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GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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No. 19408

OFFICE OF THE PRESIDENT

No. 1388. 30 October 1998

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

No. 84 of 1998: National Forests Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1388. 30 Oktober 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 84 van 1998: Nasionale Wet op Bosse, 1998.

GENERAL EXPLANATORY NOTE:

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

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 20 October 1998.)

ACT

To reform the law on forests; to repeal certain laws; and to provide for related matters.

PREAMBLE

Parliament recognises that—

- **everyone has the constitutional right to have the environment protected for the benefit of present and future generations;**
- **natural forests and woodlands form an important part of that environment and need to be conserved and developed according to the principles of sustainable management;**
- **plantation forests play an important role in the economy;**
- **plantation forests have an impact on the environment and need to be managed appropriately;**
- **the State's role in forestry needs to change; and**
- **the economic, social and environmental benefits of forests have been distributed unfairly in the past.**

Parliament therefore enacts the following law:

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CHAPTER 1

INTRODUCTORY PROVISIONS

This Chapter sets out the purposes for which this Act is passed. It defines important words and terms used in the Act and guides its interpretation.

Purposes

1. The purposes of this Act are to—

(a) promote the sustainable management and development of forests for the benefit of all;

(b) create the conditions necessary to restructure forestry in State forests;

(c) provide special measures for the protection of certain forests and trees:

(d) promote the sustainable use of forests for environmental, economic. educational. recreational, cultural, health and spiritual purposes:

(e) promote community forestry;

(f) promote greater participation in all aspects of forestry and the forest products industry by persons disadvantaged by unfair discrimination.

Interpretation

2. (1) In this Act, unless inconsistent with the context—

(i) "biological diversity'. means genetic diversity. species diversity and ecosystem diversity; (iii)

(ii) '. Committee for Sustainable Forest Management" means the committee established in terms of section ***36(3)(a);*** (xxv)

(iii) "Committee on Forest Access'. means the committee established in terms of section 36(3)*(b)*; (xxiv) "

(iv) 'community'. means a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law: (xix)

(v) 'community forestry" means forestry by a community in terms of an agreement referred to in sections 30 and 31: (xx)

(vi) '. Council'. means the National Forests Advisory Council. established by section 33; (xXxii)

(vii) "Department" means the national Department which has responsibility for forests: (xii)

(viii) "Director-General" means the Director-General of the Department; (xvi)

(ix) 'ecosystem" means a system made up of a group of living organisms. the relationship between them and their physical environment: (xvii)

(x) ''forest'' includes—

(a) a natural forest, a woodland and a plantation;

(b) the forest produce in it; and

(c) the ecosystems which it makes up; (vi)

(xi) "forest management unit" means an area of land on all or on part of which there is forest and which is managed as an integrated unit; (viii)

(xii) "forest officer" means a person designated or appointed as a forest officer under section 65; (vii)

(xiii) "forest produce" means anything which appears or grows in a forest, including—

(a) any living organism, and any product of it, in a forest; and

(b) inanimate objects of mineral, historical, anthropological or cultural value; (x)

(xiv) ''forest product" means an object or substance made from forest produce by a mechanical or chemical process: (xi)

(xv) "forestry" means the management of forests, including the management of land which is not treed but which forms part of a forest management unit; (ix)

(xvi) "habitat" means the place where a plant or animal naturally grows or lives; (xxi)

(xvii) "indigenous" means indigenous to South Africa; (xxiii)

(xviii) "Minister" means the Minister to whom the President assigns responsibility for forests in terms of section 91(2) of the Constitution; (xxvi)

(xix) "municipality" means a local council, a metropolitan council, a metropolitan local council, a representative council, a rural council or a district council as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and any successor to such a council: (xxvii)

(xx) "natural forest" means a group of indigenous trees—

(a) whose crowns are largely contiguous: or

(b) which have been declared by the Minister to be a natural forest under section 7(2): (xxviii)

(xxi) "organ of State" means—

(a) any department of State or administration in the national, provincial or local sphere of government; and

(b) any other functionary or institution exercising a public power or performing a public function in terms of any legislation,

but excluding a court or judicial officer: (xxxv)

(xxii) "person" includes a juristic person and a community; (xxix)

(xxiii) '-plantation" means a group of trees cultivated for exploitation of the wood. bark, leaves or essential oils in the trees; (xxx)

(xxiv) 'prescribe'. means prescribe by regulation; (xxxviii)

(xxv) "previous forest legislation" means—

(a) ***the*** laws referred to in the Schedule to the Forest Act. 1913 (Act No. 16 of 1913);

(b) the Forest Act, 1913 (Act No. 16 of 1913):

(c) the Forest (Demarcation) Act, 1917 (Act No. 14 of 1917):

(d) the regulations made in terms of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), and published in Government Notice No. 494 of 2 April 1937:

(e) the Forest Act, 1941 (Act No. 13 of 1941):

(f) the regulations made in terms of the Black Administration Act, 1927 (Act No. 38 of 1927), and the Development Trust and Land Act. 1936 (Act No. 18 of 1936), and published in Government Notice No. R191 of 8 September 1967;

(g) the Government Notices referred to in regulation 27 of the Government Notice referred to in paragraph *(f)*:

(h) the Forest Act, 1968 (Act No. 72 of 1968);

(i) the laws referred to in column 1 of Schedule 1 to the Forestry Laws Rationalisation and Amendment Act. 1994 (Act No. 51 of 1994):

(j) the laws referred to in Schedule 1 to this Act:

(k) any other law which allowed for the demarcation of forests or the acquisition or reservation of land for forestry; and

(l) any amendments to the laws referred to in paragraphs *(a)* to (k); (xxxviii)

(xxvi) "protected area" means an area set aside by the Minister as a protected area in one of the categories referred to in section 8(1); (ii)

(xxvii) 'protected tree" means a tree declared to be protected, or belonging to a group of trees, woodland or species declared to be protected, under section 12(1) or 14(2); (i)

(xxviii) "province'. means the premier of the province exercising his or her executive authority together with the other members of the executive council referred to in section 132 of the Constitution; (xxxi)

(xxix) "registered owner" means an owner as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937); (xx)

(xxx) "State forest"—

(a) means—

(i) State land, other than trust forests, acquired or reserved for forestry in terms of this Act or any previous forest legislation, unless it has been released under section 50(3);

(ii) State land. other than trust forests, designated as demarcated State forest or a similar designation in terms of any previous forest legislation, unless it was withdrawn from demarcation and is no longer used for forestry; and

(iii) trust forests; and

(b) includes—

(i) State plantations, State sawmills and State timber preservation plants;

(ii) land controlled and managed by the Department for research purposes or as a tree nursery;

(iii) areas protected in terms of sections 8(l)(a) and *(b)* and 9;

(iv) an area of State land which has been set aside in terms of previous forest legislation for the prevention of soil erosion or sand drift;

(v) an area referred to in paragraph *(a)* or paragraph *(b)*(i) to (iv), the ownership or control of which is transferred to a person or organ of State contemplated in section 53(2)(g)(i); (xxxiii)

(xxxi) "State land" means land which vests in the national or a provincial government—

(u) including land held in trust by the Minister of Land Affairs or the Ingonyama referred to in the KwaZulu Ingonyama Trust Act. 1994 (KwaZulu Act No. 3 of 1994); but

(b) excluding land belonging to a municipality; (xxxiv)

(xxxii) "the Act" or "this Act" means the National Forests Act, 1998, and includes the regulations made in terms of the Act; (xv)

(xxxiii) "the Trust'. means the National Forest Recreation and Access Trust. established by section 41; (xiii)

(xxxiv) "the Trust funds'. means the funds referred to in section 41(5) together with any money subsequently received by the Trust; (xiv)

(xxxv) 'timber" means—

(a) logs; or

(b) wood that has been sawn or otherwise mechanically processed: (xxii)

(xxxvi) "tree" includes any tree seedling, sapling, transplant or coppice shoot of any age and any root, branch or other part of it; (iv)

(xxxvii) "trust forest" means State land which—

(a) was reserved for forestry or declared as demarcated State forest or a similar status in terms of any previous forest legislation; and

(b) has at any time vested in—

(i) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);

(ii) the government of any area for which a legislative assembly was established in terms of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or

(iii) the governments of the former Republics of Transkei. Bophuthatswana, Vends and Ciskei,

despite any subsequent withdrawal, retraction or amendment of the status of the forest as reserved or demarcated, the boundaries being those which applied when the forest was first demarcated or, failing demarcation, first reserved for forestry; (xxxvi)

(xxxviii) 'vehicle" includes any vessel or aircraft; (xxxvii)

(xxxix) "woodland'. means a group of indigenous trees which are not a natural forest, but whose crowns cover more than five per cent of the area bounded by the trees forming the perimeter of the group. (v)

(2) Words derived from the words defined have corresponding meanings, unless the context indicates otherwise.

(3) A reasonable interpretation of a provision which is consistent with the purposes of this Act must be preferred over an alternative interpretation which is not.

(4) Neither—

(a) a reference to a duty to consult specific persons or authorities; nor

(b) the absence of any reference to a duty to consult or give a hearing,

in this Act exempts the official or authority exercising a power or performing a duty from the duty to proceed fairly in respect of all persons entitled to be heard.

(5) Explanatory notes, printed in bold italics, at the beginning of Chapters and Parts must not be used to interpret this Act.

CHAPTER 2

SUSTAINABLE FOREST MANAGEMENT

The purpose of this Chapter is to promote the sustainable management of forests.

Part 1

Management

Part 1 lists principles of sustainable forest management, which apply to all official decisions affecting forests, whether in terms of this Actor other laws. The Minister is given the power to—

* ***set criteria, indicators and standards for assessing and enforcing sustainable forest management; and***
* ***create incentives to manage forests sustainably,***

on the advice of the Committee for Sustainable Forest Management.

Principles to guide decisions affecting forests

3. (1) The principles set out in subsection (3) must be considered and applied in a balanced way—

(a) in the exercise of any power or the performance of any duty in terms of this Act;

(b) in the development and implementation of government policies affecting forests:

(c) in the exercise of any power or the performance of any duty in terms of any other legislation where the exercise of that power or the performance of that duty will impact on a natural forest or woodland;

(d) in the issuing of a licence or other authorisation relating to the use of water for afforestation or forestry in terms of section 39(1) or 40(1) of the National Water Act, 1998: and

(e) by any person required in terms of any legislation to carry out an environmental impact assessment in respect of any activity which will or may have an effect on natural forests or woodlands.

(2) An organ of State applying these principles must—

(a) take into account the differences between natural forests, woodlands and plantations;

(b) recognise that conservation of biological diversity within plantations should be promoted in a way which is consistent with the primary economic purpose for which the plantation was established;

(c) only apply those principles which it considers relevant to the decision or action which is contemplated; and

(d) give such weight to each principle as it considers appropriate.

