



# **National Diploma**

## **Farm Business Management**

### **Handout 5**

### **Environment Conservation Act 73**

### **of 1989**

## **Environment Conservation Act 73 of 1989 (Selected Sections)**

### **I. Definitions.—In this Act, unless the context indicates otherwise—**

“administrative body” means a Minister, competent authority, local authority, government institution or a person who makes a decision in terms of the provisions of this Act;

“Administrator”. . . . .

“chief executive officer” means the officer in charge of the relevant local authority or government institution;

“committee” means the Committee for Environmental Co-ordination established by section 12;

“competent authority” in so far as a provision of this Act is applied in or with reference to a particular province, means the competent authority to whom the administration of this Act has under section 235 (8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) been assigned in that province;

“council” means the Council for the Environment established by section 4;

“define” includes a description by means of a map on which sufficient information is indicated to identify an area;

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

“Director-General” means the Director-General: Environmental Affairs and Tourism;

“disposal site” means a site used for the accumulation of waste with the purpose of disposing or treatment of such waste;

“ecological process” means the process relating to the interaction between plants, animals and humans and the elements in their environment;

“ecosystem” means any self-sustaining and self-regulating community of organisms and the interaction between such organisms with one another and with their environment;

“environment” means the aggregate of surrounding objects, conditions and influences that influence the life and habits of man or any other organism or collection of organisms;

“environmental impact report” means a report referred to in section 22 (2) or 23 (3);

“government institution” means any institution, body, company or close corporation recognized by the Minister by notice in the Gazette;

“limited development area” means an area declared as a limited development area in terms of section 23 (1);

“litter” means any object or matter discarded or left behind by the person in whose possession or control it was;

“local authority”, in so far as a provision of this Act is applied in or with reference to a particular province, means a local government body or a transitional council, as the case may be, contemplated in section 1 (1) of the Local Government Transition Act, 1993 Act No. 209 of 1993);

“management advisory committee” means a committee established under section 17 (1);

“Minister” means the Minister of Environmental Affairs and Tourism;

“Minister of State Expenditure”— (a) in so far as the administration of a provision of this Act has under section 235 (8) of the Constitution of the Republic of South Africa, 1993, been assigned to a competent authority within the jurisdiction of the government of a province and the provision is applied in or with reference to the province concerned, means the member of the Executive Council of that province responsible for the budget in the province; or (b) in so far as the administration of a provision of this Act has been so assigned, means the Minister of Finance;

“Official Gazette” means the Provincial Gazette of a province;

“prescribe” means prescribe by regulation or notice in the Gazette;

“protected natural environment” means an area declared as a protected natural environment under section 16 (1);

“province” means a province established in terms of section 124 of the Constitution of the Republic of South Africa, 1993;

“provincial administration” means the provincial administration established for a province by the Public Service Act, 1994 (Proclamation No. 103 of 1994).

“regulation” means a regulation made under this Act;

“special nature reserve” means an area declared as a special nature reserve under section 18;

“this Act” includes the regulations and any notice issued under the Act;

“waste” means any matter, whether gaseous, liquid or solid or any combination thereof, which is from time to time designated by the Minister by notice in the Gazette as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity. ...

## **PART III – PROTECTION OF NATURAL ENVIRONMENT**

### **16. Protected natural environment.—**

(1) A competent authority may by notice in the Official Gazette concerned declare any area defined by him, to be a protected natural environment and may allocate a name to such area: Provided that such protected natural environment may only be declared—

(a) if in the opinion of the competent authority there are adequate grounds to presume that the declaration will substantially promote the preservation of specific ecological processes, natural systems, natural beauty or species of indigenous wildlife or the preservation of biotic diversity in general; and

(b) after consultation with the owners of, and the holders of real rights in, land situated within the defined area: Provided that where such owners and holders cannot readily be located the competent authority shall give notice in the Official Gazette and in one Afrikaans and one English newspaper circulating within the district where the land is situated, of his intention to declare such land to be a protected natural environment and invite such owners and holders to lodge any complaints against the intended declaration with the Director-General of that province within 30 days from the date of the notice.

