



PROVINCE OF THE EASTERN CAPE
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PROVINSIE OOS-KAAP

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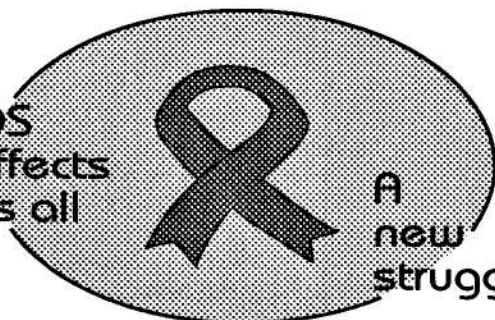
Vol. 9

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No. 932
(Extraordinary)

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPLINE**

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DEPARTMENT OF HEALTH



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PROVINCIAL NOTICES

No. 49

25 October 2002

EASTERN CAPE HERITAGE RESOURCES BILL, 2002

PROVINCE OF THE EASTERN CAPE

PROVINCIAL NOTICE

**DEPARTMENT OF ECONOMIC AFFAIRS, ENVIRONMENT AND
TOURISM**

The above-mentioned Bill is hereby published in terms of rule 153 of the Standing Rules of the Legislature for a period of fourteen (14) days.

Members of the public are invited to submit their comments to the Head of Department, Department of Economic Affairs, Environment and Tourism
Private Bag x54 Bisho 5605

PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF SPORT, RECREATION, ARTS AND CULTURE

EASTERN CAPE HERITAGE RESOURCES BILL, 2002

As introduced

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE
FOR SPORT, RECREATION, ARTS AND CULTURE)**

BILL

To provide for the establishment of a statutory body to identify, manage, conserve and promote heritage resources in the Province; and to provide for matters incidental to thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape as follows: -

CHAPTER 1

DEFINITIONS

Definitions

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

“alter” means any action affecting the structure, appearance or physical properties of a place or object whether by way of structural or other works, by painting, plastering or other decoration or by any other means;

“Amafa Ethu” means the heritage conservation agency established as a statutory body by section 2 of this Act;

“archaeological” means –

- (a) material remains resulting from human activity which are in a state of disuse and are in or on land and are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;
- (b) rock art, being a form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and is older than 100 years, including any area within 10 metres of such representation;
- (c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land or in the maritime cultural zone referred to in section 6 of the Maritime Zones Act,

1994 (Act No. 15 of 1994), and any cargo, debris or artefacts found or associated with these, which are older than 60 years or which in terms of national legislation are considered to be worthy of conservation; and

- (d) features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found;

“board” means the board of trustees of Amafa Ethu established by section 2;

“classified post” means a post on the establishment structure of the Department determined in terms of section 15(1);

“conservation”, in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“cultural significance” means of aesthetic, architectural, historical, scientific, social, spiritual or technological value or significance;

“Department” means the department responsible for heritage matters in the Province;

“development” means any physical intervention, excavation or action, other than those caused by natural forces, which may, in any way, result in a change in the nature, appearance or physical appearance of a place or influence its stability and future well-being, including –

- (a) construction, alteration, demolition, removal or change of use of a place or a structure on the place;
- (b) carrying out any works on or over or under the place;
- (c) subdivision or consolidation of land comprising a place, including the structures or airspace;
- (d) construction or putting up for display signs or boarding;

(e) any change to the natural or existing condition or topography of land;

(f) any removal or destruction of trees or removal of vegetation or topsoil;

• **“Director”** means the Director of museums and heritage resources of the Department;

• **“export”** means “export” as defined in the Customs and Excise Act, 1964 (Act No. 91 of 1964);

• **“expropriate”** means the process as determined by the terms of and according to procedures prescribed in the Expropriation Act, 1975 (Act No. 63 of 1975);

• **“Gazette”** means the Provincial *Gazette* of the Province;

• **“grave”** means a place of internment and includes the contents, headstone or other marker of and any other structures on or associated with such place;

• **“head”** means the head and accounting officer of Amafa Ethu on the staff establishment thereof;

• **“heritage conservancy”** means a declared area of land surrounding a heritage resource or heritage resources to reasonably ensure the protection or reasonable enjoyment of the resource, or the protection of the view of or from the resource;

• **“heritage landmark”** means the heritage landmark designated as such in terms of section 21(c);

• **“heritage object”** means an object contemplated in section 22;