(3) The principles are that—

(a) natural forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits;

(b) a minimum area of each woodland type should be conserved: and

(c) forests must be developed and managed so as to—

(i) conserve biological diversity, ecosystems and habitats;

(ii) sustain the potential yield of their economic, social and environmental benefits:

(iii) promote the fair distribution of their economic, social, health and environmental benefits;
(iv) promote their health and vitality;
(v) conserve natural resources, especially soil and water;
(vi) conserve heritage resources and promote aesthetic, cultural and spiritual values; and
(vii) advance persons or categories of persons disadvantaged by unfair discrimination.

(4) The Minister must determine the minimum area of each woodland type to be conserved in terms of subsection (3)*(b)* on the basis of scientific advice.

Promotion and enforcement of sustainable forest management

4. (1) For the purposes of this section, "owner" means—
(a) the registered owner; or
(b) where the registered owner has transferred control of the forest management unit in question to another person or organ of State, whether by way of assignment, delegation, contract or otherwise, that person or organ of State.

(2) The Minister may—
(a) determine—
(i) criteria on the basis of which it can be determined whether or not forests are being managed sustainably;
(ii) indicators which may be used to measure the state of forest management: and
(iii) appropriate standards in relation to the indicators: and
(b) create or promote certification programmed and other incentives to encourage sustainable forest management,
on the advice of the Committee for Sustainable Forest Management.

(3) The Minister must—
(a) publish the criteria, indicators and standards in the form of regulations made under section ***53(2)(b);***
(b) identify clearly where the breach of a standard may be an offence.

(4) The Minister may publish the criteria, indicators and standards in such other media as he or she considers appropriate.

(5) Specific regional, economic, social and environmental conditions must be taken into account in determining criteria, indicators and standards.

(6) Criteria and indicators may include. but are not limited to, those for determining—
(a) the level of maintenance and development of—
(i) forest resources:
(ii) biological diversity in forests:
(iii) the health and vitality of forests:
(iv) the productive functions of forests:
(v) the protective and environmental functions of forests; and
(vi) the social functions of forests:
(b) the level of provision of socio-economic benefits; and
(c) the status and appropriateness of the policy and the legislative and institutional framework for forest management.

(7) The criteria, indicators and standards determined under subsection (2)*(a)*—
(a) may apply nationally, regionally or to specific forest management units;
(b) may identify the boundaries of the forest management unit or units to which they apply;
(c) may apply to all or to specific forest types;
(d) bind all owners of land on which there are forests in the area and of the type to which the standards apply;
(e) bind any other persons to whom they are expressly made applicable.

(8) Where the breach of a particular standard may be an offence. a forest officer may inform an owner who is in breach of that standard by written notice of—

(a) the nature of the breach;

(b) the steps which the owner must take to remedy the breach; and

(c) the period within which he or she must do so.

(9) The period laid down in the notice may be extended by the Minister for good reason.

Part 2

Research, monitoring and reporting

Part 2 obliges the Minister to see that relevant research is done and to monitor the management of forests. The Minister must report to Parliament at least every three years on the results of the monitoring.

Promotion of research

5. (1) The Minister must carry out or commission research,

(2) The research must promote the objectives of forest policy and conform with national policies and programmed relating to science and technology.

Duty to monitor forests and disseminate information

6. (1) The Minister must monitor forests with reference to the matters referred to in section 4(6).

(2) The Minister must disseminate the information derived from monitoring to the public in a way which in his or her opinion will promote sustainable forest management,

(3) The Minister must report to Parliament at least every three years on—

(a) the facts and trends which emerge from the monitoring:

(b) whether the facts and trends observed are in the national interest;

(c) the measures being implemented to address negative trends: and

(d) any other matter he or she considers appropriate.

CHAPTER 3

SPECIAL MEASURES TO PROTECT FORESTS AND TREES

Part 1

Prohibition of destruction of natural forests

Part 1 prohibits the destruction of indigenous trees in any natural forest without a licence.

Prohibition on destruction of trees in natural forests

7. (1) No person may cut, disturb. damage or destroy any indigenous. living tree in, or remove or receive any such tree from, a natural forest except in terms of—

(a) a licence issued under subsection (4) or section 23; or

(b) an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of the Council.

(2) The Minister may declare to be a natural forest a group of indigenous trees—

(a) whose crowns are not largely contiguous; or

(b) where there is doubt as to whether or not their crowns are largely contiguous, if he or she is of the opinion. based on scientific advice, that the trees make up a forest which needs to be protected in terms of this Part.

(3) The Minister declares a forest to be a natural forest by—

(a) publishing a notice in the ***Gazette;***

(b) publishing a notice in two newspapers circulating in the area: and

(c) airing a notice on two radio stations broadcasting to the area.

(4) The Minister may issue a licence to cut. damage or destroy any indigenous, living tree in. or remove or receive any such tree from. a natural forest,

Part 2

Protected areas

***Part** 2 allows the Minister to declare certain forests as protected forest areas. It sets out the procedure for and effect of this declaration. It provides for the management of such an area.*

Power to set aside protected areas

8. (1) The Minister may—

(a) declare a State forest or a part of it;

(b) purchase or expropriate land under section 49 and declare it: or

(c) at the request or with the consent of the registered owner of land outside a State forest, declare it,

as a specially protected area in one of the following categories:

(i) A forest nature reserve;

(ii) a forest wilderness area; or

(iii) any other type of protected area which is recognised in international law or practice.

(2) The Minister may declare such an area only if he or she is of the opinion that it is not already adequately protected in terms of other legislation.

Procedure for declaring protected areas

9. (1) Before declaring an area under section 8(1), the Minister must—

(a) give notice of the proposal to declare a protected area and invite comments and objections within a specified period;

(b) consider the comments and objections received in response to the notice: and

(c) in the case of a trust forest, consult with the communities residing on the land adjoining the proposed protected area.

(2) The Minister must—

(a) (i) publish the notice referred to in subsection (1) in the *Gazette* and two newspapers circulating in the area: and

(ii) air such notice on two radio stations broadcasting to the area: and

(b) deliver it to—

(i) the Council:

(ii) the Committee for Environmental Co-ordination. established by section 12 of the Environment Conservation Act. 1989 (Act No. 73 of 1989):

(iii) the member of the executive council responsible for nature conservation in the province in which the area falls:

(iv) the chief executive officer of the local authority for the area: and

(v) any person or organ of State to whom control of the area in question has been transferred. whether by way of assignment. delegation, contract or otherwise.

(3) The Minister declares a protected area by publishing a notice in the media referred to in subsection (2)*(a)*—

(a) recording his or her decision;

(b) naming the protected area; and

(c) describing the area set aside.

Effect of setting aside protected areas

10. (1) No person may cut, disturb, damage or destroy any forest produce in, or remove or receive any forest produce from, a protected area, except—

(a) in terms of the rules made for the proper management of the area in terms of section 11(2)(b);

(b) in the course of the management of the protected area by the responsible organ of State or person;

(c) in terms of a right of servitude:

(d) in terms of the authority of a licence granted under section 7(4) or 23;

(e) in terms of an exemption under section 7(1)(b) or 24(6); or

(f) in the case of a protected area on land outside a State forest, with the consent of the registered owner or by reason of another right which allows the person concerned to do so,

subject to the prohibition in section 7(1).

(2) The decision to declare a protected area may not be revoked, nor may a protected area which is State forest be sold, nor may a servitude over a protected area be granted, without—

(a) the Minister following the same procedure as that required for declaring the protected area; and

(b) the approval by resolution of Parliament.

(3) Changes to the boundaries of an existing protected area require compliance with subsection (2)*(a)* only.

Management of protected areas

11. (1) The Minister is responsible for the management of the protected area.

(2) The Minister must—

(a) manage the protected area in a manner which is consistent with the purpose for which it was established; and

(b) make rules for the management of the protected area so as to achieve the purpose for which the area has been protected. unless suitable rules already exist for the area.

(3) The Minister may grant financial or other assistance to the registered owner of land referred to in section 8(1)(c) for the management of a protected area.

Part 3

Protection of trees

Part 3 allows the Minister to declare a tree, a group of trees, a woodland or a species of trees as protected. The procedure for and the effect of this decoration are set out. An emergency procedure is included to protect trees threatened with immediate harm.

Declaration of trees as protected

12. (1) The Minister may declare—

(a) a particular tree.

(b) a particular group of trees,

(c) a particular woodland: or

(d) trees belonging to a particular species.

to be a protected tree. group of trees. woodland or species.

(2) The Minister may make such a declaration only if he or she is of the opinion that the tree. group of trees, woodland or species is not already adequately protected in terms of other legislation.

(3) In exercising a discretion in terms of this section, the Minister must consider the principles set out in section 3(3).

Normal procedure for declaring protected trees

13. (1] Except in the circumstances referred to in section 14, the Minister must. before making a declaration under section 12—

(a) give notice of the proposal to protect a tree, group of trees, woodland or species and invite comments and objections within a specified period: and

(b) consider the comments and objections received in response to the notice.

(2) The Minister must—

(a) publish the notice referred to in subsection (1) in the *Gazette* and in two newspapers circulating in. and air it on two radio stations broadcasting to—

(i) the vicinity, in the case of a particular tree or group of trees or woodland; or

(ii) the entire country, in the case of a species; and

(b) deliver the notice to—

(i) the persons and bodies referred to in section *9(2)(b),* in the case of a particular tree or group of trees or woodland;

(ii) the bodies referred to in subparagraphs (i) and (ii) of section 9(2)(b), in the case of a species.

(3) After deciding to make a declaration the Minister must publish a notice in the media referred to in subsection (2)*(a)*—

(a) recording his or her decision; and

(b) identifying the particular tree or group of trees or woodland or species to be protected.

Emergency procedure for protecting trees

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

(2) The Minister may declare any tree or group of trees to be temporarily protected by publishing a notice in two newspapers circulating in. and airing it on two radio stations broadcasting to—

(a) the vicinity. in the case of a particular tree or group of trees or woodland: or

(b) the entire country, in the case of a species.

(3) The Minister may act under subsection (1) without consulting or hearing any person if the urgency of the situation justifies this.

(4) The prohibition referred to in section 15(1) applies to a tree or group of trees temporarily protected in terms of this section.

(5) The temporary protection lapses when—

(a) the Minister publishes a notice in terms of section 13(3):

(b) the Minister decides not to protect the trees under section 12. in which event he or she must publish a notice confirming this in the media referred to in subsection (2); or

(c) the Minister fails to act in terms of paragraph *(a)* or *(b)* within 12 months of the day the notice referred to in subsection (2) became effective.

Effect of declaration of protected trees

15. (1) No person may—

(a) cut, disturb. damage, destroy or remove any protected tree; or

(b) collect, remove. transport. export. purchase. sell. donate or in any other manner acquire or dispose of any protected tree.

except under a licence granted by the Minister.

