

# **ENVIRONMENT CONSERVATION ACT NO. 73 OF 1989**

Assented to: 1 June 1989

Date of commencement: 9 June 1989

## **ACT**

**To provide for the effective protection and controlled utilisation of the environment and for matters incidental thereto.**

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### **1. 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** .....

[Definition of 'Administrator' inserted by R. 29 of 1995-04-07 and deleted by R. 43 of 1996-08-08.]

**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;

[Definition of "committee" substituted by s. 1 of Act No. 94 of 1993.]

**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 Act, 1993 (Act No 20 of 1993) been assigned in that province;

[Definition of "competent authority" inserted by R. 43 of 1996-08-08.]

**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;

[Definition of "define" inserted by s. 1(a) of Act No. 79 of 1992.]

**Department** means the Department of Environmental Affairs and Tourism;

[Definition of "department" amended by s. 1 (a) of Act No. 52 of 1994]

**Director-General** means the Director-General: Environmental Affairs and Tourism;

[Definition of "department" amended by s. 1 (b) of Act No. 52 of 1994]

**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);

[Definition of "environmental impact report" substituted by s. 1(b) of Act No. 79 of 1992.]

**government institution** means any institution, body, company or close corporation recognised by the Minister by notice in the *Gazette*;

[Definition of "government institution" substituted by s. 1(c) of Act No. 79 of 1992.]

**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;

[Definition of "litter" substituted by s. 1(d) of Act No. 79 of 1992.]

**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);

[Definition of 'local authority' substituted by R. 29 of 1995-04-07.]

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

**Minister** means the Minister of Environmental Affairs and Tourism;

[Definition of "department" amended by s. 1 (c) of Act No. 52 of 1994]

**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 not been so assigned, means the Minister of Finance;

[Definition of 'Minister of State Expenditure' inserted by R. 29 of 1995-04-07.]

**Official Gazette** means the *Provincial Gazette* of a province;

[Definition of '*Official Gazette*' inserted by R. 29 of 1995-04-07.]

**prescribe** means prescribe by regulation or notice in the *Gazette*;

[Definition of "prescribe" substituted by s. 1(e) of Act No. 79 of 1992.]

**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;

[Definition of 'province' inserted by R. 29 of 1995-04-07.]

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

[Definition of 'provincial administration' inserted by R. 29 of 1995-04-07.]

**regulation** means a regulation made under this Act;

[Definition of "regulation" inserted by s. 1(f) of Act No. 79 of 1992.]

**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;

[Definition of "this Act" substituted by s. 1(g) of Act No. 79 of 1992.]

**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.

[Definition of "waste" substituted by s. 1(h) of Act No. 79 of 1992.]

2.-15. ....

[S. 2-15 repealed by Act No 107 of 1998.]

**PART III  
PROTECTION OF NATURAL ENVIRONMENT**

**16. Protected natural environment**

.....Repealed by National Environmental Management: Protected Areas Act.

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

.....Repealed by National Environmental Management: Protected Areas Act.

**18. Special nature reserves**

.....Repealed by National Environmental Management: Protected Areas Act.

**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.

[S. 19A inserted by s. 8 of Act No. 79 of 1992.]

**20. Waste management**

- (1) No person may establish, provide or operate a disposal site without a permit issued by the Minister in terms of subsections (1) to (9).
- (2) A person who wishes to provide or operate a disposal site must apply for a permit referred to in subsection (1) in the prescribed form, supplying such information as may be prescribed.
- (3) The Minister may—
  - (a) issue a permit subject to such conditions as he or she considers fit;
  - (b) alter or cancel any permit or condition in a permit;

- (c) refuse to issue a permit.
- (4) The Minister may exempt any person or category of persons from having to obtain a permit, subject to such conditions as he or she considers fit.
- (5) The Minister may require further information from the applicant for the purpose of enabling him or her to make a decision on an application.
- (6) The issuing of a waste disposal site permit is subject to—
  - (a) the concurrence of the Minister of Water Affairs and Forestry; and
  - (b) the inclusion therein of the conditions contained in a Record of Decision issued by the Minister of Water Affairs and Forestry regarding any measures that the Minister of Water Affairs and Forestry considers necessary to protect a water resource as defined in the National Water Act, 1998 (Act No. 36 of 1998);
  - (c) in the event of concurrence or conditions not being obtained as contemplated in paragraphs (a) and (b) within a reasonable time the matter shall be referred to the Fair Decision Making and Conflict Management provisions contained in Chapter 4, sections 17 to 22, of the National Environmental Management Act, 1998 (Act No. 107 of 1998), by the Minister.
- (7) The Minister must maintain a register in which details of every disposal site for which a permit has been issued shall be recorded.
- (8) The Minister may, 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 utilised for another purpose.
- (9) 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 this section; or
  - (b) in a manner or by means of a facility or method and subject to such conditions as the Minister may prescribe.
- (10) Anything done in terms of this section by the Minister of Water Affairs and Forestry prior to the commencement of the Environment Conservation Amendment Act, 2003, shall be deemed to have been done by the Minister.