(1A) A competent authority may, by notice in the Official Gazette—

(a) exclude any area from a protected natural environment and amend the description of the protected natural environment accordingly;

(b) withdraw the declaration of any protected natural environment; and

(c) change the name of any protected natural environment.

(1B) The provisions of subsection

(1) (b) shall mutatis mutandis apply to the exclusion of an area from a protected natural environment and the withdrawal of a declaration of a protected natural environment: Provided that the withdrawal of a declaration of a protected natural environment may only take place after consultation with any local authority or government institution (if any) to which the control and management of the area concerned had been assigned in terms of subsection (6) (a).

(2) The competent authority may by notice in the Official Gazette concerned issue directions in respect of any land or water in a protected natural environment in order to achieve the general policy and objects of this Act: Provided that—

(a) a copy of the directions applicable to the area shall be handed or forwarded by post to the last-known address of every owner of, and every holder of a real right in, the land in question; and

(b) the directions shall only be issued with the concurrence of each Minister charged with the administration of any law which in the opinion of the competent authority relates to a matter affecting the environment in that area.

(2A) The competent authority may, subject to the provisions of any other law pertaining to land, and subject to the proviso to subsection (2), amend or repeal any direction issued under the said subsection.

(3) Every owner of, and every holder of a real right in, land situated within a protected natural environment in respect of which directions have been issued in terms of subsection (2) or amended in terms of subsection (2A), and the successors in title of such owner and the holder of the real right, shall be subject to the provisions of such directions.

(4) The competent authority shall in writing direct the registrar of deeds of the deeds registry in which the title deed of land referred to in subsection (3) is registered, to make an entry of the directions in question in his registers and to endorse the office copy of the title deed accordingly.

(5) The competent authority may with the concurrence of the Minister of State Expenditure out of money appropriated by the provincial legislature concerned for that purpose and subject to such conditions as he may determine, render financial aid by way of grants or otherwise to the owner of, and the holder of a real right in, land situated within a protected natural environment in respect of expenses incurred by the owner or holder of the right in compliance with any direction issued in terms of subsection (2).

(6) A competent authority may—

(a) with the concurrence of a local authority or government institution assign the control and management of a protected natural environment to such local authority or government institution; or

(b) withdraw such control and management from such local authority or government institution.

#### **17. Management advisory committees in respect of protected natural environment.—**

(1) A competent authority may in respect of any protected natural environment establish a management advisory committee to advise him with regard to the control and management of such protected natural environment in order to advance the objects referred to in section 16 (1) (a).

(2) The competent authority shall determine the membership of a management advisory committee.

(3) Subject to the provisions of subsection (4), the members of a management advisory committee shall be appointed by the competent authority from persons who—

(a) shall represent the following interests, namely— (i) the Department and any other department of State which in the opinion of the competent authority should be represented in the management advisory committee; (ii) the provincial administration concerned; (iii) every local authority whose area of jurisdiction falls wholly or partly within the protected natural environment; (iv) the owners of, and the holders of real rights in, land situated within that protected natural environment; and (v) the users of such land; and

(b) in the opinion of the competent authority are capable of assisting the management advisory committee in the performance of its functions.

(4) If a competent authority assigns the control and management of a protected natural environment to a local authority or government institution in terms of section 16 (6), the appointment of members of such management advisory committee shall be made with the concurrence of such local authority or government institution.

(5) The competent authority shall designate one member of a management advisory committee as chairman and another member as vice-chairman.

(6) A member of a management advisory committee shall hold office for such period as the competent authority may determine at the time of the appointment of such member, but may be reappointed at the expiry of his term of office: Provided that the competent authority may, if in his opinion there are sufficient reasons for doing so, at any time remove a member from office.

(7) The Director-General of the relevant provincial administration shall, subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), designate as many officers and employees of the provincial administration as may be necessary to assist a management advisory committee in the administrative work connected with the performance of the functions of the committee: Provided that where the control and management of a protected natural environment has been assigned to another local authority or government institution in terms of section 16 (6) the chief executive officer of such local authority or government institution shall designate as many employees of the relevant local authority or government institution as may be necessary to assist a management advisory committee with the said administrative work: Provided further that with the approval of the competent authority such administrative work may be performed by any person other than such officer or employee at the remuneration and allowances which the competent authority with the concurrence of the Minister of State Expenditure may determine.