(2) The decision to declare a tree, group of trees, woodland or species protected may not be revoked, nor may the notice referred to in section 13(3) be amended, without the Minister following the procedure set out in section 13.

(3) The Minister must publish—

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

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

annually in the *Gazette* and in two newspapers circulating nationally.

Registration against title deeds

16. (1) Where the Minister has declared—

(a) a forest to be a natural forest under section 7(2); or

(b) a particular tree or group of trees or woodland to be protected under section 12(1),

the Minister may request the registrar of deeds for the area to make an appropriate note.

(2) On receiving such a request, the registrar of deeds must make a note of the particulars of such declaration in his or her registers in terms of section 3(1)*(w)* of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(3) The State does not acquire any rights—

(a) in the land on which any natural forest or any protected tree is situated: or

(b) to any tree or forest produce,

as a result of the prohibition in section 7(1) or a declaration under section 7(2), 12(1). 14(1) or 17(2) or the making of a note in terms of this section.

Part 4

Measures to control and remedy deforestation

Part 4 gives the Minister powers to intervene urgently to prevent deforestation and to rehabilitate deforested areas. The procedure for and the effect of the exercise of these powers are set out. It also provides for the Minister to enter into an agreement with the owner to remedy the situation.

Power to declare controlled forest areas

17. (1) For the purposes of this section, "owner'. means—

(a) the registered owner: and

(b) where the registered owner has transferred control of the forest management unit in question to another person or organ of State, whether by way of assignment. delegation. contract or otherwise. that person or organ of State.

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

(a) prevent the deforestation or further deforestation of; or

(b) rehabilitate,

a natural forest or a woodland protected under section 12(1) which is threatened with deforestation. or is being or has been deforested. he or she may declare it a controlled forest area.

(3) The Minister declares a controlled forest area by publication of a notice in two newspapers circulating in, and by airing it on two radio stations broadcasting to. the vicinity-

(a) recording his or her decision:

(b) stating a fixed time period for which the declaration is effective;

(c) describing the area:

(d) identifying the activities which are or become prohibited in the area in terms of subsection (4):

(e) identifying the steps to be taken in terms of subsection (4)*(e)* and. if applicable. subsection (4)*(f)* to prevent or remedy deforestation.

(4) The Minister may, in the notice referred to in subsection (3)—

(a) stop any persons wishing to exercise the right of access referred to in section 19 from entering the area;

(b) prohibit any person from removing forest produce from the area;

(c) prohibit any other activity which may cause deforestation or prevent rehabilitation;

(d) suspend licences issued under this Act in respect of the area;

(e) require the owner to take specified steps to prevent deforestation or rehabilitate the natural forest or woodland: and

(f) require the owner to submit and comply with a sustainable forest management plan for the area.

(5) The notice is effective from the date of its publication in the newspapers and airing on the radio stations referred to in subsection (3).

(6) The Minister may extend the period for which the notice is effective.

(7) The Minister must cause copies of the notice to be—

(a) delivered to the owner, the holders of any licences granted under this Act in respect of the area and any other interested persons known to the Minister; and

(b) published in the *Gazette*.

(8) The Minister may conduct the hearings required by the duty to proceed fairly in declaring a controlled forest area, in a way which is commensurate with the urgency of the situation.

(9) The Minister may, instead of or in addition to declaring a controlled forest area, enter into au agreement with the owner and any other interested persons which—

(a) describes the steps to be taken to prevent deforestation or to rehabilitate the natural forest or woodland;

(b) allocates responsibility for the management of the area;

(c) adopts a sustainable forest management plan for the area; and

(d) records any assistance the Minister will give to enable the owner to comply with the agreement,

(10) In the absence of an agreement, the Minister may authorise officials of the Department or any other person to take the steps necessary to prevent deforestation or to rehabilitate the forest or woodland in a controlled forest area.

(11) Any official of the Department *or* other person authorised by the Minister has reasonable access to the area for purposes of giving effect to this section.

(12) The Minister may grant financial or other assistance to the owner to enable him or her to comply with any duty imposed in terms of this section.

Right to apply for protection

18. (1) Any natural or juristic person or any organ of State may apply to the Minister to protect a forest, tree or group of trees in terms of this Chapter.

(2) The applicant must apply in the prescribed way.

CHAPTER 4

USE OF FORESTS

This Chapter regulates a wide range of uses of primarily State forests, ranging from recreational use to commercial and community forestry.

Part 1

Access for recreation *and related purposes*

Part 1 sets out the right of everyone to have access to State forests for the purpose of recreation, education, culture or spiritual fulfilment. This right may be restricted. The procedure for imposing these restrictions is provided for. The Minister, in his or her capacity as trustee of the National Forest Recreation and Access Trust, may also take steps to promote the voluntary grant of access to forests that are outside State control. Limited provision is also made for financial assistance for owners and compensation if they suffer any damage as a result of allowing access.

Access to State forests for recreation, education, culture or spiritual fulfillment

19. Everyone has reasonable access to State forests for purposes of recreation. education. culture or spiritual fulfillment, subject to—

(a) this Act:

(b) any conditions determined by the Minister: and

(c) restrictions on entry into any area protected for environmental purposes in terms of this Act or any other law.

Regulation of access to State forests

20. (1) For the purposes of this section, 'owner'. means any person or organ of State to whom control of the forest management unit in question has been transferred. whether by way of assignment. delegation, contract or otherwise.

(2) The owner of each State forest must designate areas in the forest for access under section 19.

(3) The owner must prepare a map showing the areas designated and a set of written rules which regulate access and which may provide for—

(a) payment to the owner of a reasonable fee for the map, the use of facilities and the provision of any services; and

(b) reasonable restrictions on access, including, but not limited to—

(i) limitations on the number of people allowed in the forest at any one time;

(ii) restrictions on the mode of transport in a forest:

(iii) restrictions to prevent fires;

(iv) provision for closure of forests for specific periods;

(v) restrictions to prevent harm to any person or property;

(vi) restrictions in a plantation to ensure that its proper management for commercial purposes is not frustrated;

(vii) restrictions in a protected area to ensure that the purposes for which the area was declared as such. are not frustrated; and

(viii) different restrictions for different forest types.

(4) In a protected area, the map and rules maybe incorporated in the rules referred to in section 1 1(2)*(b)*.

(5) *(a)* The owner must submit the rules to the Director-General within six months of the promulgation of this Act.

(b) Until the map and rules are made. access to any State forest for recreation. education. culture or spiritual fulfillment is regulated as if this Act has not come into force.

(6) The Director-General—

(a) may change the designated area and the rules:

(b) must. where the owner fails to designate an area or make rules within the six month period. designate such an area, prepare a map and make such rules: and

(c) must designate an area for public access and prepare a map and rules as set out in subsection (3). where control of a forest management unit has not been transferred as referred to in subsection (1).

(7) *(a)* An owner who objects to—

(i) a change by. or to rules made by the Director-General in terms of subsection (6); or

(ii) the way in which the public or members of the public exercise their right of access: and

(b) a member of the public who objects to—

(i) the designation or the rules:

(ii) the fee charged for the map. facilities or services: or

(iii) any conduct of the owner in relation to his or her right of access.

may lodge a written objection with the Director-General.

(8) The Director-General may convene a meeting of the interested parties to reach an agreement on the objection. or appoint a mediator acceptable to the interested parties from the panel referred to in section 45 to do so.

(9) If the matter is not resolved in terms of subsection (8), the Director-General must refer the matter to the Minister who must-

(a) rule on the objection; or

(b) appoint an arbitrator from the panel referred to in section 45 to do so.

(10) The ruling of the Minister or the arbitrator—

(a) may require the owner to change the designation or the rules: or

(b) may confirm the designation and rules as made by the owner: or

(c) may require the Director-General to change the designation or the rules made by him or her: and

(d) is final and binding on the interested parties. subject to the right to review of administrative action.

(11) The owner must make the map and rules available to any person exercising the right of access to the forest.

(1 2) If an owner wishes to amend the rules, he or she must lodge the amended rules with the Director-General, after which the procedure in subsections (6) to (10) applies again.

(13) Everyone is entitled to information from the Department regarding the right of access. including maps and rules, on payment of a reasonable fee set by the Director-General.

Access to forests other than State forests

21. (1) The Minister, in his or her capacity as trustee of the Trust, may take steps to promote the voluntary grant of access to forests other than State forests by the registered owners of such forests.

(2) The registered owner may lodge with the Minister a map displaying clearly the areas designated for public access and a set of written rules recording the conditions on which he or she is prepared to allow access.

(3) At the request of—

(a) a person seeking access to a forest other than a State forest; or

(b) a registered owner of such a forest,

the Minister may negotiate, or appoint a facilitator from the panel referred to in section 45 to Facilitate negotiations, with interested parties with a view to determining whether and on what terms a registered owner of such a forest is willing to grant access to the public.

(4) Where the Minister is of the opinion that it is justified and affordable, he or she may—

(a) provide financial or other assistance from the Trust funds for the development of an area of public access in a forest other than a State forest;

(b) compensate a registered owner of such a forest from the Trust funds for losses caused by the grant of access to the public in such a forest.

(5) No person who is granted access to a forest other than a State forest may interfere with the privacy or cause damage to the property of the registered owner.

Part 2

Vesting and granting of rights to use State forests

Part 2 vests ***the right to use and manage State forests and the forest produce in them in the State, represented by the Minister. It provides for the transfer of rights in State forests by way of licences, servitudes, lease agreements and agreements to sell forest produce. A provision is included to avoid conflicting rights in State forests.***

Vesting of rights

22. (1) The rights to—

(a) the use, management, control and operation of; and

(b) the forest produce in,

State forests, vest in the national executive of the Republic. represented by the Minister. despite any other law but subject to—

(i) this Act;

(ii) an order of the Land Claims Court restoring or granting rights in a State forest to a claimant in terms of section 35(1) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994): and

(iii) rights protected in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996).

(2) The Minister, the Director-General] or an arbitrator, as the case may be, may not—

(a) make or change a designation or rules under section 1 1(2)*(b)* or 20(6);

(b) make a ruling in terms of section 20(10);

(c) grant a licence under section 23;

(d) grant a servitude under section 26: or

(e) enter into art agreement under section 27,28 or 30,

if doing so conflicts with an existing right under a licence, servitude or agreement referred to in this Chapter or section 77(2) and the persons affected have not consented.