• **“heritage resource”** means any place or object of cultural significance including –

• (a) places, buildings, structures and equipment;

• (b) places to which oral traditions are attached or which are associated with living heritage;

• (c) historical settlements and townscapes;

- (d) landscapes and natural features;
- (e) geological sites of scientific or cultural importance;
- (f) archaeological and palaeontological sites;
- (g) graves and burial grounds, including –
 - (i) ancestral graves;
 - (ii) royal graves and graves of traditional leaders;
 - (iii) graves of important individuals;
 - (iv) other human remains not covered by the Human Tissues Act, 1983 (Act No. 65 of 1983);
- (h) movable objects, including –
 - (i) objects recovered from the soil or waters of South Africa including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - (ii) ethnographic art and objects;
 - (iii) military objects;
 - (iv) objects of decorative art;
 - (iv) objects of fine art;
 - (v) objects of scientific or technological interest;
 - (vii) books, records, documents, photographic positives and negatives, graphic material, film or video material or sound recordings; and
 - (v) any other prescribed categories, but excluding any object made by a living person;
- (i) battlefields;

(j) traditional building techniques;

“heritage site” means any place protected under section 21 of this Act;

“improvement” in relation to heritage resources, includes the repair, restoration and rehabilitation of places protected under this Act;

“land” includes land covered by water and the airspace above land;

“Legislature” means the Legislature of the Province;

“living heritage” means the intangible aspects of inherited culture, and may include-

- (a) cultural tradition;
- (b) oral history;
- (c) performance;
- (d) ritual;
- (e) popular memory;
- (f) skills and techniques;
- (g) indigenous knowledge systems; and
- (h) the holistic approach to nature, society and social relationships;

“local authority” means –

- (a) a district council as defined in section 1 of the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998); and
- (b) a municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998);

“management” in relation to heritage resources, includes the conservation, presentation and improvement of places protected under this Act;

“MEC” means the Member of the Executive Council responsible heritage resources in the Province;

“meteorite” means any naturally occurring object of extraterrestrial origin;

“non-classified post” means a post, other than a classified post, in Amafa Ethu to which the board may appoint a person in terms of section 16 (c);

“object” means any movable property of cultural significance which may be protected in terms of any provisions of this Act, including –

- (a) any archaeological artefact;
- (b) palaeontological and rare geological specimens;
- (c) meteorites; and
- (d) other objects referred to in paragraph (h) of the definition **“heritage resources”**;

“owner” includes a registered title holder to a property or his or her authorised agent and any person with a real interest in the property and –

- (a) in the case of a place owned by the state or a supported body, the relevant executing authority or any other person or body of persons responsible for the care, management and control of that place; and
- (b) in the case of tribal land, the recognised traditional authority;

“palaeontological” means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace;

“place” includes –

- (a) a site, area or region;
- (b) a building or other structure, which may include equipment, furniture, fittings and articles associated with or connected with such building or other structures;

- (c) a group of buildings or other structures, which may include equipment, furniture, fittings and articles associated with or connected with such a group of buildings or other structures; and
- (d) an open space, including a public square, street or park, and in relation to the management of a place, includes the immediate surroundings of a place;

“plan” means any plan envisaged by the Physical Planning Act, 1991 (Act No. 125 of 1991), or any other town and land use planning legislation applicable in the Province;

“planning” means urban and regional planning as covered by the Development Facilitation Act, 1995 (Act No. 67 of 1995), or any other town and land use planning legislation applicable in the Province;

“planning authority” means an office of the state, at provincial or local government level, which is legally vested with a physical planning capacity;

“prescribe” means prescribe by regulation under this Act;

“presentation” includes –

- (a) the exhibition or display of;
- (b) the provision of access and guidance to; and
- (c) the provision, publication or display of information in relation to, heritage resources protected under this Act;

“Province” means the Province of the Eastern Cape established by section 103 of the Constitution;

“provisional protection” means provisional protection referred to in section 25;

“public monuments and memorials” means all monuments and memorials –

- (a) erected on land belonging to any branch of central, provincial or local government, or on land belonging to any organization funded

by or established in terms of legislation of such a branch of government;

- (b) which were paid for by public subscription, government funds, or a public-spirited or military organization and are on land belonging to any private individual;

“regulations”, unless otherwise stated, means the regulations made hereunder;

