

REPUBLIC OF SOUTH AFRICA

NATIONAL FORESTS AMENDMENT BILL

*(As amended by the Portfolio Committee on Agriculture, Forestry and Fisheries
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B 11B—2016]

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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.

BILL

To amend the National Forests Act, 1998, so as to provide for clear definitions of natural forests and woodlands; to provide for public trusteeship of the nation’s forestry resources; to increase the promotion and enforcement of sustainable forest management; to increase the measures provided for in the Act to control and remedy deforestation; to provide for appeals against decisions taken under delegated powers and duties; to reinforce offences and penalties; and to provide for matter connected therewith.

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

Amendment of section 2 of Act 84 of 1998, as amended by section 1 of Act 12 of 2001

1. Section 2 the National Forests Act, 1998 (Act No. 84 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended— 5

(a) by the insertion in subsection (1) before the definition of “biological diversity” of the following definition:

“**‘assignment’** means the permanent or temporary transfer of—

(a) a power, duty, role or function from the functional domain of national government to one or more provincial governments, organs of state or to persons who are not organs of state; or 10

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

(b) by the insertion after the definition of “biological diversity” of the following definition: 15

“**‘Appeal Committee’** means the committee constituted in terms of section 57A(2);”;

(c) by the substitution in subsection (1) for the definition of “natural forest” of the following definition:

“**‘natural forest’** means a group of predominantly indigenous trees— 20

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

(b) which may represent any successional stage or state of forest degradation, in which case crowns may not be contiguous;

- (c) which occur in association with characteristic plants or animals recognised in vegetation science as diagnostic species of a specific natural forest type; or
- (d) which have been declared by the Minister to be a natural forest in accordance with section 7(2);”;
- (d) by the substitution in subsection (1) for the definition of “woodland” of the following definition:
- “**‘woodland’** means a group of indigenous trees which are not a natural forest, but whose crowns cover **[more than]** at least five per cent of the area **[bounded by trees forming the perimeter of the group]** they occupy, and which may, in a degraded state have a crown cover of less than five per cent.”.

Insertion of section 2A in Act 84 of 1998

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

“Public trusteeship of nation’s forestry resources

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

Amendment of section 7 of Act 84 of 1998, as amended by section 2 of Act 12 of 2001 and section 1 of Act 35 of 2005

3. Section 7 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
- “**Prohibition [on] against destruction [of trees] in natural forests**”;
- (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:
- “(a) cut, disturb, damage, or destroy any indigenous tree or any other indigenous vegetation in a natural forest;
- (b) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, [or any] forest product derived from a tree contemplated in paragraph (a), other indigenous vegetation or any forest product derived from a vegetation contemplated in paragraph (a),”;
- (c) by the addition of the following subsections:
- “(5) If a person is in breach of subsection 1(a), the Minister may, by written notice—
- (a) inform that person of the—
- (i) nature of the alleged breach;
- (ii) steps which the person must take to prevent or to redress the said breach; and
- (iii) period within which he or she must take the steps referred to in paragraph (ii); and
- (b) in addition to any penalties in terms of section 63(2)—
- (i) direct the said person to take the steps referred to in paragraph (a)(ii) to prevent further damage or to redress the said breach; and
- (ii) determine the period within which he or she must take the steps referred to in subparagraph (i).
- (6) If the person fails to comply with the directive within the period determined under subsection (5)(b)(ii), the Minister may—
- (i) take reasonable steps to remedy the situation;
- (ii) recover consequential damage or costs from the person concerned; and
- (iii) approach a competent court for relief.”.

Amendment of section 8 of Act 84 of 1998, as amended by section 2 of Act 35 of 2005

4. Section 8 of the principal Act is hereby amended by the addition of the following subsection:

“(3) A person may not conduct any activity in a protected area which is inconsistent with the conservation, recreation or any other management objectives of that area, except under a licence issued by the Minister in exceptional circumstances that may be determined by the Minister.”. 5

Amendment of section 14 of Act 84 of 1998

5. Section 14 of the principal Act is hereby amended by the addition of the following subsection: 10

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

(a) protected, in accordance with section 12(a) and (b), until such time that a notice in this regard is published in the *Gazette* in accordance with section 14(2); or 15

(b) a controlled forest area in accordance with section 17.”. 16

Amendment of section 15 of Act 84 of 1998, as amended by section 3 of Act 35 of 2005 20