Activities which may be licensed in State forests

23. (1) The Minister may in a State forest. license—

(a) the establishment and management of a plantation;

(b) the felling of trees and removal of timber;
(c) the cutting, disturbance, damage or destruction of any other forest produce;
(d) the removal or receipt of any other forest produce;
(e) the use of land, structures or buildings for agricultural, commercial, communications, domestic, industrial, residential or transportation purposes;
(f) the use of roads;
(g) the moving of water, electricity, gas, fuel and any other thing across a State forest;
(h) the construction of any road, building or structure;
(i) the grazing or herding of animals;
(j) the cultivation of land;
(k) hunting and fishing;
(l) the use of a State forest for recreational, educational, cultural or spiritual purposes where there is no right to such use under section 19; and
(m) the use of a State forest for any other purpose, if it is consistent with the sustainable management of the forest.

(2) No person may engage in any activity in a State forest for which a licence is required without such a licence, unless—

(a) he or she is exempted under section 24(6):
(b) he or she is acting in the scope of his or her employment or mandate as an officer, employee or agent of the Department;
(c) he or she has a right to engage in the activity in terms of the Interim Protection of informal Land Rights Act. 1996 (Act No. 31 of 1996).

(3) An organ of State must obtain a licence to carry on an activity for which a licence is required.

Requirements for licensing

24. (1) A licence must be issued for a period—

(a) equal to the period for which the activity is permitted in terms of a servitude. lease. agreement to sell forest produce or community forestry agreement referred to in this Chapter: or
(b) not exceeding ten years in the case of any other activity.

(2) The Minister may attach conditions to the granting of a licence.

(3) A licensee must pay the licence fee. unless—

(a) he or she has entered into a lease agreement under section 26:
(b) he or she is a purchaser in terms of an agreement referred to in section 28(1):
(c) it is a community which has entered into an agreement under section 30: or
(d) the licensee is unable to pay in terms of criteria set by the Minister.

(4) A licensee may only—

(a) transfer a licence: or
(b) contract with another party to carry out the activities authorised by the licence, with the written consent of the Minister.

(5) A licence may only be granted in a protected area if the licensed activity does not frustrate the achievement of the objects for which the protected area was established.

(6)(a) The Minister may exempt persons or classes of persons from the licencing provisions if the intended activity is for domestic, cultural, health or spiritual purposes only.

(b) The exemption becomes effective when it is published in the *Gazette*.

(7) The Minister and any other organs of State or persons to whom the power to grant licences is delegated must keep registers of all licences granted in terms of this section which are issued for a year or longer.

(8) The holder of a licence must produce it on demand of a forest officer or a police officer.

(9) Nothing in this Act prohibits or affects the grant in terms of any law of a right to prospect for. mine or dispose of any mineral as defined in the Minerals Act, 1991 (Act

No. 50 of 199 1), or any source material as defined in the Nuclear Energy Act, 1993 (Act No. 131 of 1993), in a State forest but the holder of such a right may not cut, disturb, damage, destroy or remove any forest produce without a licence.

Amendments, suspensions and cancellations

25. (1) The licensee is responsible for any damage caused by not complying with the licence.

(2) The Minister may amend, suspend or cancel a licence or a category of licences if—

(a) there is, in his or her opinion, a material change in the circumstances which existed at the time of the grant of the licence or licences which requires such amendment, suspension or cancellation; or

(b) the licensee does not comply with the licence.

(3) Before acting under subsection (2)(b), the Minister must give a licensee a fair opportunity to remedy his or her non-compliance with the licence, unless the Minister is of the opinion that granting such an opportunity will result in serious harm to person or property.

Servitudes in State forests

26. (1) The Minister may grant a servitude in a State forest if—

(a) in the case of State forests other than trust forests, the Minister of Public Works agrees; or

(b) in the case of trust forests on land held in trust by the Ingonyama referred to in the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994). the authority with the necessary power in terms of that Act agrees; or

(c) in the case of trust forests other than those referred to in paragraph ***(b),*** the Minister of Land Affairs agrees; and

(d) it does not conflict with an existing right; and

(e) it does not materially affect the ecology and the useful extent of the State forest: and

(f) there is compliance with section 10(2) where it is a protected area.

(2) Any agreement entered into with the Minister creating the servitude may include such provisions as he or she considers appropriate. including payment for the rights granted under the servitude.

(3) A community or members of a community who are granted a servitude of right of way in order to walk to or from their homes are exempt from payment for such rights.

(4) The Minister must keep a register of all servitudes granted under subsection (1).

(5) The Minister must license any activity which is permitted under a servitude.

(6) No servitude or other right of any nature in a State forest may be acquired by prescription.

Leasing of State forests

27. (1) The Minister may lease a State forest or part of it to any person if—

(a) in the case of State forests other than trust forests, the Minister of Public Works agrees;

(b) in the case of trust forests on land held in trust by the Ingonyama referred to in the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994). the authority with the necessary power in terms of that Act agrees; and

(c) in the case of trust forests other than those referred to in paragraph *(b)*, the Minister of Land Affairs agrees,

(2) The lease agreement may provide for—

(a) the carrying on by the lessee of any of the activities referred to in section 23(1);

(b) the management, control and operation of a State forest for commercial purposes;

(c) the management, control and operation of a protected area;

(d) the performance by the lessee of the State's obligations to supply forest produce from that State forest;

(e) the lodging by the lessee of and compliance with a sustainable forest management plan:

(f) the sustainable management of natural forests, woodlands and other habitats falling within the forest let:

(g) the establishment and operation of facilities for tourism and recreation:

(h) the resolution of disputes by members of the panel referred to in section 45: and

(i) such other matters as the parties consider appropriate.

(3) The Minister must license the activities which the lessee may carry on in terms of the lease.

Agreements to sell forest produce in State forests

28. (1) *(a)* The Minister:

(b) a person who has entered into a lease agreement under section 27:

(c) a party to a community forestry agreement entered into under section 30: or

(d) the South African Forestry Company Limited.

may enter into an agreement to sell timber or any other forest produce in a State forest to any other person.

(2) An agreement referred to in subsection (1) must—

(a) allow for termination of the contract at any time after it comes into effect by either party on a period of notice which is not more than five years. unless the Minister agrees to a longer period;

(b) not oblige the seller to provide a quantity of timber or other forest produce which is greater than that which the forest to which the agreement relates. yielded on a sustainable basis during the period of the contract, or a cycle within a contract. unless any shortfall was due to negligence by the seller:

(c) not confer rights in conflict-with the lease or community forestry agreement referred to in subsection (1)*(b)* or *(c)* or an agreement referred to in section 77(2) with the South African Forestry Company Limited.

(3) A term of an agreement which is in conflict with subsection (2) is void and the agreement is deemed to have been entered into on the terms set out in subsection (2).

(4) The Minister must license the activities which the purchaser may carry on in terms of an agreement to sell timber or other forest produce. subject to subsection (5).

(5) An agreement to sell timber or other forest produce in any State forest which is already in force on the date [his Act commences, is despite the terms of the agreement. subject to the following:

(a) Either party may elect to terminate the agreement on either of the following bases—

(i) five years written notice to the other: or

(ii) such greater or lesser period of notice as the agreement may provide:

(b) notice in terms of subparagraph (i) of paragraph ***(a)*** may be given at any time after the commencement of this Act:

(c) before the seller acts in terms of subparagraph (i) of paragraph *(a)*. the Minister must be of the opinion that—

(i) it will serve one or more of the purposes referred to in section 1: and

(ii) the purchaser will, by the end of the notice period, have had an opportunity of realising a reasonable return on any investments which were made before the commencement of the Act primarily as a result of the agreement:

(d) if either party elects to terminate the agreement in terms of subparagraph (i) of paragraph *(a)*. neither it nor any other person or organ of State has to pay any compensation to. or buy any assets of. any other party. except that the State must compensate the purchaser for any improvements which the purchaser has erected in a State forest in terms of or as a result of the agreement if—

(i) the seller terminated the agreement; and

(ii) the purchaser must vacate the improvements as a result of the termination;

(e) the seller is not obliged to deliver to the purchaser a quantity **of** timber or other forest produce which is greater than that which the forest yielded on a sustainable basis during the period of the contract, or a cycle within a contract, unless any shortfall was due to negligence by the seller;

(f) the termination of the agreement in terms of subparagraph (i) of paragraph *(a)* is not a breach of the agreement.

(6) The compensation for improvements referred to in paragraph *(d)* of subsection (5) is not payable if the agreement—

(a) is terminated no earlier than a date on which the agreement could lawfully have been terminated had this Act not been promulgated; and

(b) does not provide for—

(i) compensation for improvements; or

(ii) the purchase by the seller of any assets of the purchaser,

on termination.

(7) A shortfall referred to in subsection (2)*(b)* or (5)*(e)* may not be made up from the forest to which the agreement relates.

Part 3

Community forestry

Part 3 allows communities that wish to engage in community forestry to enter into agreements with the Minister. The procedure for* entering *into, and the minimum requirements for the content of, such an agreement are set out. The Minister may make financial or other assistance available for community forestry and certain other forms of forestry.

Offers to enter into community forestry agreements

29. (1) Any community wishing—

(a) to do anything in a State forest for which a licence is required;

(b) to manage a State forest or part of it. whether alone or jointly with an organ of State; or

(C) to do both,

may make an offer to the Minister to enter into a community forestry agreement with him or her and any other person or organ of State who must by law consent.

(2) The Minister may invite communities to submit offers to enter into community forestry agreements in respect of a particular State forest or forests.

(3) The offer must include—

(a) details of the membership of the community;

(b) a copy or details of the constitution. laws or customs which regulate the community;

(c) the terms of its offer;

(d) details of any rights held by the community or any of its members in the State forest concerned in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996); and

(e) any other prescribed information.

(4) The Minister must investigate the offer and may in doing so—

(a) establish whether or not there are any other communities who may wish to make offers to enter into a community forestry agreement in respect of the forest in question:

(b) invite such communities to make offers;

(c) consult with any other persons or organs of State having an interest in the matter;

(d) evaluate the suitability of the forest for community forestry in comparison to its current or potential uses;

(e) establish whether or not any offeror is willing to amend the terms of its offer to accommodate any concerns of the Minister and, if so. invite the offeror to amend it;

(f) in the event of competing offers, evaluate which offers or offerors are the most suitable; and

(g) appoint a facilitator from the panel referred to in section 45 to attempt to secure agreement between competing offerors.

Conclusion of community forestry agreements

30. (1) The Minister may—

(a) reject any offer;

(b) make a counter-offer to one or more offerors; or

(c) decide to enter into a community forestry agreement with one or more offerors in respect of the State forest in question.

(2) If the forest is a trust forest, the Minister may only enter into such an agreement if—

(a) in the case of land held in trust by the Ingonyama referred to in the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994), the authority with the necessary power in terms of that Act agrees; and

(b) in the case of other land, the Minister of Land Affairs agrees.

(3) The Minister must license the activities which the community or communities may carry on under the community forestry agreement.

(4) The Minister need not implement a public tender process before entering into a community forestry agreement, despite any other law, unless he or she is of the opinion that such a process is needed in any particular case.