(8) A member of a management advisory committee who is not in the full-time employment of the State or a local authority may be paid from money appropriated by the provincial legislature concerned for that purpose, such remuneration and allowances as the competent authority may, with the concurrence of the Minister of State Expenditure, determine in general or in any particular case.

## **18. Special nature reserves.—**

(1) The Minister may by notice in the Gazette declare any area defined by him, and situated in the Republic of South Africa, including the territorial waters as defined in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), to be a special nature reserve.

(2) A declaration under subsection (1) shall only be made—

(a) for purpose of the protection of the environment in or special characteristics of such area;

(b) in respect of land or water of which the State is the owner or which is under the exclusive control of the State;

(bA) in respect of other land or water than land or water referred to in paragraph (b), at the request of and with the written consent of the owner of such land or water, as well as the holder of any right to minerals in respect of such land, and subject to the conditions agreed upon by the Minister and the owner.

(c) . . . . .

(3) The declaration of a special nature reserve shall not be withdrawn or the boundaries thereof altered except by resolution of Parliament: Provided that this subsection shall not apply to a declaration contemplated in subsection (2) (bA).

(4) The Minister may assign the control of a special nature reserve to any competent authority, local authority or government institution, providing such assignment takes place—

(a) with the concurrence of the competent authority, local authority or government institution in question;

(b) if a management plan for the special nature reserve is drawn up in consultation with the competent authority, local authority or government institution in question and accompanies such assignment; and

(c) with the concurrence of the owner of the land or water, as well as the holder of any right to minerals in respect of such land, contemplated in subsection (2) (bA).

(5) The competent authority, controlling local authority or government institution referred to in subsection (4) may amend the management plan with the concurrence of the Minister.

(6) Subject to the provisions of subsection (7) no person shall—

(a) gain admittance to a special nature reserve; or

(b) perform any activity in or on a special nature reserve.

(7) The competent authority, controlling local authority or government institution referred to in subsection (4) may, on the conditions determined by it, after consultation with the Minister, in writing grant exemption from the provisions of subsection (6), to—

- (a) any scientist occupied with any specific project;
- (b) any officer charged with specific official duties;
- (c) any other person desiring to view a special nature reserve on account of its special nature or characteristics.

(8) For the purposes of subsection (6) a special nature reserve shall include the air space to a level of 500 metres above the ground level of that special nature reserve.

## **PART IV – CONTROL OF ENVIRONMENTAL POLLUTION**

### **19. Prohibition of littering.—**

(1) No person shall discard, dump or leave any litter on any land or water surface, street, road or site in or on any place to which the public has access, except in a container or at a place which has been specially indicated, provided or set apart for such purpose.

(2) Every person or authority in control of or responsible for the maintenance of any place to which the public has access shall at all times ensure that containers or places are provided which will normally be adequate and suitable for the discarding of litter by the public.

19A. Removal of litter.—Notwithstanding the provisions of section 19 (2) every person or authority in control of or responsible for the maintenance of any place to which the public has access, shall within a reasonable time after any litter has been discarded, dumped or left behind at such place (with the inclusion of any pavement adjacent to, or land situated between, such a place and a street, road or site used by the public to get access to such place) remove such litter or cause it to be removed.

### **20. Waste management.**

(1) No person shall establish, provide or operate any disposal site without a permit issued by the Minister of Water Affairs and that Minister may—

- (a) issue a permit subject to such conditions as he may deem fit;
- (b) alter or cancel any permit or condition in a permit;
- (c) refuse to issue a permit:

Provided that such Minister may exempt any person or category of persons from obtaining a permit, subject to such conditions as he may deem fit.