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

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 25
- “The Minister must, by notice in the *Gazette* and in two newspapers circulating nationally, publish—”; and
- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 26
- “(b) an appropriate warning of the prohibition referred to in subsection (1) and the consequences of [its] an infringement [,] at least every five years or publish a change that has been effected to the list contemplated in paragraph (a) in the *Gazette* and in two newspapers circulating nationally.”. 30

Amendment of section 16 of Act 84 of 1998

7. Section 16 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 35

“(b) a particular tree [or], group of trees [or], woodland, or a State forest or part of it, to be protected under [section] sections 12(1) and 8(1), respectively.”. 36

Amendment of section 17 of Act 84 of 1998, as amended by section 4 of Act 35 of 2005

8. Section 17 of the principal Act is hereby amended— 40

- (a) by the substitution in subsection (2) for the words following paragraph (b) of the following words: 45
- “a natural forest or a woodland, which is threatened with deforestation, or is being [or has been] deforested, he or she may declare it a controlled forest area.”; and
- (b) by the addition of the following subsections: 46
- “(13) The Minister may declare a controlled forest area, and due to the urgency of the situation, the Minister may proceed with the declaration without prior consultation with, or affording a prior hearing to, any affected person but as soon as reasonably possible after the declaration contemplated in section 17(3), the Minister must— 50
- (a) consult with, and afford a hearing to, any affected person;
- (b) consider any representations received during such consultation or hearing; and

(c) confirm, vary or cancel the declaration concerned.

(14) If the Minister is of the opinion that the owner failed to comply with the notice issued in terms of subsections (3) and (4), he or she may—

(i) take reasonable steps to remedy the situation;

(ii) recover consequential damages or costs from the owner or person concerned; and

(iii) approach a competent court for any appropriate relief.”.

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Amendment of section 23 of Act 84 of 1998, as amended by section 6 of Act 12 of 2001

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

“(4) No person may engage in any prospecting or mining activity in a State forest except in terms of—

(a) an existing lease agreement or any other valid contract; or

(b) applicable legislation.”.

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Amendment of section 34 of Act 84 of 1998

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

(a) by the substitution in subsection (2) for the full stop at the end of paragraph (i) of a semi-colon; and

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

“(j) youths and women.”.

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Amendment of section 35 of Act 84 of 1998

11. Section 35 of the principal Act is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively:

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“(4) Members of the Council and members of [a committee] the committees of the Council referred to in section 36 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] the committees of the Council referred to in section 36 with the consent of the Minister of Finance.”.

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Amendment of section 36 of Act 84 of 1998

12. Section 36 of the principal Act is hereby amended by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“(6) The functions of the Committee on Forest Access are to advise the Council, the Department and the Minister on—”.

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Amendment of section 37 of Act 84 of 1998

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

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

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Amendment of section 47 of Act 84 of 1998

14. Section 47 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:

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“(i) [a province or other] an organ of State in accordance with section 99 of the Constitution of the Republic of South Africa, 1996; or”.

Insertion of Chapter 6A in Act 84 of 1998

15. The following chapter is hereby inserted in the principal Act after Chapter 6:

“CHAPTER 6A

APPEAL

Right to appeal

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57A. (1) A person who is aggrieved by any decision or action taken by a delegated official in terms of this Act may appeal in the prescribed manner to the Minister against such decision or action.

(2) The Minister may constitute a committee known as the Appeal Committee to investigate and consider any appeal referred to it in terms of section 57D.

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Composition and membership of Appeal Committee

57B. (1) The Appeal Committee must consist of at least three members appointed by the Minister, on an *ad hoc* basis and when necessary, of whom—

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(a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and

(b) two or more persons must have expert knowledge on the subject of the appeal.

(2) The person referred to in subsection (1)(a) must be designated as the chairperson of the Appeal Committee.

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(3) The Minister must appoint the members for a determined period through an open and transparent process.

(4) The chairperson and the other members of the Appeal Committee must, for each day or part of a day in any month on which the duties attached to the office concerned were performed, be remunerated and paid a travelling and subsistence allowance, at such daily rate as the Minister in consultation with the Minister of Finance may determine from time to time.

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(5) In order to be eligible for appointment or designation as a member of the Appeal Committee, and to continue to hold that office, a person must—

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(a) not be subject to any disqualification set out in subsection (6); and

(b) have submitted to the Minister a written declaration stating that the person—

(i) is not disqualified in terms of subsection (6); and

(ii) does not have any personal interests, or interest through a spouse, partner or associate.