“site” means any area of land, including that covered by water, and including any structures or objects thereon;

“small-scale agriculture” means any farming activity undertaken by a single farmer and his family working without labour employed from outside and on a total area of land not exceeding ten hectares;

“structures” means any human-made building, works, device, or any other facility older than 60 years, and which is fixed to land and any fixtures, fittings and equipment associated with these;

“supported body” means a body funded by or established in terms of legislation of any branch of government, and includes state-owned enterprises;

“this Act” includes the regulations;

“victims of conflict” means –

- (a) certain persons who died in the area now included in the Province as a direct result of any war or conflict, excluding the periods covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992);
- (b) members of the forces of Great Britain and the former British Empire who died on active service prior to 14 August 1914 in any area now included in the Province;
- (c) certain categories of persons who died in the civil and political conflicts known as the “Liberation Struggle”, as prescribed in regulations, including –
 - (i) members of the forces of the liberation movements;

- (ii) members of the State military and police forces for the area presently included in the Province who were on active service;
- (d) other persons and unknown victims of the Liberation Struggle as prescribed in regulations; and

“wreck” has the meaning given under the definition of “archaeology”;

CHAPTER 2

ESTABLISHMENT OF HERITAGE RESOURCES AGENCY

Establishment of Amafa Ethu

2. (1) There is hereby established an agency, to be known as Amafa Ethu.

(2) Amafa Ethu must be a body corporate, administered by a board of trustees, capable of suing and being sued in its own name and of performing, subject to the provisions of this Act, all such actions necessary for, or incidental to, the exercise of such powers.

Objects of Amafa Ethu and jurisdiction

3. (1) The objects of Amafa Ethu must be the identification, management, conservation and promotion of heritage resources of the Province within the terms of this Act and to generally foster heritage conservation and management for the benefit of present and future generations.

(2) Heritage resources within the Province must, subject to the provisions of this Act, fall under the control of Amafa Ethu.

Constitution of the board

4. Subject to the succeeding provisions of this section, the board must consist of a minimum of seven and a maximum of fifteen members, appointed by the MEC from public nominations in the prescribed manner.

Tenure of office of board members

5. (1) The terms of office of members of the board must be three years.

(2) A member must vacate office if he or she –

(a) resigns in writing;

(b) has been absent without leave of the board for three consecutive meetings;

(c) is convicted of an offence and sentenced to imprisonment without the option of a fine;

(d) is an unrehabilitated insolvent; and

(e) is found to be of unsound mind by a competent court.

(3) The MEC may, after consultation with the board, remove a member if in the opinion of the MEC there are sound reasons for doing so.

(4) Any board member whose period of office has expired, other than for reasons set out in subsections (2) and (3) must be eligible for re-ppointment.

Vacancies on the board and filling thereof

6. (1) A vacancy on the board must be filled by the appointment of a successor by the MEC.

(2) Any member of the board who has been appointed in terms of subsection (1) must hold office for the unexpired period of office of his or her predecessor.

Disqualification for membership of the board

7. No person must be eligible for appointment to the board if –

(a) he or she is not a South African citizen unless the MEC has specifically authorised such appointment; or

(b) within the preceding five years he or she has been convicted of an offence and sentenced to imprisonment without the option of a fine.

Quorum

8. The quorum of a meeting of the board shall be half the number of board members plus one.

Powers, duties and functions of the board

9. (1) Generally, the powers, duties and functions of the board are to manage the policy and finances of Amafa Ethu in concert with the chief executive officer, and to recommend appropriate heritage conservation actions.

(2) The board must enjoy the following powers, duties and functions -

- (a) to make such recommendations in order to enable the MEC to exercise his or her powers under this Act;
- (b) to advise the MEC regarding –
 - (i) the withdrawal of heritage landmark, Provincial landmark and heritage object status;
 - (ii) the withdrawal of other notices published in the *Gazette* in terms of the provisions of sections 19, 22(1), 24 (4), 26; and
 - (iii) regulations to be made by him or her in terms of this Act;
- (c) by notice in the *Gazette* to –
 - (i) designate any heritage resource as protected in terms of the provisions of section 21; and
 - (ii) where it has such powers, withdraw notices in the *Gazette*;
- (d) submit annually to the MEC a draft budget and to present to him or her an audited report on the use of funds during the previous year;