- (2) Any application for a permit referred to in subsection (1) shall be in the form and be accompanied by such information as the Minister may prescribe.
- (3) If the Minister of Water Affairs should require any further information to enable him to make a decision on an application for a permit referred to in subsection (1), he may demand such information from the applicant.
- (4) The Minister of Water Affairs shall maintain a register in which details of every disposal site for which a permit has been issued shall be recorded.
- (5) The Minister of Water Affairs may from time to time by notice in the Gazette issue directions with regard to—
- (a) the control and management of disposal sites in general;
  - (b) the control and management of certain disposal sites or disposal sites handling particular types of waste; and
  - (c) the procedure to be followed before any disposal site may be withdrawn from use or utilized for another purpose.
- (6) Subject to the provisions of any other law no person shall discard waste or dispose of it in any other manner, except
- (a) at a disposal site for which a permit has been issued in terms of subsection (1); or
  - (b) in a manner or by means of a facility or method and subject to such conditions as the Minister may prescribe.

## **PART V – CONTROL OF ACTIVITIES WHICH MAY HAVE DETRIMENTAL EFFECT ON THE ENVIRONMENT**

### **21. Identification of activities which will probably have detrimental effect on environment.**

- (1) The Minister may by notice in the Gazette identify those activities which in his opinion may have a substantial detrimental effect on the environment, whether in general or in respect of certain areas.
- (2) Activities which are identified in terms of subsection (1) may include any activity in any of the following categories, but are not limited thereto:
- (a) Land use and transformation;
  - (b) water use and disposal;
  - (c) resource removal, including natural living resources;

- (d) resource renewal;
- (e) agricultural processes;
- (f) industrial processes;
- (g) transportation;
- (h) energy generation and distribution;
- (i) waste and sewage disposal;
- (j) chemical treatment;
- (k) recreation.

(3) The Minister identifies an activity in terms of subsection (1) after consultation with—

- (a) the Minister of each department of State responsible for the execution, approval or control of such activity;
- (b) the Minister of State Expenditure; and
- (c) the competent authority of the province concerned.

## **22. Prohibition of undertaking of identified activities.**

(1) No person shall undertake an activity identified in terms of section 21 (1) or cause such an activity to be undertaken except by virtue of a written authorization issued by the Minister or by a competent authority or local authority or an officer, which competent authority, authority or officer shall be designated by the Minister by notice in the Gazette.

(2) The authorization referred to in subsection (1) shall only be issued after consideration of reports concerning the impact of the proposed activity and of alternative proposed activities on the environment, which shall be compiled and submitted by such persons and in such manner as may be prescribed.

(3) The Minister or the competent authority, or a local authority or officer referred to in subsection (1), may at his or its discretion refuse or grant the authorization for the proposed activity or an alternative proposed activity on such conditions, if any, as he or it may deem necessary.

(4) If a condition imposed in terms of subsection (3) is not being complied with, the Minister, any competent authority or any local authority or officer may withdraw the authorization in respect of which such condition was imposed, after at least 30 days' written notice was given to the person concerned.

### **23. Limited development areas.**

- (1) A competent authority may by notice in the Official Gazette declare any area defined by him or her, as a limited development area.
- (2) No person shall undertake in a limited development area any development or activity prohibited by the competent authority by notice in the Official Gazette or cause such development or activity to be undertaken unless he or she has on application been authorized thereto by the competent authority, or by a local authority designated by the competent authority by notice in the Official Gazette, on the conditions contained in such authorization.
- (3) In considering an application for an authorization referred to in subsection (2) the competent authority or the designated local authority may request the person to submit a report as prescribed, concerning the influence of the proposed activity on the environment in the limited development area.
- (4) A limited development area shall not be declared unless the competent authority—
- (a) has given notice in the Official Gazette and in not fewer than one English and one Afrikaans newspaper circulating in the area in question of his or her intention to declare such area as a limited development area;
  - (b) has permitted not fewer than 60 days for the submission to the Director-General of the provincial administration concerned, of comment on the proposed declaration;
  - (c) has considered all representations received in terms of such notice; and
  - (d) has consulted each Minister charged with the administration of any law which in the opinion of the competent authority relates to a matter affecting the environment in that area.