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(6) A person may not be a member of the Appeal Committee if that person—

(a) is an unrehabilitated insolvent or he or she becomes insolvent and the insolvency results in the sequestration of that person’s estate;

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(b) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;

(c) is subject to an order of a competent court holding that person to be mentally unfit;

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(d) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or

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(e) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

- (7) A member of the Appeal Committee must not—
- (a) engage in any activity that may undermine the integrity of the Appeal Committee;
 - (b) attend, participate in or influence the proceedings of the Appeal Committee, if, in relation to the matter before the Appeal Committee, that member has an interest that precludes that member from performing the functions of a member of the Appeal Committee in a fair, unbiased and proper manner;
 - (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Appeal Committee; or
 - (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions as a member of the Appeal Committee.
- (8) If, at any time, it appears to a member of the Appeal Committee that a matter being considered by the Appeal Committee during proceedings concerns an interest of that member referred to in subsection (7)(b), that member must—
- (a) immediately and fully disclose the nature of that interest to the members present; and
 - (b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.
- (9) The disclosure by a member of the Appeal Committee in terms of subsection (8)(a), and the decision by the Appeal Committee in terms of subsection (8)(b), must be expressly recorded in the records of the proceedings in question.

Vacancies in Appeal Committee

- 57C.** (1) A member of the Appeal Committee vacates office—
- (a) if the member becomes subject to any disqualification referred to in section 57B(6); and
 - (b) in the case where the member has resigned by giving one month's notice in writing to the Minister, when the member's resignation takes effect.
- (2) The Minister may, subject to due process of law, remove any member of the Appeal Committee from office—
- (a) for misconduct;
 - (b) for failing to perform the duties of a member or to perform such duties diligently and efficiently; or
 - (c) if the member, because of any physical or mental illness or disability, has become incapable of performing a member's duties or performing the duties diligently and efficiently.
- (3) (a) Any vacancy in the office of the Appeal Committee must be filled by the Minister through the appointment of another member in accordance with section 57B(3).
- (b) A member so appointed holds office for the unexpired portion of the predecessor's term of office.

Investigation and consideration of appeal by Appeal Committee

- 57D.** (1) The Minister may refer an appeal to the Appeal Committee.
- (2) An appeal must be heard on the date, time and place determined by the chairperson.
- (3) The chairperson must inform the appellant and any other party that has an interest in the appeal in writing of the date, time and place of the hearing.
- (4) The chairperson may, for the purpose of the hearing of an appeal—
- (a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control, any document which has any

- bearing upon the subject of the hearing, to appear before the Appeal Committee at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain for examination any document so produced; and
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing. 5
- (5) A person who appeals in terms of section 57A may be represented by any person.
- (6) If a member of the Appeal Committee—
- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time; 10
- (b) is unable to act and another person cannot be appointed in time; or
- (c) is, after the investigation has commenced, unable to continue therewith, 15
- the parties may agree that the investigation be continued by the remaining members of the Appeal Committee.
- (7) Where the member of the Appeal Committee who has died or has become incapacitated as envisaged in subsection (5) was the chairperson of the Appeal Committee, the Minister must designate one of the remaining members of the Appeal Committee to act as chairperson, until the Minister appoints a chairperson. 20
- (8) Any person appointed in terms of section 57B and 57C(3) must recuse himself or herself as a member of the Appeal Committee if he or she has any direct or indirect personal interest in the outcome of the appeal. 25
- (9) The Appeal Committee must make recommendation to the Minister on its decision regarding an appeal.

Consideration of appeal by Minister

- 57E.** (1) When the Minister receives a recommendation in terms of section 57D(9), he or she may— 30
- (a) substitute, confirm or set aside the recommendations of the Appeal Committee; and
- (b) order the delegated official to execute the decision in connection therewith.
- (2) Where the Minister considers an appeal, he or she may— 35
- (a) confirm, set aside or vary the decision of the delegated official; and
- (b) order the delegated official to execute the decision in connection therewith.
- (3) The Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), applies. 40
- (4) The decision of the Minister must be in writing and a copy thereof must be furnished to the delegated official, appellant and any other party that has an interest in the appeal.
- (5) If the Minister—
- (a) sets aside any decision or action by the delegated official, the prescribed fee paid by the appellant in respect of the appeal must be refunded to him or her; or 45
- (b) varies any decision or action by the delegated official, the Minister may direct that the whole or any part of such fee, be refunded to the appellant. 50