- (e) to investigate and report on any matter pertaining to heritage resources at the request of the MEC;
- (f) to perform such functions relating to the conservation of any artefact or heritage site as the MEC may from time to time determine;
- (g) to collaborate with and enter into agreements with other branches of government and other organizations with a view to fulfilling its obligations in terms of this Act;
- (h) to cause to have drawn up, approve and establish policy and standards in terms of which the Amafa Ethu and other relevant bodies and authorities will function with respect to heritage in the Province, as prescribed by regulations;
- (i) to issue or cause to be issued permits and notices as required in terms of this Act and set conditions in such permits concerning, amongst other things, the deposition of recovered materials in storage facilities of the Amafa Ethu or other appropriate institution and the erection of plaques recognizing the importance of a heritage resource;
- (j) to establish projects and research programmes aimed at documenting the heritage resources of the Eastern cape with a view to facilitating their conservation and increasing knowledge and understanding of these;
- (k) to submit annually to the Department a report on the activities and concerns of Amafa Ethu, together with recommendations and suggestions for legislative amendment and enactment, if any;
- (l) to purchase or otherwise acquire, hold, let, hire, receive in trust, make over to any person to hold in trust, or sell, exchange or otherwise alienate, or hypothecate, burden with servitude or otherwise confer any real right in any property movable or immovable, subject to the consent of the MEC in the case of fixed property or the Department in the case of movable property;

- (m) to lend any heritage objects and material in its custody to a museum or public institution, subject to the proviso that such objects and materials are managed in accordance with the accepted standards for museum conservation;
- (n) by agreement with the owner of any land, to acquire or construct and maintain an access road over such land to any heritage site, or to construct upon such land fences, walls or gates upon, across or next to such road;
- (o) to preserve, repair, restore or provide security for any immovable or movable property owned or otherwise controlled by Amafa Ethu;
- (p) to make recommendations to the MEC regarding the expropriation of property in terms of subsection 28(10);
- (q) to raise funds and gain independent income for use in performing the functions of Amafa Ethu by way of inter alia the following methods:
 - (i) charging for services and other functions rendered in terms of this Act;
 - (ii) use of commercial opportunities associated with the field of operations of Amafa Ethu; and
 - (iii) receipt of donations of property, materials or money;
- (r) to establish and administer trust funds for use in performing the functions of Amafa Ethu;
- (s) to invest, lend or borrow money;
- (t) to spend the proceeds of fund-raising, investments, trust funds and other independent income on any activity covered by this Act and within the limitations prescribed by a donor or the terms of reference of a trust fund;
- (u) to assess applications for, and, where resources permit, grant
 - (i) subsidies; and

- (ii) subject to adequate security, low-interest, or interest-free loans,

in respect of the purchase, restoration or maintenance of any site or artefact protected in terms of sections 21 to 27 and to, wherever appropriate, institute a covenant in terms of subsection 28(9) as a condition of such a subsidy or loan;

- (v) to create and where necessary register with the relevant authorities a logo, or logos, for Amafa Ethu, its projects and other areas of responsibility and categories of protection provided for in the Act;
- (w) where possible and appropriate, to affix to any site protected in terms of this Act a badge, or otherwise mark an area, indicating its status of protection in terms of this Act;
- (x) to publish or by other means make available or distribute, or cause to be published and distributed, any knowledge and information associated with heritage resources of the Province, subject to withholding information in instances where it considers that revelation may impact negatively on the economic interests of owners or potential investors, or on the future conservation of a heritage resource;
- (y) to encourage and promote heritage conservation through the medium of the media, educational programmes and involvement with other conservation bodies, tourism initiatives and other similar activities;
- (z) to wherever appropriate interpret the heritage resources of the Province via –
 - (i) erection of explanatory plaques;
 - (ii) mounting of exhibitions;
 - (iii) creation of interpretive centres;
 - (iv) erection of public memorials; or

- (iv) creation of other tourist facilities necessary for effective interpretation of the heritage resources of the Province;
 - (aa) to wherever interpretation of the heritage takes place on sites owned by the Province, or other provincially supported bodies, be the provincial authority responsible for such activity and the provision of necessary facilities;
 - (ab) to approve the deposit in an appropriate province-aided museum in the Eastern Cape such archaeological material as may be recovered in terms of permits issued under this Act;
 - (ac) to maintain a store of historic building and other relevant materials for use in the conservation of structures protected in terms of this Act, such facility to be known as the 'Amafa Ethu Conservation Materials Bank';
 - (ad) where it is not the responsibility of another authority, to repair, restore, maintain and generally care for burial grounds and graves referred to in section 28 (2), (3) and (4); and
 - (ae) where such sites are threatened by what it considers to be unavoidable or necessary development, and subject to the provisions of any other law and at cost to the developer, to exhume and re-inter graves of victims of conflict.