## **PART VI – REGULATIONS**

**24. Regulations regarding waste management.**—The Minister may make regulations with regard to waste management, concerning—

- (a) the manner in which an application for a permit in terms of section 20 (1) shall be submitted;
- (b) the submission, subject to the provisions of Act section 3 (3) of the Statistics Act, 1976 (Act No. 66 of 1976), of statistics on the quantity and types of waste produced;
- (c) the classification of different types of waste and the handling, storage, transport and disposal of such waste;

- (d) the reduction of waste by— (i) modifications in the design and marketing of products; (ii) modifications to manufacturing processes; and (iii) the use of alternative products;
- (e) the utilization of waste by way of recovery, re-use or processing of waste;
- (f) the location, planning and design of disposal sites and sites used for waste disposal;
- (g) control over the management of sites, installations and equipment used for waste disposal;
- (h) the administrative arrangements for the effective disposal of waste;
- (i) the dissemination of information to the public on effective waste disposal;
- (j) control over the import and export of waste; and
- (k) any other matter which he may deem necessary or expedient in connection with the effective disposal of waste for the protection of the environment.

**24A. Regulations regarding littering.**

The competent authority may make regulations with regard to the control of the dumping of litter, concerning—

- (a) the nature, design, number, provision and placing of containers for the dumping of litter;
- (b) the nature, design, number, provision and placing of notices in respect of the dumping of litter;
- (c) the cleaning, clearing away and removal of litter and the emptying and maintenance of containers for the dumping of litter;
- (d) any other facilities or methods to prevent the dumping of litter, as well as programmes for the clearing away of litter;
- (e) the powers of the provincial administration, local authorities or government institutions to control and prevent the dumping of litter; and
- ( f ) any other matter which he deems necessary or desirable to control and prevent the dumping of litter.

**25. Regulations regarding noise, vibration and shock.**—The Minister may make regulations with regard to the control of noise, vibration and shock, concerning—

- (a) the definition of noise, vibration and shock;
- (b) the prevention, reduction or elimination of noise, vibration and shock;

- (c) the levels of noise, vibration and shock which shall not be exceeded, either in general or by specified apparatus or machinery or in specified instances or places;
- (d) the type of measuring instrument which can be used for the determination of the levels of noise, vibration and shock, and the utilization and calibration thereof;
- (e) the powers of provincial administrations and local authorities to control noise, vibration and shock; and
- (f) any other matter which he may deem necessary or expedient in connection with the effective control and combating of noise, vibration and shock.

**26. Regulations regarding environmental impact reports.**—The Minister or a competent authority, as the case may be, may make regulations with regard to any activity identified in terms of section 21 (1) or prohibited in terms of section 23 (2), concerning—

- (a) the scope and content of environmental impact reports, which may include, but are not limited to— (i) a description of the activity in question and of alternative activities; (ii) the identification of the physical environment which may be affected by the activity in question and by the alternative activities; (iii) an estimation of the nature and extent of the effect of the activity in question and of the alternative activities on the land, air, water, biota and other elements or features of the natural and man-made environments; (iv) the identification of the economic and social interests which may be affected by the activity in question and by the alternative activities; (v) an estimation of the nature and extent of the effect of the activity in question and the alternative activities on the social and economic interests; (vi) a description of the design or management principles proposed for the reduction of adverse environmental effects; and (vii) a concise summary of the finding of the environmental impact report;
- (b) the drafting and evaluation of environmental impact reports and of the effect of the activity in question and of the alternative activities on the environment; and
- (c) the procedure to be followed in the course of and after the performance of the activity in question or the alternative activities in order to substantiate the estimations of the environmental impact report and to provide for preventative or additional actions if deemed necessary or desirable.

**27. Regulations regarding limited development areas.**—The competent authority may make regulations with regard to limited development areas, concerning—

- (a) the imposition of restrictions on the nature and extent of development or activities in connection with development in such area;

- (b) the procedure to be followed for obtaining permission for development in such area; and
- (c) the repair of damage to the environment in such area by unauthorized development or activities.

27A. . . . .

