  - (ii) authority or authorities that have issued it.

### **Amendment, revocation and suspension of permits**

71. (1) An issuing authority may amend, revoke or suspend a permit issued in terms of this Act, if—

- (a) the permit-holder contravenes or fails to comply with a condition subject to which the permit was issued or any provision of this Act or other law governing the permitted activity;
- (b) changes in circumstances require such amendment, revocation or suspension;
- (c) it is necessary to meet the Republic's international obligations;
- (d) the applicant or permit-holder has been convicted of an offence in terms of this Act;
- (e) the carrying out of the activity has a detrimental impact on the species or ecosystem;
- (f) the permit was issued as a result of misleading or false representations by

the applicant or a person acting on behalf of the applicant;

(2) An issuing authority must notify the permit-holder in writing of an intention to act in terms of subsection (1) and request the permit-holder to make written representations within 30 days from the date of being notified as to why the permit should not be amended, revoked or suspended.

(3) After the 30 days in subsection (2) has expired, the issuing authority must consider any representations made by the permit-holder, and may—

- (a) revoke the permit;
- (b) suspend the permit for a period determined by the issuing authority;
- (c) alter the terms or conditions of the permit; or
- (e) decide not to amend, revoke or suspend the permit.

### **Emergency intervention**

**72.** (1) The Minister may, by notice in the *Gazette*, declare an emergency intervention for—

- (a) the control or eradication of an alien species or a listed invasive species, if that alien species or listed invasive species constitutes a significant threat to the environment;

- (b) the protection or management of a listed species or listed ecosystem or any other species or ecosystem managed in terms of this Act, if such species or ecosystem is under or may be under significant threat from natural or human impacts or activities; or
- (c) any resource regulated by Chapter 7, where such resource is required for immediate research, distribution or use, or for the protection of human health or the environment.

(2) A notice in terms of subsection (1) must—

- (a) list the species or resource to which the emergency intervention relates;
- (b) provide a brief summary of the reasons for the intervention; and
- (c) provide the details relating to the intervention.

(3) A notice in terms of subsection (1) may be published without first consulting any person or organ of state.

(3) An intervention may provide for, but is not limited to, the following:

- (a) the suspension all or any activity or authorisation, or any specified part of it;
- (b) the restriction or prohibition of any activity in relation to any species, ecosystem or resource;
- (c) the restriction of the number of persons in a particular area or areas of

operation; or

- (e) declare that an area is closed and may not be accessed by the public until such as the circumstances giving rise to the intervention has been adequately resolved.

(4) The Minister may, by notice in the *Gazette*, amend, withdraw or suspend an intervention issued in terms of subsection (1).

### **Regulations by Minister**

**73.** (1) The Minister may make regulations relating to—

- (a) the implementation of Chapters 2, 3, 4, 5, 6, 7 and 8;
- (b) any measures necessary for the management or well-being of any species, ecosystem or other biological resource managed in terms of this Act;
- (c) the implementation of any international agreement regulating international trade in specimens of species and any other international agreement relating to biodiversity;
- (d) the systems and the requirements for—
  - (i) the compulsory or voluntary registration of persons, institutions, ranching operations, game farms, nurseries, captive breeding, aquaria, rehabilitation or other keeping operations and other facilities

or operations; and

- (ii) the recognition of associations, organisations or industry bodies in the biodiversity sector;
- (e) the composition, operating procedures and functions of the scientific authority including the making of non-detriment findings;
- (f) the sustainable utilisation of biodiversity, including but not limited to—
- (i) limiting the number of permits;
  - (ii) qualifications or requirements necessary for the undertaking of a particular activity;
  - (iii) criteria for the equitable allocation of permits for activities;
  - (iv) certification or labelling systems or schemes;
  - (v) methods, gear, equipment, measure or devices;
  - (vi) quotas, bag limits, off-take limits any other measure, restrictions or prohibitions;
  - (vii) registration or the requirements for a permit for hunters, hunting facilities, or any other hunting operator or body involved in the hunting industry;
  - (viii) training requirements;