Content of community forestry agreements

31. (1) A community forestry agreement must—

(a) not discriminate unfairly;

(b) identify the management powers delegated to the community or communities and those retained by the Minister;

(c) identify accurately the area of forest subject to the agreement:

(d) identify the licensed activities which the community or communities intend carrying on;

(e) regulate the use and the management of the forest in a way which is sustainable;

(f) identify the duties of the various parties in terms of the agreement. including payments to be made by any party;

(g) prohibit the parties to the agreement from transferring their rights under the agreement in any way without the consent of the Minister;

(h) provide for dispute resolution through informal mediation or arbitration, whether by a member of the panel referred to in section 45 or otherwise: and

(i) provide for remedial measures, including the suspension or cancellation of the community forestry agreement, in the event of a breach.

(2) A community forestry agreement may—

(a) rename the forest;

(b) be indefinite or for a fixed period:

(c) oblige a community to reconstitute itself or make a lawful amendment to its constitution;

(d) require the community or communities to lodge and comply with a sustainable forest management plan which is acceptable to the Minister:

(e) include as a party a person who is not a community or a member of the community and who wishes to conduct forestry for commercial, environmental or other purposes;

(f) provide for the management of a protected area;

(g) oblige the community to perform the State's obligations to supply forest produce from that State forest;

(h) provide that a community need not pay rental or similar compensation for the rights granted to it, if this is fair having regard to—

(i) the community's historical association with the land on which the forest is situated; or

(ii) the economic circumstances of the community;

(i) exchange a right in terms of the interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996), for a right in the agreement; and

(j) deal with such other matters as maybe prescribed or as the parties consider appropriate.

Assistance for community forestry

32. (1) In this section, community forestry includes, in addition to the definition of that term—

(a) small scale plantation forestry by persons disadvantaged by unfair discrimination;

(b) the planting of trees by any person or organ of State for aesthetic reasons or to improve the quality of life; and

(c) the sustainable use of a natural forest or woodland by a community other than in terms of an agreement referred to in section 30,

in a rural or an urban area and whether in or outside of a State forest.

(2) The Minister may—

(a) provide information, training, advice and management and extension services for community forestry;

(b) establish and maintain nurseries and other facilities to provide seed and plants for community forestry;

(c) provide material or financial assistance for community forestry, including recovery from disaster, if no such grants are available from any other source.

(3) The Minister may enter into an agreement with a person or organ of State regulating the matters referred to in subsection (2).

CHAPTER 5

INSTITUTIONS

The various institutions that play a role in making the Act functional are dealt with in this Chapter.

Part 1

National Forests Advisory Council

Part 1 deals with the establishment, objects, constitution, meetings, staffing and funding of the Council. It advises the Minister on all aspects of forestry in the Republic. The Council must establish the Committee for Sustainable Forest Management to advise the Council, the Department and the Minister on all aspects of sustainable forest management, and the Committee on Forest Access. Both are permanent committees of the Council.

Establishment and objects of National Forests Advisory Council

33. (1) The National Forests Advisory Council is established.

(2) The object of the Council is to advise the Minister on any matter related to forestry in the Republic.

(3) The Minister must consider and respond to the advice provided to him or her by the Council.

(4) *(a)* The Forestry Council and the Forestry industry Fund referred to in sections 47 to 56 of the Forest Act, 1984 (Act No. 122 of 1984), are dissolved.

(b) The assets, if any, of the Forestry Industry Fund vest in the State.

(5) The National Forestry Advisory Council referred to in sections 46A to 46H of the Forest Act, 1984, is dissolved.

(6) *(a)* The Transkei Forestry Council referred to in section 3 of the Forestry Laws Rationalisation and Amendment Act, 1994 (Act No. 51 of 1994), is dissolved.

(b) The assets, if any, of the Transkei Forestry Council vest in the State.

Constitution of Council

34. (1) The Council consists of a maximum of 20 members and a minimum of 14 members appointed by the Minister in terms of this section.

(2) In making appointments to the Council the Minister must balance the interests of—

(a) categories of persons disadvantaged by unfair discrimination;

(b) communities involved in community forestry;

(c) environmental interest groups:

(d) persons who carry on small scale plantation forestry;

(e) persons who carry on small scale timber processing;

(f) persons with expertise which can assist the Council in achieving its objects;

(g) the forest industry;

(h) the forest products industries; and

(i) trade unions representing employees in the forest and forest products industry.

(3) Whenever it is necessary to-appoint the Council the Minister must—

(a) invite nominations by means of a notice published in at least two nationally distributed newspapers, specifying a period within which nominations must be submitted;

(b) establish an advisory committee which includes the chairpersons of the portfolio committees dealing with forestry matters in the National Assembly and the National Council of Provinces, or their delegates, and appoint a chairperson for the committee; and

(c) submit all the nominations received to the advisory committee.

(4) The advisory committee must compile a short list of suitable candidates from the nominations and submit it to the Minister within one month of receiving the nominations.

(5) The Minister must appoint the members of the Council after considering the short list.

(6) The Minister may appoint—

(a) an alternate member for any member of the Council: and

(b) a replacement for any member who vacates his or her office.

on the basis of the criteria referred to in subsection (2).

(7) The replacement serves for the balance of the term of the person he or she replaces.

(8) The Minister must appoint one member of the Council as chairperson and one member as vice-chairperson.

Conditions of appointment to Council

35. (1) A member of the Council holds office for a period of—

(a) four years in the case of the chairperson of the Council: and

(b) three years in the case of other members.

(2) At the expiry of his or her term of office a member may be appointed again.

(3) A member or alternate member of the Council must vacate his or her office if—

(a) the Minister at any time terminates his or her term of office for good reason after consulting the chairperson of the Council;

(b) he or she can no longer perform his or her duties on the Council;

(c) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine:

(d) he or she is absent from more than two consecutive meetings of the Council without the leave of the chairperson; or

(e) he or she resigns by written notice to the Minister.

(4) Members of the Council and members of a committee of the Council who are not in the full-time employment of the State may be paid for their services, except for attending Council meetings.

(5) The Minister must determine the remuneration and allowances payable to members of the Council and members of a committee of the Council with the consent of the Minister of Finance.

Committees of Council

36. (1) The Council may elect an executive committee.

(2) The chairperson of the Council must be the chairperson of the executive committee.

(3) The Council must establish—

(a) the Committee for Sustainable Forest Management; and

(b) the Committee on Forest Access,

as permanent committees of the Council.

(4) The permanent committees must include persons representing the interest groups referred to in section 34(2) and—

(a) in the case of the Committee for Sustainable Forest Management, a representative of the Department of Environmental Affairs and Tourism appointed by its Director-General;

(b) in the case of the Committee on Forest Access, one or more representatives of voluntary associations interested in recreational activities in forests appointed in terms of subsection (9).

(5) The functions of the Committee for Sustainable Forest Management are to advise—

(a) the Council, the Department and the Minister on all aspects of sustainable forest management in the Republic;

(b) the Department and the Minister on the determination of criteria, indicators and standards for sustainable forest management;

(c) the Department on convening forums for interested persons to participate in the formulation of criteria, indicators and standards.

(6) The functions of the Committee on Forest Access are to advise the Minister on—

(a) a ruling referred to in section 20(10);

(b) promoting the grant and exercise of access to forests;

(c) promoting education on the sustainable management and use of forests;

(d) the use of the Trust funds.

(7) *(a)* A decision on advice to be provided to the Minister by a permanent committee must be reached on the basis of unanimity.

(b) If unanimity is not reached, the Minister must consider all the views expressed in the committee as conveyed by the chairperson of the committee.

(8) The Council may establish other committees.

(9) The Council may, with the approval of the Minister, appoint to one of the permanent committees or to a committee contemplated in subsection (8). persons who are not members of the Council but who may assist the committee in the performance of its functions.

(10) The Council must designate one member of each committee as the chairperson and one member as the vice-chairperson.

Meetings of Council

37. (1) The Minister must determine—

(a) the manner of the calling of, the quorum for, and the procedure at, meetings of the Council;

(b) what records the Council must keep;

(c) the way in which the Council must submit advice to him or her; and

(d) a code of conduct for Council members.

(2) The Council or a committee may admit as an observer any person including any representative of national, provincial or local government.

(3) The chairperson of the Council must provide the Minister with advice or information emanating from any meeting within two weeks.

Funding of Council

38. (1) The Council is funded by money appropriated by Parliament.

(2) **Before 31** October of every year the Council must submit a budget of its expenditure for the next financial year to the Minister for his or her approval.

(3) The Council may during the course of a financial year submit to the Minister for his or her approval additional or revised budgets for that year.

(4) The Minister must include the budget of the Council in his or her annual budget for the Department submitted for approval to Parliament.

(5) The Council must as soon as possible after the end of each financial year present a report on its expenditure for that year to the Minister.

(6) The financial year ends on 31 March.

Staff of Council

39. The Director-General must designate as many officers and employees of the Department as maybe necessary to assist the Council and any committee of the Council to perform the administrative and professional work of the Council or of a particular committee.

Report by Council

40. (1) The Council must present an annual report on its activities to the Minister within three months of the end of the financial year.

(2) The report by the Council must include its expenditure report compiled in terms of section 38(5).

Part 2

National Forest Recreation and Access Trust

Part 2 deals with the establishment of the National Forest Recreation and Access Trust.

Establishment and objects of National Forest Recreation and Access Trust

41. (1) **The National Forest Recreation and Access Trust is established.**

(2) **The Minister is the sole trustee of the Trust.**

(3) *(a)* The National Hiking Way Board referred to in section 29;

(b) the committees referred to in sections 40 and41: and

(c) the National Hiking Way System referred to in section 28,

of the Forest Act. 1984 (Act No. 122 of 1984), are dissolved.

(4) Administrative action in terms of PART VII of the Forest Act. 1984. is no longer of any effect. except in relation to the National Hiking Way Fund.

(5) The moneys standing to the credit of the National Hiking Way Fund referred to in section 36 of the Forest Act. 1984. vest in the Minister in his or her capacity as trustee.

(6) The object of the Trust is to promote access to and the use of forests for recreation. education. culture or spiritual fulfillment.

(7) The Trust is for the benefit of the general public of the Republic.

Powers and duties of Minister as trustee

42. (1) The Minister must do whatever is necessary to achieve the object of the Trust.

(2) The Minister may. as trustee—

(a) act on the advice of the Committee on Forest Access:

(b) solicit and receive donations and sponsorships;

(c) receive funds appropriated by Parliament:

(d) contract:

(e) use money in the Fund;

(f) cooperate with any organ of State or person;

(g) commission research;

(h) provide environmental education;

(i) provide information and other public services;

(j) charge fees for goods the Trust supplies and services it renders: and

(k) delegate any of his or her powers and duties as trustee to a named official in the Department.

Administration of Trust funds

43. (1) The Minister must appoint—

(a) an official of the Department: or

(b) any other person, if the Minister of Finance agrees,

as the accounting officer for the Trust.