**28. General regulatory powers.—**Any regulation made under this Part—

- (a) may assign functions to any provincial administration or any local authority;
- (b) may relate to the qualifications, powers and duties of officers enforcing the provisions of this Act, including the power to seize any book, document, vehicle or other thing which such officer deems necessary in the execution of his functions;
- (c) . . . . .
- (d) may provide that an officer, local authority or government institution may by notice call upon a person contravening a provision of this Act to take certain steps or to cease certain activities within a specified period;
- (e) may provide that any person who contravenes, or who fails to comply with, any provision thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed, and, in the event of a continuing contravention, to a fine not exceeding R250 or to imprisonment for a period not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which such contravention continues;
- ( f ) may be made in respect of different regions or different matters which the Minister or a competent authority as the case may be may deem necessary or expedient;
- (g) may relate to any matter which in terms of this Act shall or may be prescribed by regulation;
- (h) may in general relate to any matter which aims at furthering the objects of this Act; (i) (i) which will entail the expenditure of State funds shall be made only with the concurrence of the Minister of State Expenditure.

**28A. Exemption to persons, local authorities and government institutions from application of certain provisions.—**

- (l) Any person, local authority or government institution may in writing apply to the Minister or a competent authority, as the case may be, with the furnishing of reasons, for exemption from the

application of any provision of any regulation, notice or direction which has been promulgated or issued in terms of this Act.

(2) In order to enable him to make a decision on an application in terms of subsection (1), the Minister or a competent authority, as the case may be, may call for further information from the applicant.

(3) The Minister or a competent authority, as the case may be, may after considering an application—

(a) refuse to grant exemption;

(b) in writing grant exemption from compliance with any of or all the provisions of any regulation, notice or direction, subject to such conditions as he may deem fit.

(4) If any condition referred to in subsection (3) (b) is not being complied with, the Minister may in writing withdraw the exemption concerned or at his discretion determine new conditions.

(5) The Minister or a competent authority, as the case may be, may from time to time review any exemption granted or condition determined, and if he deems it necessary, withdraw such exemption or delete or amend such condition.

## **PART VII OFFENCES, PENALTIES AND FORFEITURE**

### **29. Offences and penalties.—**

(1) Any person—

(a) who, having been duly summoned to appear at proceedings under section 15, fails without lawful excuse so to appear; or

(b) who, having appeared as a witness at proceedings under section 15, refuses without lawful excuse to be sworn or to make affirmation or to produce any book, document or thing or to answer any question which he may be lawfully required to produce or answer, shall be guilty of an offence.

(2) Any person—

(a) referred to in section 16 (3) who contravenes any provision of a direction issued under section 16 (2) or fails to comply therewith; or

(b) who contravenes a provision of section 18 (6) or a condition of an exemption in terms of section 118 (7), shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Any person who contravenes a provision of section 19 or 19A or fails to comply therewith, or fails to comply with a direction in terms of section 31A (1) or (2), or prevents any person authorized in terms of section 41A to enter upon such land or hinders him in the execution of his powers, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months.

(4) Any person who contravenes a provision of section 20 (1), 20 (6), 22 (1) or 23 (2) or a direction issued under section 20 (5) or fails to comply with a condition of a permit, permission, authorization or direction issued or granted under the said provisions shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.

(5) Any person convicted of an offence in terms of this Act for which no penalty is expressly provided, shall be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) Any person convicted of an offence in terms of this Act, and who after such conviction persists in the act or omission which constituted such offence, shall be guilty of a continuing offence and liable on conviction to a fine not exceeding R250 or to imprisonment for a period not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which he so persists with such act or omission.

(7) In the event of a conviction in terms of this Act the court may order that any damage to the environment resulting from the offence be repaired by the person so convicted, to the satisfaction of the Minister, the competent authority concerned or the local authority concerned.

(8) If within a period of 30 days after a conviction or such longer period as the court may determine at the time of the conviction, an order in terms of subsection (7) is not being complied with, the Minister, the competent authority concerned or local authority concerned may itself take the necessary steps to repair the damage and recover the cost thereof from the person so convicted.

(9) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.

### **30. Forfeiture.**

(1) Notwithstanding anything to the contrary in any law contained, a court convicting any person of an offence under this Act may declare any vehicle or other thing by means whereof the offence concerned was committed or which was used in the commission of such offence, or the rights of the convicted person to such vehicle or other thing, to be forfeited to the State.