Inspection and documentation

10. The board must cause the staff of Amafa Ethu –

- (a) on a regular basis, to inspect those heritage resources protected in terms of sections 21 to 26, and maintain a register of such inspections; and

(b) to inspect or document any aspect of the heritage of the Province which-

- (i) has the potential to become protected by the Act for which the possible need for protection is being investigated;
- (ii) is, or which it has reason to believe may be, protected by the Act;
- (iii) it wishes to document for research purposes or for purposes of building up a public record of heritage resources; or
- (iv) is part of an investigation into a suspected offence in terms of the Act.

Admission of guilt

11. The board may delegate to the staff of Amafa Ethu and other responsible bodies powers to levy admission of guilt fines for contraventions of the provisions of this Act as prescribed.

Maintenance of registers

12. The board must maintain registers of –

- (a) all heritage conservation bodies operating in the Province;
- (b) all sites and objects protected by this Act;
- (c) all known royal graves, graves of victims of conflict, public memorials; and battlefields, as prescribed.

Identification and documentation of heritage resources

13. The board must cause to be identified and documented the heritage resources of the Province through procedures as prescribed.

Assistance to individuals and communities

14. The board must endeavour to assist communities and individuals to conserve their heritage through procedures as prescribed.

Staff establishment, salaries and allowances

15. (1) The Department must determine the staff establishment of Amafa Ethu and the grading of classified posts on such establishment in terms of prevailing public service norms and standards and must make provision on such establishment for the post of a head for Amafa Ethu.

(2) The salaries, wages and allowances of all employees in classified posts must be fixed by the Department in terms of the Public Service Act, 1994 (Proclamation No.103 Of 1994), and Public Service Regulations, 1999, and no board must pay any person in a classified post a salary, wage or allowance in excess of the salary, wage or allowance fixed by the Department in respect of that post.

(3) The salaries and allowances of staff appointed in terms of subsections (1) and (2) by the Department must be remunerated from monies appropriated by the Legislature for this purpose.

(4) Subject to the provisions of section 16 (3), the board must not appoint or engage any staff in excess of the staff establishment determined for Amafa Ethu.

Appointment and termination of services of staff

16. The board may, subject to the provisions of this Act -

- (a) recommend candidates to the Department for appointment to the vacancies on the staff establishment;
- (b) recommend to the Department the termination of services of an officer on the staff establishment;
- (c) employ any person in a non-classified post at its own cost, with the approval of the Department, additional to the staff establishment of Amafa Ethu in a temporary capacity if such employment is necessary -

- (i) due to illness or absence of the incumbent of the post;
- (ii) to provide for the performance of work for which staff is not ordinarily maintained on a permanent basis; or
- (iii) when vacant classified posts cannot readily be filled by the Department.

Conditions of employment

17. The conditions of employment of staff in classified posts in Amafa Ethu must be determined by the Public Service Act, 1994 (Proclamation No.103 Of 1994), and Public Service Regulations, 1999, the board must not alter these in any respect.

Subsidies

18. There must be paid by the Department, from monies appropriated by the Legislature for the purpose, to the board of Amafa Ethu, an annual subsidy which is calculated on the basis that the full amount or such percentage, being not less than fifty per cent, as the MEC may generally or specifically determine, of the approved subsidisable expenditure, for the effective running of Amafa Ethu.

CHAPTER 3

HERITAGE RESOURCES CONSERVATION MEASURES

Rights and duties of other authorities and individuals

19. (1) In order to facilitate liaison between Provincial departments regarding heritage-conservation matters and to facilitate the duties of Provincial departments, the MEC may establish a Provincial heritage liaison committee which must meet at least once per year and must consist of –

- (a) a senior official of the Director-General's office;
- (b) the head of Amafa Ethu, who shall chair the meeting, and relevant senior staff of Amafa Ethu;
- (c) senior officials of all provincial departments and provincially supported bodies which have some or other

duty concerning or impacting upon heritage matters, whose attendance must be determined by regulations;

- (d) other government-sponsored institutions with similar duties which it is felt may on a voluntary basis wish to contribute to interdepartmental liaison;
- (e) a nominated member of the House of Traditional Leaders; and
- (f) a secretary provided by Amafa Ethu.