(2) The accounting officer must account for money received by and paid from the Trust and generally perform the work of the Trust connected with its records, accounts and balance sheets.

(3) The accounting officer must before 31 October of every year submit a budget of the Trust's income and expenditure for the next financial year to the Minister for his or her approval.

(4) The accounting officer may revise the budget during the course of a financial year.

(5) The accounting officer may, with the consent of the Minister, invest Trust funds which are not needed for immediate use.

(6) Any credit balance in the Trust funds at the end of a financial year must be carried forward to the next financial year in the budget of the Trust.

(7) The financial year ends on 31 March.

(8) The accounting officer must keep a record of—

(a) the assets and liabilities of the Trust; and

(b) the financial transactions of the Trust.

(9) The accounting officer must, as soon as possible after the end of each financial year, draw up financial statements which must reflect the Trust's assets and liabilities at the beginning and end of the year and its income and expenditure for the year.

(10) The records, accounts and balance sheets of the Trust must be audited every year by the Auditor-General at an agreed fee, or, in the absence of an agreement, at a fee determined by the Minister of Finance.

Reports by Minister **as** trustee

44. The Minister must. within three months of the end of each financial year. submit to Parliament—

(a) a report on the Trust's activities; and

(b) audited financial statements of the Trust.

Part 3

Panel of facilitators, mediators and arbitrators

Part 3 gives ***the Minister the power to establish a panel from which facilitators, mediators and arbitrators may be selected for purposes of dispute resolution. Some of the factors they must take into account are listed.***

Establishment of panel

45. (1) The Minister must establish a panel of persons from whom appointments of facilitators, mediators and arbitrators may be made for the purposes referred to in sections 20(8), 20(9), 21(3), 27(2)*(h)*, 29(4)*(g)* and 31(1)(h).

(2) The Minister may. instead of establishing a panel in terms of subsection (1), adopt—

(a) the panel of arbitrators established in terms of section 31(1) of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), as the panel from which such appointments must be made;

(b) the remuneration and allowances determined in terms of section 31(3) of that Act as those which will be payable for services rendered by panel members in terms of this Act.

(3) If the Minister establishes a panel in terms of subsection (l), he or she must determine the remuneration and allowances to be paid to panel members in consultation with the Minister of Finance.

(4) Facilitators, mediators and arbitrators are only remunerated when they are appointed or selected from the panel to act in a particular matter.

(5) A facilitator, mediator or arbitrator appointed in terms of this Act must, where appropriate, have regard to the following factors along with all other issues he or she must consider in any matter:

(a) Where one or more communities is or are party to the dispute. the historical and cultural association of the community or communities with the forest;

(b) the need to find equitable solutions to problems in the forests sector; and

(c) the principles of sustainable forest management set out in section 3(3).

CHAPTER 6

ADMINISTRATION OF ACT

Part 1

General powers and duties of Minister

Part 1 deals with the general powers and duties of the Minister. The Minister must develop and implement a policy for forests and their management and may, amongst other things—

- **** assign, and withdraw the assignment of, certain powers and duties;***
- **** delegate certain powers and duties;***
- **** expropriate property for forestry;***
- **** reserve State land for forestry;***
- **** make regulations.***

Development and implementation of policy

46. The Minister must develop and implement policy for forests and their management.

Assignment of powers and duties

47. (1) The Minister may—

(a) assign any power or duty in this Act to—

(i) a province or other organ of State; or

(ii) a person who or which is not an organ of State,

indefinitely or for a fixed period:

(b) withdraw an assignment. including any assignment of powers and duties in the Forest Act. 1984 (Act No. 122 of 1984). whether that assignment was effected in terms of that Act or any other legislation:

(c) make an assignment subject to conditions.

by notice in the *Gazette.*

(2) The Minister must—

(a) consult with the province. organ of State or person concerned: and

(b) consider the administrative capacity of the province. organ of State or person concerned to assume. or continue to provide. effective responsibility.

before making or withdrawing an assignment.

(3) A province may implement those provisions of the Act relating to the powers and duties assigned to it—

(u) from the date of the assignment:

(b) in the area to which the assignment relates:

(c) until the assignment ends.

Delegation of powers and duties

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

(a) a named official in the Department:

(b) the holder of an office in the Department:

(c) an organ of State;

(d) a person who or which is not an organ of State.

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

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

(a) must be in writing:

(b) may be subject to conditions;

(c) must specify the period for which it lasts:

(d) do not prevent the exercise of the power or the performance of the duty by the Minister himself or herself.

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

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

(5) The Minister may withdraw any delegation.

Expropriation of property

49. (1) The Minister may purchase or expropriate any property and reserve it for forestry or any other purpose in terms of this Act, if—

(a) that purpose is a public purpose or is in the public interest; and
(b) the Minister of Public Works agrees.

(2) Land purchased or expropriated for forestry under subsection(1) may include land which is not treed or which will not be afforested if that land will be managed as part of the forest management unit or units in question.

(3) The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriations.

Reservation of State land for forestry

50. (1) The Minister may reserve State land which is not a State forest for forestry if—

(a)" in the case of State forests other than trust forests, the Minister of Public Works agrees: or
(b) in the case of trust forests on land held in trust by the Ingonyama referred to in the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994). the authority with the necessary power in terms of that Act agrees; or
(c) in the case of trust forests other than those referred to in paragraph (b). the Minister of Land Affairs agrees.

(2) State land reserved for forestry under subsection (1) may include land which is not treed or which will not be afforested if that land will be managed as part of the forest management unit or units in question.

(3) The Minister may release a State. forest or part of a State forest which is no longer required for forestry.

(4) The Minister reserves State land for forestry or releases it by notice in the *Gazette*.

Performance of functions on other land

51. The Minister may authorise officials in the Department to perform services in connection with trees on land which is not a State forest—

(a) at the request. or with the consent. of the registered owner;
(b) on appropriate conditions.

Extensions

52. The Minister may extend. or condone a failure by a person to comply with. a time period in terms of this Act. except a time period which binds the Minister.

Content of regulations

53. (1) For the purposes of this section. "owner'. means—

(a) the registered owner: and
(b) where the registered owner has transferred control of the forest management unit in question to another person or organ of State. whether by way of assignment. delegation. contract or otherwise, that person or organ of State.

(2) The Minister may make regulations to deal with-

(a) any matter which must be dealt with by regulation in terms of this Act;

(b) the criteria, indicators and standards referred to in section 4(2)*(a)*, including—
(i) their determination and enforcement;
(ii) the creation and promotion of the incentives referred to in section ***4(2)(b);***

(c) research;

(d) monitoring of the forest resource, including regulations relating to——
(i) the registration of, and collection of data from, owners of forests;
(ii) the registration of, and collection of data from, persons who harvest, saw, process or sell forest produce;
(iii) collection of data from institutions which certify sustainable forest management;

(e) protected trees, including—
(i) the cultivation and grazing of land around any protected tree;
(ii) financial assistance for erecting stock-proof fences:
(iii) the preparing and maintenance of firebreaks for the protection of such a tree;
(iv) the control of the collection, removal, transport, export, purchase. sale or donation of parts or produce of protected trees;
(v) management plans for protected trees:

(f) the management of State forests in general or a particular State forest or part of it:

(g) licences under section 23, leases under section 27, agreements under section 28 and community forestry agreements under section 30, including—
(i) the appointment and functioning of a person or organ of State outside of the Department to exercise powers and perform duties of the Minister and the Director-General in terms of Chapter 4 and such other sections as relate to that task; and
(ii) procedures for the selection of suitable licensees. lessees. purchasers or offerors;

(h) facilitation. mediation and arbitration before a panel member referred to in section 45;

(i) forest hygiene. including—
(i) the combating of any harmful organism which affects any kind of forest. tree or timber on any land or in any vehicle, building or other place where timber is stored. stacked. 'seasoned or processed;
(ii) the prevention of the introduction into or the spreading within the Republic of any such harmful organism: and

(j) in general. the carrying out of the purposes and the provisions of this Act.

(3) The Minister may make different regulations under subsection (2) for different regions of the Republic. different forests or parts or classes of forests and different owners or classes of owners of forests.

(4) The Minister may make regulations—

(a) for the inspection of any forest, trees. timber, vehicle. pack-animal or premises by any person or the incumbent of a post designated by the Minister for purposes of enforcing regulations made under this section:

(b) prescribing how samples of any timber for examination or testing must be taken and how and where such timber may or must be graded or marked.

(5) The reference to specific regulation-making powers in this section does not limit the general regulation-making powers conferred by it.

(6) *(a)* The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe maximum penalties for such offences.

(b) The penalties may not exceed those for a second category offence in terms of section 58(2).

Procedure for making regulations

54. (1) Before making or amending any regulations in terms of this Act, the Minister must—

(a) publish a notice in the *Gazette*—

(i) setting out the draft regulations; and

(ii) inviting written comments to be submitted on the proposed regulations within a specified period;

(b) consider all comments received: and

(c) take advice from the Council.

(2) The regulations are effective from the date the Minister publishes them in the ***Gazette.***

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

(a) within 30 days after publishing them; or

(b) if Parliament is not then in session, within 30 days after the next session starts.

(4) Parliament may reject the regulations within 60 days after they have been tabled.

(5) If Parliament rejects any regulations, the Minister must—

(a) repeal them; or

(b) table amended regulations in draft form in Parliament,

within 60 days of the rejection, or, if Parliament is not then in session. within 60 days after the next session starts, failing which the regulations become invalid. ·

(6) If the Minister elects to table amended regulations in terms of subsection (5)*(b)*, he or she—

(a) must consult the chairperson of the Council:

(b) need not follow the procedure in subsection (1),

before the amended regulations are tabled.

(7) If Parliament—

(a) accepts the amended regulations, the Minister must publish them within 30 days of Parliament's acceptance;

(b) rejects the amended regulations, subsections (5) and (6) and this subsection apply.

(8) If the Minister complies with subsection ***(S)(b),*** the regulations as originally published continue to apply until amended regulations are accepted by Parliament and published by the Minister in terms of subsection (2).

Tariffs and charges

55. The Minister may. with the consent of the Minister of Finance—

(a) in respect of any State forest. issue a tariff of licence fees which may vary according to circumstances;

(b) issue the tariff of charges to be paid for any product or service rendered by an officer or employee of the Department or by a member of the panel referred to in section 45.

Part 2

General powers and duties of Director-General

Part 2 deals with the general powers and duties of the Director-General. He or she may delegate certain powers and duties.

Powers and duties

56. (1) The Director-General has those powers and duties—

(a) referred to in this Act: or

(b) delegated to him or her.

(2) The Director-General may delegate the exercise of any of his or her powers and the performance of any of his or her duties, to—

(a) a named official of the Department;

(b) the holder of an office in the Department;

(c) an organ of State:

(d) a person who or which is not an organ of State.