(2) A declaration of forfeiture under subsection (1) shall not affect the rights which any person other than the convicted person may have to the vehicle or other thing concerned, if it is proved that he did not know that the vehicle or other thing was used or would be used for the purpose of or in connection with the commission of the offence concerned or that he could not prevent such use.

(3) The provisions of section 35 (3) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall mutatis mutandis apply to any declaration of forfeiture under this section.

## **PART VIII – GENERAL PROVISIONS**

### **31. Powers of Minister and competent authority in case of default by local authority**

(1) If in the opinion of the competent authority of the province in question, any local authority fails to perform any function assigned to it by or under this Act, that competent authority may, after affording that local authority an opportunity of making representations to him, in writing direct such local authority to perform such function within a period specified in the direction, and if that local authority fails to comply with such direction, the competent authority may perform such function as if he were that local authority and may authorize any person to take all steps required for that purpose.

(2) Any expenditure incurred by the competent authority in the performance of any function by virtue of the provisions of subsection (1), may be recovered from the local authority concerned.

(3) Whenever in the opinion of the Minister a local authority has failed to perform a function in terms of subsection (1), the Minister may request the competent authority in question to act in terms of subsection (1), and if the competent authority fails within 90 days after the date of such request to act accordingly, the Minister may do anything which the competent authority could have done, and the provisions of subsections (1) and (2) shall apply mutatis mutandis with reference to the Minister and anything done by him or under his authority.

**31A. Powers of Minister, competent authority, local authority or government institution where environment is damaged, endangered or detrimentally affected.—**

(1) If, in the opinion of the Minister or the competent authority, local authority or government institution concerned, any person performs any activity or fails to perform any activity as a result of which the environment is or may be seriously damaged, endangered or detrimentally affected, the Minister, competent authority, local authority or government institution, as the case may be, may in writing direct such person—

(a) to cease such activity; or

(b) to take such steps as the Minister, competent authority, local authority or government institution, as the case may be, may deem fit, within a period specified in the direction, with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.

(2) The Minister or the competent authority, local authority or government institution concerned may direct the person referred to in subsection (1) to perform any activity or function at the expense of such person with a view to rehabilitating any damage caused to the environment as a result of the activity or failure referred to in subsection (1), to the satisfaction of the Minister, competent authority, local authority or government institution, as the case may be.

(3) If the person referred to in subsection (2) fails to perform the activity or function, the Minister, competent authority, local authority or government institution, depending on who or which issued the direction, may perform such activity or function as if he or it were that person and may authorize any person to take all steps required for that purpose.

(4) Any expenditure incurred by the Minister, a competent authority, a local authority or a government institution in the performance of any function by virtue of the provisions of subsection (3), may be recovered from the person concerned.

### **32. Publication for comment.**

(1) If the Minister, the Minister of Water Affairs, a competent authority or any local authority, as the case may be, intends to—

- (a) issue a regulation or a direction in terms of the provisions of this Act;
- (b) make a declaration or identification in terms of section 16 (1), 18 (1), 21 (1) or 23 (1); or
- (c) determine a policy in terms of section 2, a draft notice shall first be published in the Gazette or the Official Gazette in question, as the case may be.

(2) The draft notice referred to in subsection (1) shall include—

- (a) the text of the proposed regulation, direction, declaration, identification or determination of policy;
- (b) a request that interested parties shall submit comments in connection with the proposed regulation, direction, declaration, identification or determination of policy within the period stated in the notice, which period shall not be fewer than 30 days after the date of publication of the notice;
- (c) the address to which such comments shall be submitted.

(3) If the Minister, competent authority or local authority concerned thereafter determines on any alteration of the draft notice published as aforesaid, it shall not be necessary to publish such alteration before finally issuing the notice.

### **33. Delegation.**

(1) The Minister, the Minister of Water Affairs, a competent authority, a local authority or a government institution may on such conditions as he or it may deem fit delegate or assign any power or duty conferred upon or assigned to him or it by or under this Act, excluding any power referred to in sections 2, 16 (2), 18 (1), 18 (4), 24, 25, 26, 27 and 28, to, respectively, any officer or employee of the Department, the Department of Water Affairs or the provincial administration or local authority or government institution concerned.