(2) All departments of the Provincial Administration and provincially supported bodies must, free from charge, make available to Amafa Ethu for its use and incorporation into its databases any information which they have on record or collect pertaining to the heritage of the Province.

(3) A competent local authority must be obliged to –

- (a) ascertain that the terms of this Act, where applicable, have been complied with, prior to it granting authority in accordance with its jurisdictional powers to any development which will impact upon a site;
- (b) inform Amafa Ethu of any change in the planning status and zoning determination of any site protected in terms of sections 21 to 28;
- (c) subject to minimum standards set in terms of regulations, maintain the graves of victims of conflict which fall within its area of jurisdiction if it is a local authority responsible for an urban area;
- (d) at the time of the revision of any plan, or on any other suitable occasion, and in consultation with and to the satisfaction of Amafa Ethu, make provision for the identification and protection of the heritage resources of the area under its jurisdiction through use of the appropriate provisions of the Act;
- (e) implement the minimum incentives for conservation, as determined in this Act;

- (f) administer heritage resources in accordance with what Amafa Ethu regards as its level of competence and according to powers delegated in terms of provisions of this Act; and
- (g) inform Amafa Ethu of its intention to dispose of any architectural or technical drawings in any manner other than to a provincial archive and shall, free of charge, make them available to Amafa Ethu should it wish to add them to its collections.

(4) Where any site protected in terms of this Act is to be interpreted, the person wishing to undertake such interpretation must, at least sixty days prior to the institution of interpretive measures or manufacture of associated material, consult with Amafa Ethu regarding the contents of interpretive material or programmes and must obtain a permit from Amafa Ethu for the erection, in the vicinity of the site, of any plaque or other structure associated with such interpretation.

Applicability of national legislation and relations with other heritage bodies

20. (1) Amafa Ethu may enter into agreements with national heritage bodies regarding the performance of functions in terms of national legislation on behalf of such a national body.

(2) Amafa Ethu may assist and cooperate with other heritage bodies, both within and outside of South Africa, provided that this does not involve the transfer of funds to such a body and with due regard to the impact this will have upon its own resources or effectiveness and the financial and public relations benefits to be derived from such an arrangement.

Formal protections

21. The board must, wherever it deems it necessary, and subject to the provisions of this section, introduce the following protections by way of publication in the *Gazette*:

- (a) Heritage landmark status must be conferred upon sites which constitute, in the opinion of the board, important elements of the heritage of the Province;

- (b) no person must damage, alter, redecorate, remove from its original position, subdivide or amend any plan thereof except under the authority of a permit issued by Amafa Ethu;
- (c) Amafa Ethu must designate a site as a Heritage Landmark subject to –
 - (i) the owner being given 90 days from the date of the Board's decision in which to object, or suggest reasonable conditions under which Heritage Landmark status is acceptable; and
 - (ii) where an objection is not received or conditions are not considered reasonable, the site must automatically be included in the Heritage List;
- (d) Any heritage landmark must automatically enjoy any incentives afforded sites on the heritage list;
- (e) Subject to any successful objection in terms of section 21(3), sites which the board has resolved to protect as heritage landmarks must be deemed to be protected as such for six months from the date of serving of notice of the board's intention on the owner;
- (f) Amafa Ethu must inform the local authority within whose area of authority a heritageLandmark falls within two months of the designation thereof;
- (g) except cases where the board considers it inappropriate, all heritage landmarks must be marked with a badge indicating their status;
- (i) where they exist, the title deeds and survey diagrams of all heritage landmarks must be endorsed concerning their status;
- (j) no heritage landmark may be demolished until such time as such status has been withdrawn by the MEC; and

- (k) regulations must make provision for a process of consultation and arbitration between Amafa Ethu, a relevant local authority, an appropriate community structure or any person in the declaration of a heritage landmark.

Heritage object status

22. (1) Heritage object status must be applicable to artefacts, or collections thereof, which are of substantial aesthetic, historic, scientific, or technological importance, or which have a significant connection to a site protected under this Act, and which must be the subject of regulations.

(2) No person must destroy, damage, alter, restore, or remove such an object from its place of storage except under the authority of a permit issued by Amafa Ethu.