- (ix) a person or category of person who may not operate without a permit; or
- (x) translocation;
- (g) any industry sector including but not limited to the hunting industry, game farms, aquaria, zoos, captive breeding or rehabilitation facilities;
- (h) the collection of samples for genetic analyses or other purposes;
- (i) the marking of specimens;
- (j) prohibitions, restrictions, methods or measures relating to an activity involving any species, ecosystem or other biological resource managed in terms of this Act;
- (k) the requirements for or circumstances in which a risk assessment in respect of any species, ecosystem or other biological resource managed in terms of this Act, may be required;
- (l) the form, content, criteria, procedures and evaluation of any risk assessment;
- (m) the form, content, requirements and implementation of programmes or plans for the prevention, control or eradication of invasive species;
- (n) biosecurity including but not limited to—
  - (i) vectors and pathways;

- (ii) restrictions on trade;
  - (iii) sale of immovable property;
  - (iv) procedures, requirements and processes for notification, management,
  - (v) control, eradication or clearance certificates for invasive species; and
  - (vi) the establishment of intergovernmental and stakeholder committees to advise and make recommendations on any aspect of biosecurity;
- (o) any matter concerning bioprospecting, access and benefit-sharing including, but not limited to—
- (i) notifying the Minister and the request for the Minister's written permission in terms of sections 55(1)(a) and (b);
  - (ii) an application to approve a Prior Informed Consultation and Consent Process in terms of 55(2);
  - (iii) an application to approve an Access Agreement in terms of 56(4);
  - (iv) an application for a discovery-phase bioprospecting permit in terms of section 57;
  - (v) an application to approve a Benefit Sharing Agreement in terms of section 58;

- (vi) an application for a commercial-exploitation bioprospecting permit in terms of section 59;
  - (vii) an application for a registration certificate in terms of section 59(5)(a);
  - (viii) the process to conclude and the content of, a Biotrade Agreement in terms of section 59(5)(b) ;
  - (ix) the financial benefit payable in terms of a Biotrade Agreement to the person giving access in terms of section 59(6) read with section 59(7);
  - (x) an application for, and the form and content of, a non-commercial research permit in terms of section 60(2); and
  - (xi) funds payable from and the administration of, the suspense bank account referred to in section 61(1);
- (p) the procedure to be followed for anything in terms of this Act, including, but not limited to—
- (i) fees for: the lodging and consideration of applications and issuance of permits, exemptions or registrations;
  - (ii) the conditions with which applicants must comply before or after the lodging of applications;
  - (iii) the powers of issuing authorities when considering and deciding such

- applications;
- (iv) the factors that must be taken into account when deciding applications;
  - (v) the form and content of permits, exemptions or registrations;
  - (vi) timeframes, measures, criteria, processes, geographical areas of application, categories and types of permits and exemptions, and any other matter relating to the issuing, renewal, amendment, revocation or suspension of permits, exemptions or registrations;
  - (vii) the period of validity of a permit, exemption or registration;
  - (viii) the circumstances in which applications must be refused or may be approved and general or compulsory conditions;
  - (ix) the giving of security in respect of any obligation that may arise from a permit or exemption and the form of such security;
  - (x) the transferability of a permit, exemption or a registration certificate;
  - (xi) the duties and reporting requirements of issuing authorities, permit holders, exemption holders and registration holders;
  - (xii) the type and format of data to be submitted to the issuing authority or other organs of state for the purposes of monitoring and the implementation of this Act; or

- (xiii) the procedure for obtaining a hunting licence;
- (q) incentives or disincentives to assist with biodiversity management;
- (r) self-administration within the biodiversity sector;
- (s) national coordination of matters of national security;
- (t) any other matter that may be necessary to facilitate the implementation of this Act;
- (u) any matter that is necessary or expedient to achieve the objectives of the Act; and
- (v) any other matter that may be prescribed in terms of this Act;

(2) The Minister may only a regulation that has a direct fiscal implication with the concurrence of the Minister responsible for finance.

### **Norms and standards**

- 74.** (1) The Minister may, by notice in the *Gazette*—
- (a) issue norms and standards for the achievement of any of the objectives of this Act, including for the—
    - (i) management and conservation of South Africa's biological diversity

and its components; or

(ii) restriction of activities which impact on biodiversity and its components;

(b) set indicators to measure compliance with those norms and standards; and

(c) amend any notice issued in terms of paragraph (a) or (b).