[S.20 amended by Act No. 50 of 2003]

**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.

[Sub-s. (3) substituted by s. 10 of Act No. 79 of 1992.]

**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 authorisation 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 authorisation 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 authorisation 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 authorisation in respect of which such condition was imposed, after at least 30 days' written notice was given to the person concerned.

[S. 22 substituted by s. 11 of Act No. 79 of 1992.]

### 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 authorised 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 authorisation.

[Sub-s. (2) substituted by s. 12 of Act No. 79 of 1992.]

- (3) In considering an application for an authorisation 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.

[Sub-s. (3) substituted by s. 12 of Act No. 79 of 1992.]

- (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.

[S. 23 substituted by R. 29 of 1995-04-07.]

## **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 section 3 (3) of the Statistics Act, 1976 (Act No. 66 of 1976), of statistics on the quantity and types of waste produced;  
[Para. (b) substituted by s. 13 of Act No. 79 of 1992.]
- (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 utilisation 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.

[S. 24A inserted by s. 14 of Act No. 79 of 1992 and amended by R. 29 of 1995-04-07.]

**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 utilisation 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 unauthorised development or activities.

[S. 27 amended by R. 29 of 1995-04-07.]

27A. ....

[S. 27A repealed by Act No 107 of 1998.]

**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) .....
- [S. 28 (c) deleted by s. 5 of Act No. 52 of 1994.]
- (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;
- [Sub-para. (f) amended by R. 29 of 1995-04-07.]
- (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.

(ii) .....

[Sub-para. (ii) deleted by s. 16 of Act No. 79 of 1992.]

(iii) .....

[Sub-para. (iii) substituted by s. 2 of Act No. 98 of 1991 and deleted by s. 16 of Act No. 79 of 1992.]

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

- (1) 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 or a competent authority, as the case may be, 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.

[S. 28A inserted by s. 17 of Act No. 79 of 1992, and amended by R. 29 of 1995-04-07.]

**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 18(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 authorised 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.

[Sub-s. (3) substituted by s. 18 of Act No. 79 of 1992.]

- (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, authorisation 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.

[Sub-s. (7) amended by R. 29 of 1995-04-07.]

- (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.

[Sub-s. (8) amended by R. 29 of 1995-04-07.]

- (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 authorise 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 authorise 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.

[S. 31A inserted by s. 19 of Act No. 79 of 1992.]

### 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.

[S. 33 substituted by s. 20 of Act No. 79 of 1992 and by s. 3 of Act No. 189 of 1993.]

#### 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.

[Sub-s. (3) amended by R. 29 of 1995-04-07.]

- (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.

38. ....  
[S. 38 repealed by Act No 107 of 1998.]

39. ....  
[S. 39 repealed by R. 29 of 1995-04-07.]

**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.

**41. Application of Act**

(1) This Act shall also apply in respect of the Prince Edward Islands as defined in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

(2) .....  
[S. 41(2) repealed by Act No 25 of 1999.]

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

(1) Any person authorised 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, authorisation, instruction or any direction promulgated, issued, granted or made thereunder or any condition imposed thereunder or contained in any authorisation, instruction or direction has been complied with.  
[Sub-s. (1) amended by R. 29 of 1995-04-07.]

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

(3) An authorised person shall produce his authorisation at the request of any person having a material interest in the matter concerned.  
[S. 41A inserted by s. 21 of Act No. 79 of 1992.]

**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.  
[Sub-s. (2) substituted by s. 2 of Act No. 115 of 1992.]
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.

#### SCHEDULE

No. and year of law	Title	Extent of repeal
Act 100 of 1982	Environment Conservation Act, 1982	The whole
Act 45 of 1983	Environment Conservation Amendment Act, 1983	The whole
Act 61 of 1987	Environment Conservation Amendment Act, 1987	The whole

#### AMENDMENTS

Environment Conservation Amendment Act, No. 98 of 1991  
 Environment Conservation Amendment Act, No. 79 of 1992  
 Environment Conservation Second Amendment Act, No. 115 of 1992  
 Environment Conservation Amendment Act, No. 94 of 1993  
 Environment Conservation Second Amendment Act, No. 189 of 1993  
 Environment Conservation Amendment Act, No 52 of 1994  
 Constitution of the Republic of South Africa Act, No 200 of 1993 (Proc. No. R. 29 of 7 April 1995)  
 Constitution of the Republic of South Africa Act, No 200 of 1993 (Proc. No. R. 43 of 8 August 1996)  
 National Environmental Management Act, No 107 of 1998  
 National Heritage Resources Act, No 25 of 1999  
 Nema Protected Areas Amendment Act No 31 of 2004  
 Environment Conservation Amendment Act, No. 50 of 2003