Amendment of section 58 of Act 84 of 1998

- 16.** Section 58 of the principal Act is hereby amended—
- (a) by the substitution for subsection (6) of the following subsection: 55
- “(6) A person who is guilty of a fifth category offence referred to in section 61 may **[not]** be sentenced to a fine not exceeding R10 million or imprisonment[, **but may be sentenced to a fine up to R50 000]** for a period of up to 10 years or to both such fine and imprisonment.”; and

- (b) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

“(b) for any offence in terms of this Act, may suspend or revoke a licence granted to the offender under section 7, 15 or 23.”.

Substitution of section 61 of Act 84 of 1998

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17. The following section is hereby substituted for section 61 of the principal 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] sections 4(8), 7(5), 8(3), 14(6) and 17(3) within the period or the extended period laid down, is guilty of a fifth category offence.”. 10

Amendment of section 62 of Act 84 of 1998, as amended by section 12 of Act 12 of 2001 and section 7 of Act 35 of 2005

18. Section 62(1) of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 15

“(1) Any person who contravenes the prohibition of certain acts in relation to trees, indigenous vegetation or any other forest product in natural forests referred to in section 7(1) is guilty of a [~~second~~] first category offence.”; and

- (b) by the substitution for subsection (3) of the following subsection: 20

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

Amendment of section 63 of Act 84 of 1998, as amended by section 8 of Act 35 of 2005

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19. Section 63 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Any person who contravenes a condition in a license, exemption or any other authorisation in terms of this Act, in respect of—

- (a) [~~in any~~] a protected area, a natural forest or protected trees, is guilty of a 30
second category offence; and

- (b) [~~in~~] any other forest, is guilty of a third category offence.”.

Amendment of section 65 of Act 84 of 1998

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

- (a) by the deletion of the word “and” at the end of paragraph (a); 35

- (b) by the substitution for the fullstop at the end of paragraph (b) of a semi-colon; and

- (c) by the addition of the following paragraphs:

“(c) determine different levels of forest officers; and

(d) determine qualification criteria for forest officers.” 40

Short title and commencement

21. This Act is called the National Forests Amendment Act, 2018 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL FORESTS AMENDMENT BILL, 2016

1. BACKGROUND

- 1.1 The Department of Agriculture, Forestry and Fisheries (“the Department”) is responsible for the administration of the National Forests Act, 1998 (Act No. 84 of 1998) (“the Act”). The Act promotes sustainable management and development of forests and provides for the protection of certain forests and trees. The National Forests Amendment Bill, 2016 (“the Bill”), seeks to amend this Act.
- 1.2 The Department is the custodian of the Act and should facilitate the amendment of this legislation in order to ensure that it remains responsive and relevant in the field of sustainable forest management.
- 1.3 This legislation was promulgated in 1998 and since then, several national legislation such as the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003) and the National Environmental Management Biodiversity Act, 2004 (Act No. 10 of 2004) were also promulgated, as well as the advance in science, technology and research in the field of sustainable forest management to ensure the co-operative governance and management of natural resources.
- 1.4 The Department is responsible for the creation of a comprehensive regulatory framework through policies and legislation to improve sustainable forest management in the country. It is therefore of critical importance to ensure that, where necessary, amendments should be effected to ensure that there are no legislative or policy vacuums that hinder effective sustainable forest management.
- 1.5 Most poor people and vulnerable groups located mainly in rural areas of the country rely on forestry for their livelihoods. The proposed amendments will assist in encouraging participation of vulnerable groups at the same time ensuring sustainable forest management.

2. OBJECTS OF BILL

The objects of the Bill are to—

- provide clear definitions of terms;
- increase promotion and enforcement of sustainable forest management;
- increase in measures to control and remedy deforestation;
- provide for appeal procedures; and
- promote equity by inclusion of participation into the National Forests Advisory Council by vulnerable and previously disadvantaged groups (especially women and youth).

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 of the Bill seeks to insert and amend certain definitions in order to assist in the interpretation of the Act.

3.2 Clause 2

Clause 2 of the Bill seeks to insert a new section 2A to provide that the National Government acting through the Minister of Agriculture, Forestry and

Fisheries (“the Minister”), must ensure that the nation’s forestry resources, together with the land and related ecosystems which they inhabit, are protected, conserved, developed, regulated, managed, controlled and utilised in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional and developmental mandate of government.