(2) Norms and standards may apply—

(a) nationwide;

(b) in a specific area only; or

(c) to a specific category of biodiversity only.

(4) Different norms and standards may be issued for—

(a) different areas; or

(b) different categories of biodiversity.

## CHAPTER 8

### OFFENCES AND PENALTIES

## Offences

**75.** (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of sections 47(1), 48(2), 49(1), 55(1)(a), 55(1)(b), 55(2), 57(1)(a), 57(1)(b), 57(1)(c), 57(4), 58(2), 59(1)(a), 59(1)(b), 59(1)(c), 59(5), 60(1), 60(3) or 65(3).

(2) A person who is the holder of a permit is guilty of an offence if that person contravenes or fails to comply with a condition or direction contained in the permit.

(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 his or her possession any altered or false document purporting to be a permit;
- (d) knowingly makes any false statement or report for the purpose of obtaining a permit; or
- (e) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsections (1) or (2) or subparagraphs (a), (b), (c) or (d).

## Penalties

**76.** (1) A person convicted of an offence in terms of sections 75(1), (2) or (3) is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment.

(2) If a person is convicted of an offence involving a specimen of a listed threatened or protected species, a species listed in an international agreement regulating trade, or an alien species or undertaking the commercial exploitation of an indigenous biological resource or indigenous knowledge, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the specimen or activity in respect of which the offence was committed, whichever is the greater.

(3) If a person is convicted of an offence involving a specimen of a listed invasive or extra-limital species, a fine may be determined, either in terms of subsection (1) or equal to the estimated cost associated with the eradication or control of the specimen in respect of which the offence was committed or both.

(4) Notwithstanding subsections (1), (2) or (3), a person who is convicted of an offence in terms of sections 75(1), (2) or (3)—

- (a) as a member of a group of persons, a syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy, involving a specimen of a listed species;
- (b) where the offence involves wildlife trafficking of a specimen of a listed species; or

- (c) if the person is a law enforcement official, including any official involved in the enforcement of this Act, and any person involved in the processing or issuing of any permit, licence or other permission or authorisation issued in terms of this Act;

such person is liable to—

- (a) a fine not exceeding R20 million, or to a fine equal to three times the commercial value of the specimen or activity in respect of which the offence was committed, whichever is the greater;
- (b) imprisonment for a period not exceeding twenty years; or
- (c) to both such a fine and such imprisonment.

(5) Notwithstanding anything to the contrary in any other law, a Magistrates' Court shall have jurisdiction to impose any penalty imposed by, or prescribed in terms of, this Act.

## CHAPTER 9

### MISCELLANEOUS

#### **Savings and transitional arrangements**

**77.** (1) Anything done in terms of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) which may or must be

done in terms of this Act, must be regarded as having been done in terms of this Act.

(2) Any plan adopted, approved or published in terms of the National Environmental Management: Biodiversity Act, 2004 must be regarded as one adopted, approved or published in terms of this Act.

(3) The National Zoological Gardens known as the Pretoria Zoo is deemed to be a national zoological garden declared in terms of section 31(1)(b) of this Act.

(4) Any regulation prescribed in terms of the National Environmental Management: Biodiversity Act, 2004 which exists when this Act takes effect, must be regarded as having been prescribed in terms of this Act and remains of force and effect until it is repealed or amended in terms of this Act.

(5) Any permit, exemption, registration or other authorisation granted in terms of the National Environmental Management: Biodiversity Act, 2004 which was valid immediately before the commencement of this Act, remains valid and must be regarded as having been issued or done in terms of this Act, until it is revoked, cancelled or has expired.

(6) Any application for a permit, exemption, registration or other authorisation submitted in terms of the National Environmental Management: Biodiversity Act, 2004 which has not been finalised when this Act takes effect, must, despite the repeal of the National Environmental Management: Biodiversity Act, 2004 by section 78 of this Act, be dispensed with in terms of the National Environmental Management: Biodiversity Act, 2004 and a decision taken in terms of

that Act must be deemed as a decision taken in terms of this Act.

### **Repeal of Act 10 of 2004**

**78.** The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), is repealed by this Act.

### **Short title and commencement**

**79.** This Act is called the National Environmental Management: Biodiversity Act, 2019 and takes effect on a date determined by the President by proclamation in the *Gazette*.