(2) The Director-General may, on such conditions as he may deem fit, delegate or assign any power or duty conferred upon or assigned to him by or under this Act, to any officer or employee of the Department.

### **34. Compensation for loss.**

(1) If in terms of the provisions of this Act limitations are placed on the purposes for which land may be used or on activities which may be undertaken on the land, the owner of, and the holder of a real right in, such land shall have a right to recover compensation from the Minister or competent authority concerned in respect of actual loss suffered by him consequent upon the application of such limitations.

(2) The amount so recoverable shall be determined by agreement entered into between such owner or holder of the real right and the Minister or competent authority, as the case may be, with the concurrence of the Minister of State Expenditure.

(3) In the absence of such agreement the amount so to be paid shall be determined by a court referred to in section 14 of the Expropriation Act, 1975 (Act No. 63 of 1975), and the provisions of that section and section 15 of that Act shall mutatis mutandis apply in determining such amount.

### **35. Appeal to Minister or competent authority.—**

(1) Any person who feels aggrieved at a decision referred to in section 20 in respect of which a power has been delegated to an officer or employee under section 33 may appeal against such decision to the Minister of Water Affairs in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(2) Any person who feels aggrieved at a decision of an officer or employee enforcing a provision of this Act in respect of a protected natural environment may appeal against such decision to the

competent authority concerned, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(3) Subject to the provisions of subsections (1) and (2) any person who feels aggrieved at a decision of an officer or employee exercising any power delegated to him in terms of this Act or conferred upon him by regulation, may appeal against such decision to the Minister or the competent authority concerned, as the case may be, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(4) The Minister, the Minister of Water Affairs or a competent authority, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision of the officer or employee or make such order as he may deem fit, including an order that the prescribed fee paid by the applicant or such part thereof as the Minister or competent authority concerned may determine be refunded to that person.

### **36. Review by court.—**

(1) Notwithstanding the provisions of section 35, any person whose interests are affected by a decision of an administrative body under this Act, may within 30 days after having become aware of such decision, request such body in writing to furnish reasons for the decision within 30 days after receiving the request.

(2) Within 30 days after having been furnished with reasons in terms of subsection (1), or after the expiration of the period within which reasons had to be so furnished by the administrative body, the person in question may apply to a division of the Supreme Court having jurisdiction, to review the decision.

### **37. Restriction of liability.**

No person, including the State, shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this Act. ...

### **40. State bound.**

The provisions of this Act shall bind the State, including any provincial administration, except in so far as criminal liability is concerned. ...

### **41A. Right to enter upon land.**

(1) Any person authorized thereto in writing by the Minister or a competent authority, as the case may be, may after reasonable notice to the owner or occupier of any land, at any reasonable time enter upon that land in order to investigate whether any action is necessary in order to give effect to the objects of this Act, or to determine whether the provisions of this Act or a regulation, notice, authorization, instruction or any direction promulgated, issued, granted or made thereunder or any

condition imposed thereunder or contained in any authorization, instruction or direction has been complied with.

(2) A person authorized under subsection (1) shall not exercise any power or perform any duty unless he is in possession of the authorization concerned.

(3) An authorized person shall produce his authorization at the request of any person having a material interest in the matter concerned.

**42. Repeal of laws, and savings.**

(1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

(2) Anything done under any provision of a law repealed by subsection (1) and which could have been done under a provision of this Act shall be deemed to have been done under the latter provision.

**43. Amends section 1** of the Physical Planning Act, No. 88 of 1967, by deleting the definition of “nature area”.

**44. (1) Amends section 4**

(1) of the Physical Planning Act, No. 88 of 1967, by deleting paragraph (b).

(2) At the commencement of this Act, land reserved as a nature area in terms of section 4 (1) (b) of the Physical Planning Act, 1967 (Act No. 88 of 1967), shall, notwithstanding the provisions of subsection (1), be deemed to be declared a protected natural environment in terms of section 16 (1) of this Act.

**45 Amends section 6** (2) (e) of the Physical Planning Act, No. 88 of 1967, by substituting subparagraph (i).

**46. Short title.**—This Act shall be called the Environment Conservation Act, 1989