3.3. **Clause 3**

3.3.1 Clause 3 of the Bill amends section 7 of the Act which provides for the prohibition against the destruction of trees in natural forests. Clause 3 provides for the protection of other indigenous vegetation in a natural forest other than the trees themselves, and provides for the inclusion of licensing provisions of other vegetation other than trees in a natural forest.

3.3.2 Clause 3 provides for the insertion of section 7(5) in the Act to provide for a directive (to rectify damage) by the Minister in the case of non-compliance with the provisions of section 7(1), which prohibits the destruction of trees in a natural forest except in terms of a licence or an exemption.

3.4 **Clause 4**

Clause 4 of the Bill amends section 8 of the Act which provides for the power of the Minister to declare protected areas. Clause 4 provides for the prohibition of activities in a protected area which might be inconsistent with the purposes of conservation, recreation and management.

3.5 **Clause 5**

Clause 5 of the Bill amends section 14 of the Act which provides for emergency procedures for protecting trees. Clause 5 provides for emergency protection of individual trees or group of trees under immediate threat which are not yet declared as protected, by way of the Minister issuing a written order for the immediate termination of the felling, mutilation or destruction, of trees.

3.6 **Clause 6**

Clause 6 of the Bill amends section 15 of the Act which provides for the effect of declaration of protected trees. This clause provides for the publication in newspapers and the *Gazette*, of a list of protected species with the aim to address gaps on challenges related to enforcement, and aims to minimise costs for compliance promotion incurred through publication of the Declared National List of Protected Trees.

3.7 **Clause 7**

Clause 7 of the Bill amends section 16 of the Act provides for the registration against title deeds. Clause 7 provides for the inclusion of protected areas, in order to align with the National Environmental Management Protected Areas Act, Act No. 57 of 2003.

3.8 **Clause 8**

3.8.1 Clause 8 of the Bill amends section 17 of the Act which provides for the Minister’s power to declare controlled forest areas. Clause 8 provides for the emergency powers of the Minister, in an urgent situation, to declare a controlled forest area, in order to prevent continued deforestation of, and ensure rehabilitation of, natural forests and woodlands.

3.8.3 Clause 8 provides for steps that can be taken by the Minister in the case of non-compliance with a notice issued by the Minister directing an owner to take steps in order to prevent deforestation and ensure rehabilitation of natural forests and woodlands. The Minister may remedy the situation and recover the costs from the offending owner or take legal action in court.

3.9 Clause 9

Clause 9 of the Bill amends section 23 of the Act which provides for activities which may be licensed by the Minister in State forests. This clause provides for the prohibition of mining activities in a State forest, except in terms of existing leases, other valid contracts or applicable legislation.

3.10 Clause 10

Clause 10 of the Bill amends section 34 of the Act which provides for the composition of the National Forests Advisory Council (Council) Clause 10 provides for the inclusion of categories of youths and women to current categories to be represented in the Council.

3.11 Clause 11

Clause 11 amends section 35 of the Act which provides for the conditions of appointment to the Council. This clause ensures the section refers to both committees i.e. Committee on Sustainable Forest Management and Committee on Forest Access.

3.12 Clause 12

Clause 12 of the Bill amends section 36 of the Act which provides for the committees of the Council. This clause provides for the Committee on Forest Access to also advise the council and the Department, not only the Minister.

3.13 Clause 13

Clause 13 of the Bill amends section 37 of the Act which provides for the meetings of the Council. Clause 13 provides for the extension of the time period that the Council needs to advise the Minister on issues emanating from Council meetings from two weeks to a month.

3.14 Clause 14

Clause 14 of the Bill amends section 47 of the Act which provides for assignment of powers and duties by the Minister to an organ of State. Clause 14 serves to align provisions of an assignment in terms of this Act with section 99 of the Constitution of the Republic of South Africa, 1996.

3.15 Clause 15

Clause 15 inserts a new Chapter 6A in the Act to provide for an appeal process to cater for grievances against decisions or actions taken under delegation.

3.16 Clause 16

3.16.1 Clause 16 of the Bill amends section 58 of the Act which provides for penalties. Clause 16 seeks to increase the penalty amount from R50 000.00 to R10 million, with the possibility of imprisonment or both, for fifth category offences. This is in respect of breach of sustainable forest management such as the failure to take steps to remedy the destruction of a forest.