(3) The Director-General may permit a person or organ of State to whom a power or duty has been delegated to delegate that power or duty further.

(4) A delegation referred to in subsection (1) and the permission referred to in subsection (2)—

(a) must be in writing;

(b) may be subject to conditions;

(c) must specify the period for which it lasts;

(d) do not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself.

(5) The Director-General may withdraw any delegation.

Transfer of officers and employees

57. (1) The Director-General may enter into an agreement with an officer or employee of the Department to transfer his or her employment to—

(a) a person who leases or carries on a licensed activity in a State forest:

(b) a community which has entered into a community forestry agreement: or

(c) a party to a community forestry agreement referred to in section 31(?)(e).

(2) The Minister of Finance and the Minister for the Public Service and Administration must approve the terms of such an agreement before it is concluded.

(3) The agreement may provide for the terms on which the employee will terminate membership of the State pension fund or become a member of a new pension fund.

CHAPTER 7

OFFENCES AND PENALTIES

This Chapter sets out the relevant offences in terms of the Act and the penalties applicable.

Part 1

Sentencing

Part 1 deals with matters relating to sentencing.

Penalties

58. (1) A person who is guilty of a first category offence referred to in sections 62 and 63 may be sentenced to a fine or imprisonment for a period of up to three years. or to both a fine and such imprisonment.

(2) A person who is guilty of a second category offence referred to in sections 62. 63 and 64 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to two years, or to both a fine and such imprisonment.

(3) A person who is guilty of a third category offence referred to in sections 62 and 63 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to one year. or to both a fine and such imprisonment.

(4) A person who is guilty of a fourth category offence referred to in sections 63 and 64 maybe sentenced on a first conviction for that offence to a fine or community service for a period of up to six months or to both a fine and such service.

(5) A person who is guilty of a second, third or fourth category offence may be sentenced on a second conviction for that offence as if he or she has committed a first. second or third category offence. respectively.

(6) A person who is guilty of a fifth category offence referred to in section 61 may not be sentenced to imprisonment, but maybe sentenced to a fine up to R50 000.

(7) The maximum amount of the fine referred to in subsection (6) may be amended by the Minister by a notice in the *Gazette* in order to counteract inflation.

(8) A court which sentences any person—

(a) to community service for an offence in terms of this Act must impose a form of community service which benefits the environment if it is possible for the offender to serve such a sentence in the circumstances;

(b) for any offence in terms of this Act, may suspend or revoke a licence granted to the offender under section 7 or 23.

Compensatory orders in criminal proceedings

59. (1) A court which convicts a person of an offence in terms of this Act. may order—

(a) the return of any forest produce or protected tree which has unlawfully been removed, cut or damaged, to the person entitled to it if it is feasible to do so; and, in addition to or instead of such return,

(b) the person convicted to pay damages to any person who suffered a loss as a result of the offence.

(2) The power in subsection (1) is in addition to any other powers the court has in the proceedings in question.

(3) An order under subsection (1) is executed in the same manner as a judgment of that court in a civil case.

Award of part of fine recovered to informant

60. (1) A court which imposes a fine for an offence in terms of this Act. may order that a sum of not more than one-fourth of the fine, be paid to any person whose evidence led to the conviction or who helped bring the offender to justice.

(2) An officer in the service of the State may not receive such an award.

Part 2

Offences

Part 2 lists all the offences in terms of the Act in relation to the corresponding Chapters in the Act.

Offences relating to sustainable forest management

61. Any person who fails to take the steps which he or she has been instructed to take in terms of section 4(8) within the period or the extended period laid down. is guilty of a fifth category offence.

Offences relating to protection of forests and trees

62, (1) Any **person who contravenes the prohibition of certain acts** in **relation to trees in natural forests referred to in section** 7(1) **is** guilty **of a second category** offence.

(2) A~~n~~y person who contravenes—

(a) the prohibition on the cutting, disturbance. damage or destruction of forest produce in or the removal or receipt of forest produce from a protected area referred to in section 10(1) is guilty of a second category offence;

(b) the rules referred to in section 11 (2)(b). is guilty of a third category offence;

(c) the prohibition on—

(i) the cutting. disturbance, damage. destruction or removal of protected trees referred to in section 15(1)*(a)*; or

(ii) the prohibition on the collection, removal, transport. export, purchase or sale of protected trees referred to in section 15(1)(b),

is guilty of a first category offence.

(3) Any person who contravenes a prohibition or any other provision in a notice declaring a controlled forest area under section 17(3) and (4) is guilty of a second category offence.

Offences relating to use of forests

63. (l) Any person who—

(a) without authority, enters or is in an area of a forest which is not designated for access for recreation. education. culture or spiritual fulfillment, is guilty of a fourth category offence;

(b) contravenes a rule made by an owner in terms of section ***20(3)*** or a registered owner in terms of section 2 l(2), ***is*** guilty of a fourth category offence;

(c) invades the privacy of, or causes damage to the property of, a registered owner in contravention of the prohibition referred to in section 21(5), is guilty of a third category offence;

(d) damages, removes or interferes with any beacon, boundary, fence, notice board or other structure in a forest without authority, is guilty of a fourth category offence;

(e) without authority makes a mark or sign on a rock, building, tree or other vegetation in a forest. is guilty of a third category offence;

(f) dumps or scatters litter in a forest, is guilty of a fourth category offence.

(2) Any person who, without a licence or other authority—

(a) cuts, disturbs. damages, destroys. removes or receives seven-week ferns *(Rumohra adiantiforme)* from any forest, is guilty of a first category offence;

(b) kills any animal. bird, insect or fish. is guilty of a second category offence if it is in a protected area and a third category offence if it is in any other area.

(3) Any person who. without the permission of the registered owner, removes any forest produce other than trees referred to in section 62(1), from a forest other than a State forest. is guilty of a third category offence.

(4) Any person who carries on an activity in a State forest for which a licence is required without such a licence is guilty of—

(a) a third category offence. if the State forest is a protected area;

(b) a fourth category offence. if the State forest is not a protected area.

(5) Any person who contravenes a condition in a licence. exemption or other authorisation in terms of this Act—

(a) in any protected area is guilty of a second category offence;

(b) in any other forest is guilty of a third category offence.

Offences in relation to enforcement

64. (1) Any person who—

(a) refuses or fails to produce a licence in terms of section 24(8) to a forest officer or a police officer; or

(b) prevents a forest officer or police officer from. or hinders a forest officer or police officer. acting under section 67, 68 or 69,

is guilty of a fourth category offence.

(2) A forest officer or employee of the Department who—

(a) solicits or receives, or agrees to receive, any payment. advantage or reward for doing anything in conflict with his or her duty;

(b) solicits or receives. or agrees to receive, any payment. advantage or reward, other than his or her normal remuneration, for performing his or her duty; or

(c) trades in forest produce, other than forest produce grown or produced on his or her own land, or acts as an agent for any person trading in forest produce,

is guilty of a second category offence.

CHAPTER 8

ENFORCEMENT

This Chapter provides for the appointment of forest officers and sets out their powers to police the provisions of this Act effectively.

Appointment of forest officers

65. The Director-General may—

(a) designate posts in the Department or in any provincial administration or local authority, whose incumbents are forest officers: and

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

General powers of forest officers

66. (1) A reference to an offence in this Chapter is a reference to an offence in terms of this Act.

(2) A forest officer has in respect of any offence all the powers vested by law in a police official.

(3) A forest officer exercising powers under this Act—

(a) is deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977):

(b) must carry with him or her, and produce on request, the prescribed proof of his or her identity and appointment as a forest officer.

Power to enter and search

67. (1) A forest officer may enter and search any land or premises without a warrant if he or she has reason to believe that an offence has been or is being committed there if—

(a) the person in control of the land or premises consents; or

(b) the forest officer has reason to believe that a warrant would be issued if he or she were to apply for such warrant, but the delay caused by applying would defeat the object of the entry or search.

(2) A forest officer may, without a warrant, stop, enter and search any vehicle or search any pack-animal which he or she reasonably suspects is being or has been used in the commission of an offence.

Power to seize

68. (1) A forest officer may seize without a warrant—

(a) any forest produce in respect of which he or she has reason to suspect an offence has been or is being committed;

(b) any vehicle, tool. weapon. animal or other thing which he or she has reason to believe has been or is being used in the commission of an offence;

(c) anything which he or she has reason to believe might be used as evidence in the prosecution of any person for an offence.

(2) Where any vehicle or animal is seized under subsection (])(b), the person in control of the vehicle or animal must take it to the place pointed out by the forest officer.

(3) The place pointed out must be that which in the opinion of the forest officer is the nearest or most convenient for keeping the vehicle or animal.

(4) The vehicle may be kept there pending the outcome of any proceedings in terms of this Act.

(5) If the person in control of the vehicle or animal refuses to take it to the place, the forest officer may do so.

(6) In order to safeguard a vehicle which has been seized, the forest officer may immobilise it by removing a part.

(7) The part must be kept safely and returned to the vehicle in good order when it is released.

(8) An item seized under this section must be kept securely and in good order.

Power to arrest

69. (1) A forest officer may arrest any person whom he or she reasonably suspects to have committed—

(a) a first, second or third category offence; or

(b) a fourth category offence and who in his or her opinion will fail to appear in answer to a summons.

(2) In making an arrest, a forest officer must—

(a) not use more force than is reasonably necessary if the arrest is resisted;

(b) respect the constitutional rights of the person arrested.

CHAPTER 9

GENERAL AND TRANSITIONAL PROVISIONS

This Chapter deals primarily with the transition to a new legal order with regard to forests. Miscellaneous items which need to be regulated are also dealt with here.

Part I

Miscellaneous

Documents and steps valid under certain circumstances

70. (1) A regulation, exemption. licence or notice purportedly made, issued or given in terms of this Act—

(a) which does not comply with this Act. is valid if the non-compliance is not material and does not prejudice any person:

(b) may be amended or replaced without following the procedure set out in this Act if—

(i) the purpose is to correct a mistake in the regulation. exemption, licence or notice: and

(ii) the correction does not change the rights and duties of any person materially.

(2) The failure to take any steps required in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure—

(a) is not material:

(b) has subsequently been corrected:

(c) does not prejudice any person: and

(d) is not procedurally unfair.

Delivery of documents

71. (1) If **any notice or other document referred to in this Act must be delivered to** any person, **it** may—

(a) be delivered by hand:

(b) be sent by registered mail—

(i) to that person's business or residential address; or

(ii) in the case of a juristic person, to its registered address or principal place of business: or

(c) where an address is unknown, despite reasonable enquiry, be published once in the *Gazette* and once in a local newspaper circulating in the area of that person. s last known residential or business address.