3.16.2 Clause 16 also provides for the possibility of the suspension or revocation of a licence granted in terms of section 15, in the event of the commission of an offence in contravention of the Act.

3.17 Clause 17

Clause 17 of the Bill amends section 61 of the Act which provides for offences relating to sustainable forest management. This clause provides for new offences in respect of non-compliance with instructions in terms of sections 7(5), 14(6) and 17(3) of the Act, in respect of destruction of trees in natural forests, destruction of trees eligible to be declared as protected trees and prevention of deforestation in a declared controlled area.

3.18 Clause 18

Clause 18 of the Bill amends section 62 of the Act which deals with offences relating to protection of forests and trees. Clause 18 amends the second category offences to be first category offences, thereby increasing enforcement measures to remedy deforestation. Clause 18 also provides for new first category offences in respect of non-compliance with instructions in terms of sections 17(3) and (4), which deal with the declaration of controlled forest areas by the Minister.

3.19 Clause 19

Clause 19 of the Bill amends section 63 of the Act which provides for offences relating to the use of forests. Clause 19 provides the inclusion of a national forest and protected trees in the second category offence in respect of the contravention of a licence condition, an exemption or an authorisation in terms of the Act.

3.20 Clause 20

Clause 20 of the Bill amends section 65 of the Act which deals with the appointment of forest officers. This clause vests two additional functions in the Director-General when appointing forest officers, i.e. the Director-General may determine different levels of forest officers and also the qualifications criteria.

3.21 Clause 21

Clause 21 of the Bill provides for the short title and commencement.

4. GOVERNMENT (NATIONAL, PROVINCIAL AND LOCAL), PUBLIC ENTITIES AND THIRD PARTY STAKEHOLDERS CONSULTED

- National Forests Advisory Council;
- Department of Environmental Affairs;
- Department of Cooperative Government and Traditional Affairs;
- Department of Energy;
- Provincial Conservation Agencies;
- SA National Parks and South African National Biodiversity Institute;
- Eskom;
- Department of Rural development and Land Reform;
- House of Traditional Leaders;

- Department of Minerals Resources;
- SA Timber Growers Association;
- Fire Protection Associations;
- Forestry Companies (e.g. SAFCOL, Mondi, Sappi);
- Farmers;
- Local Communities and public;
- Lessees;
- Environmental Consultant;
- Municipalities;
- Provincial Departments;
- Wildlife and Environment Society of South Africa;
- KZN Wildlife;
- Department of Planning and Local Government;
- Department of Cooperative Governance and Local Governance;
- South African Local Government Agency; and
- South African Environmental Observation Network.

5. IMPLICATIONS FOR NATIONAL GOVERNMENT (OTHER DEPARTMENTS, PUBLIC ENTITIES, ETC)

Most poor people and vulnerable groups located mainly in rural areas of the country rely on forestry for their livelihoods. The proposed amendments will make the legislation more responsive and relevant and thus will assist in ensuring improved sustainable forest management for the benefit of poor and vulnerable communities. These amendments will also ensure more effective compliance and enforcement between the Department and other enforcement agencies at national, provincial and local level.

6. IMPLICATIONS FOR DEPARTMENT

The Department is responsible for the creation of a comprehensive regulatory framework through policies and legislation to improve sustainable forest management in the country. It is therefore of critical importance to ensure that where necessary, amendments should be effected to ensure that there are no legislative or policy vacuums or conflict that hinder effective sustainable forest management.

7. FINANCIAL IMPLICATIONS

None.

8. PARLIAMENTARY PROCEDURE

8.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

- 8.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 8.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 8.4 Therefore issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.
- 8.5 The Bill seeks to ensure sustainable forest management; to provide for public trusteeship of the nation's forestry resources; to increase the promotion and enforcement of sustainable forest management; to increase the measures provided for in the Act in order to control and remedy deforestation; align the provisions of assignment in terms of section 47 of the Act with sections 99 of the Constitution; to promote equity by inclusion of participation into the National Forests Advisory Council by vulnerable and previously disadvantaged groups (women and youth); to provide for the appeals against decisions taken under delegated powers and duties; to reinforce offences and penalties.
- 8.6 The proposed amendments as reflected in the Bill have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution. As indicated above, the stated general purpose of the Bill is to ensure sustainable forest management.
- 8.7 The State Law Advisers are of the view the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.
- 8.8 The Office of the Chief State Law Adviser is therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 8.9 The Office of the Chief State Law Adviser is also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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