(2) Any document delivered in terms of subsection (1)(b) or *(c)* is presumed to have come to the notice of the person. unless the contrary is proved.

Publication of notices in media

72. (1) Where a notice must be published or aired in terms of this Act and—

(a) the required number of television channels or radio stations are not broadcasting to an area: or

(b) the required number of newspapers are not circulated in an area,

the organ of State responsible for publication may do so in such lesser number of media as to reach the area concerned.

(2) If an employee of a television channel or radio station signs an affidavit confirming—

(a) publication of a notice. it is presumed that the notice has been published; or

(b) that a television channel or radio station is broadcasting to a particular area. it is presumed that it is so broadcasting,

until the contrary is proved.

(3) If an employee of a newspaper signs an affidavit confirming that a newspaper circulates in a particular area, it is presumed that it does, until the contrary is proved.

Part 2

Repeal and amendment of laws, savings, short title and commencement

Repeal of laws

73. (1) The laws referred to in Schedule 1 are repealed to the extent indicated in the third column of that Schedule.

(2) *(a)* The definitions of "chief executive officer", " 'fund' in Part IX'.. "institute'. and "national botanic garden" in section 1, and sections 57 to 72, 73(1)(g) and 89(3) of. and Schedule 1 to, the Forest Act, 1984 (Act No. 122 of 1984);

(b) sections 1,4 to 10 and 12 of the Forest Amendment Act, 1991 (Act No. 53 of 1991); and

(c) sections 46 and 47 of the Transfer of Powers and Duties of the State President Act, 1986 (Act No. 97 of 1986), in so far as they amend the Forest Act. 1984.

are repealed with effect from a date to be published by the Minister in the *Gazette*, which may not be earlier than the date on which a law or an amendment to a law is promulgated providing for the matters dealt with in those sections and that Schedule.

Savings

74. (1) Anything done in terms of a law repealed by this Act—

(a) remains valid if it is consistent with this Act. until repealed or overridden: and

(b) becomes administrative action in terms of the corresponding provision of this Act.

(2) Any regulation made in terms of the Forest Act. 1984 (Act No. 122 of 1984)—

(a) remains valid if it is consistent with this Act. until it is repealed by the Minister: and

(b) becomes a regulation made in terms of sections 53 and 54 of this Act.

(3) Assignments and delegations of powers or duties under the Forest Act. 1984. become assignments or delegations under this Act if they are consistent with this Act.

(4) The Tweefontein Timber Company Limited continues to exist with the same assets. liabilities. rights and obligations despite the repeal by section 73(1).

(5) Section 17 of the Forest Act. 1984. remains in force for purposes only of determining prices in contracts—

(a) entered into before this Act comes into force: and

(b) which would. in the absence of section 17. be incomplete.

Amendment of section 1 of Act 128 of 1992

75. Section 1 of the Management of State Forests Act. 1992. is amended by the substitution for the definition of "Forest Act" of the following definition:

" 'Forest Act' means the **[Forest Act, 1984 (Act No. 122 of 1984)]** **National Forests Act.** 1998;".

Substitution of section 3 of Act 128 of 1992

76. The following section is substituted for section 3 of the Management of State Forests Act, 1992:

"Objects of Company

3. The objects of the Company are the development in the long term of the forestry industry according to accepted commercial [management]@ environmental practice.".

Repeal of section 4 of Act 128 of 1992

77. (1) Section 4 of the Management of State Forests Act, 1992, is repealed.

(2) Agreements entered into in terms of section 4 which are valid at the commencement of this Act continue on the same terms subject to the following:

(a) The right of access referred to in sections 19 and 20 of this Act applies to State forests to which such agreements relate.

(b) The South African Forestry Company Limited does not own or have a right to acquire ownership or ninety-nine year leasehold of any State forest.

(c) The parties may amend the existing agreements or enter into a new agreement or agreements replacing the existing agreements, save that any right to use a State forest in terms of a new agreement must be granted in terms of Chapter 4.

(d) The South African Forestry Company Limited is deemed to be licensed under section 23 to carry on the activities allowed by the existing agreements for as long as the agreements remain in force.

(e) No license fee is payable by the South African Forestry Company Limited as a result of paragraph ***(d)*** if it pays rent in terms of the existing agreements.

(f) Powers and duties of the Director-General in terms of the Forest Act, 1984, (Act No. 122 of 1984), and the regulations made in terms of that Act, which have been delegated or assigned to the South African Forestry Company Limited in terms of the existing agreements and which—

(i) exist under a corresponding provision in this Act. are deemed to have been delegated or assigned to the South African Forestry Company Limited under section 47 or 48;

(ii) do not exist under a corresponding provision in this Act, no longer vest in the South African Forestry Company Limited.

Amendment of Act 51 of 1994

78. The Forestry Laws Rationalisation and Amendment Act, 1994, is amended on the basis set out in Schedule 2.

Short title

79. This Act is the National Forests Act, 1998.

Commencement

80. This Act takes effect on a date fixed by the President in the *Gazette*.

SCHEDULE 1

[Section 73]

Number and year of law	Short title	Extent of repeal
Act No. 122 of 1984	Forest Act, 1984	The whole, save for sections 7, 8, and 9 and the provisions referred to in section 73(2) of this Act and section 34 of the National Veld and Forest Fire Act, 1998
Act No. 52 of 1987	Forest Amendment Act. 1987	The whole
Act No. 90 of 1987	Forest Second Amendment Act, 1987	The whole
Act No. 14 of 1988	Forest Amendment Act, 1988	The whole
Act No. 25 of 1989	Forest Amendment Act, 1989	The whole
Act No. 53 of 1991	Forest Amendment Act, 1991	The whole, save for the provisions referred to in section 73(2) of this Act.
Act No. 85 of 1991	Post Office Amendment Act. 1991	Section 78, only in so far as it amends the Forest Act, 1984
Act No. 108 of 1991	Abolition of Racially Based Land Measures Act, 1991	Section 43
Act No. 54 of 1992	The Conversion of the Tweefontein Timber Company Limited Act, 1992	The whole
Act No. 129 Of 1993	General Law Third Amendment Act, 1993	Sections 59 and 60
Act No. 63 of 1995	Forest Amendment Act. 1995	The whole

SCHEDULE 2

[Section 78]

Amendments to Act 51 of 1994

Amendment of section 2 of Act 51 of 1994

1. Section 2 of the Forestry Laws Rationalisation and Amendment Act, 1994. is amended by the deletion of subsection (2).

Substitution of section 3 of Act 51 of 1994

2. The following section is substituted for section 3 of the Forestry Laws Rationalisation and Amendment Act. 1994:

"Repeal of Act 15 of 1984 **(Transkei)**

3. The Forestry Council Act. 1984 (Act No. 15 of 1984) (Transkei). is repealed.'..

Repeal of sections 5,6 and 7 of Act 51 of 1994

3. Sections 5.6 and 7 of the Forestry Laws Rationalisation and Amendment Act. 1994. are repealed.

Substitution of Schedule 1 to Act 51 of 1994

4. The following Schedule is substituted for Schedule 1 to the Forestry Laws Rationalisation and Amendment Act. 1994:

"Schedule 1

Laws repealed by section 1(1)

N-umber and y ear of law	**Short title**	**Extent** of repeal	Area of national **territory in respect of which law is repealed**
Act No. 23 of 1960	Wattle Bark Industry Act. 1960	The whole	The former Republics of Transkei, Bophuthatswana. Vends and Ciskei and the former self-governing territories of Lebowa. Gazankulu. Qwaqwa. KwaZulu. KwaNdebele and KaNgwane
Act No. 44 of 1967	Wattle Bark Industry Amendment Act. 1967	The whole	
Act No 59 of 1974	Wattle Bark Industry Amendment Act. 1974	The whole	
Act No. 24 of 1986	Wattle Bark Industry Amendment Act. 1986	The whole	The former self-governing territories of Lebowa. Gazankulu. Qwaqwa. KwaZulu. KwaNdebele and KaNgwane
Proclamation No. 191 of 1967	Trust Forest Regulations. 1967	The whole. except regulation 27	The former Republic of Bophuthatswana and the former self-governing territories of Gazankulu. Qwaqwa and KwaNdebele
Proclamation No. 340 of 1968		The whole	
Act No. 72 of 1968	Forest Act. 1968	The whole	
Act No. 37 of 1971	Forest Amendment Act. 1971	The Whole	
Act No. 46 of 1972	Forest Amendment Act. 1972	The whole	

Number and year of law	Short title	Extent of repeal	Area of national territory in respect of which law is repealed
Act No. 45 of 1973	Forest Amendment Act. 1973	The whole	The former self-governing territories of Qwaqwa and KwaNdebele
Act No. 57 of 1974	Forest Amendment Act. 1974	The whole	
Act No. 36 of 1975	Forest Amendment Act. 1975	The whole	The former self-governing territory of KwaNdebele
Act No. 58 of 1976	Forest Amendment Act. 1976	The whole	
Act No. 60 of 1969	Transkei Forest Act. 1969	The whole	The former Republic of Transkei
Act No. 6 of 1971	Transkeian Nature Conservation Act. 1971	Section 38 only m so tar as it amends the Transkei Forest Act. 1969	
Act No. 5 of 1972	Transkeian General Law Amendment Act. 1972	The whole	
Act No. 7 of 1974	Transkeian Forest Amendment Act. 1974	The whole	
Act No. 6 of 1976	Ciskeian Forestry Act. 1976	The whole	The former Republic of Ciskei
Act No. 20 of 1985	Forestry Amendment Act, 1985 (Ciskei)	The whole	
Act No. 13 of 1978	Lebowa Forestry Act. 1978	The whole	The former self-governing territory of Lebowa
Act No. 15 of 1980	KwaZulu Forestry Act. 1980	The whole	The former self-governing territory of KwaZulu
Act No. 2 of 1990	KwaZulu Forestry Amendment Act. 1990	The whole	
Act No. 16 of 1981	Forest Act, 1981 (Venda)	The whole	The former Republic of Venda
Act No. 4 of 1981	KaNgwane Forestry Act. 1981	The whole	The former self-governing territory of KaNgwane"

Repeal of Schedule 2 to Act 51 of 1994

5. Schedule 2 to the Forestry Laws Rationalisation and Amendment Act. 1994, is repealed.

Substitution of Schedule 3 to Act 51 of 1994

6. The following Schedule is substituted for Schedule 3 to the Forestry Laws Rationalisation and Amendment Act, 1994:

"Schedule 3

EXTENSION OF APPLICATION OF CERTAIN LAWS BY SECTION 2

Number and year of law	Short title	Extent of extension of application
Act No. 23 of 1960	Wattle Bark Industry Act. 1960	The whole
Act No. 128 of 1992	Management of State Forests Act. 1992	The whole
Act of 1998	National Forests Act. 1998	The whole
Act of 1998	National Veld and Forest Fire Act. 1998	The whole"