(3) Any designation of an object as a heritage object must, other than in instances where it is the property of the Province, a provincially supported body, or a local authority or body supported by a local authority, be subject to the owner being given 90 days in which to object or to suggest reasonable conditions under which heritage object status is acceptable.

(4) Subject to any successful objection in terms of subsection 22(3), artefacts which the Board has resolved to protect as heritage objects must be deemed to be protected as such for six months from the date of serving of notice of the Board's intention of the owner.

(5) All heritage objects must be marked physically in accordance with recognised curatorial norms, or by way of the display of appropriate marking in their vicinity.

(6) No heritage objects may be destroyed or permanently removed from the Province until such time as its status has been withdrawn by the MEC.

(7) Regulations must make provision for a process of consultation between Amafa Ethu, a relevant local authority, appropriate community structures or any person in the declaration of heritage objects.

Heritage register

23. (1) Amafa Ethu must by way of notice in the *Gazette* compile a heritage register of listed sites which it considers to be worthy of conservation and whose listing must be the subject of regulations.

(2) Regulations must make provision for a process of consultation between Amafa Ethu, a relevant local authority, appropriate community structures or any person wishing to list or remove sites on or from the heritage register.

(3) Listed sites must be protected in the following manner:

- (a) except in cases where the board considers it inappropriate, all listed sites must be marked with a badge indicating their status;
- (b) where they exist, the title deeds and survey diagrams of all listed sites must be endorsed concerning their status;
- (c) regulations jointly published by the MEC and the MEC responsible for local government may provide for minimum incentives to be made available by local authorities for the proper treatment of sensitive sites;
- (d) where a local authority so wishes it may in any relevant plan, or by other additional means, provide incentives which to those provided for in terms of subsection 23(3)(c).

(4) Inclusion of a site in the heritage register must not exempt persons from complying with those terms of this Act which apply to the destruction, excavation, alteration, or other disturbance of archaeological and palaeontological sites and artefacts, or meteorites.

(5) Regulations must make provision for a process of consultation and arbitration between Amafa Ethu, the relevant local authority, appropriate community structures and any person wishing to damage, alter, redecorate, remove from its original position, subdivide or amend any plan relating to a listed site.

(6) Regulations must establish guidelines for the circumstances under which work on a listed building may be prevented by means of the Provisional Protection afforded in terms of section 25.

Heritage conservancies

24. (1) Heritage conservancies must be protected in terms of relevant plans or where there are no such plans, regulations made by the MEC.

(2) This section is subject to the following:

- (a) a local authority must, when amending any relevant plan, or at the instance of Amafa Ethu, investigate the establishment of heritage conservancies and consult with Amafa Ethu in this regard;
- (b) regulations must provide for a process of consultation with property owners and the communities affected by the provisions governing a heritage conservancy prior to the introduction of such measures;
- (c) each conservancy must be suitably signposted;
- (d) where they exist, the title deeds and survey diagrams of all properties within a heritage conservancy shall be endorsed concerning their status;
- (e) particular sites within a heritage conservancy may, in addition to the general provisions governing the conservancy, be afforded further protection in accordance with the other provisions of this section, or section 27;
- (f) the provisions of any plans or regulations governing a heritage conservancy must specifically state which general protections in terms of section 27 and aspects of protection in terms of this section will be excluded from application.

Provisional Protection

25. (1) Provisional protection must be applicable to any important heritage resource which is not protected as a heritage landmark or heritage object which the board considers to be or is potentially under a threat with respect to its future conservation and which threat it believes may be alleviated through the provision of a period for reconsideration and negotiation.

(2) No person may damage, alter, redecorate, remove from its original position, restore, subdivide or amend any plan relating to a provisionally protected heritage resource except under the authority of a permit issued by Amafa Ethu.

(3) At the discretion of the board, Provisional Protection may apply for a period up to a maximum of two years, which period is to be stated in the notice instituting such protection.

(4) Heritage resources which the board has resolved to provisionally protect must be deemed to be protected as such from the time of the serving of a notice to this effect on the owner or his agent and provided that a notice is published in the *Gazette* within 30 days of serving such notice.

(5) Where they exist, the title deeds and survey diagrams of all sites which have provisional protection for a period of more than six months must be endorsed concerning their status and the date of expiry thereof.

(6) Amafa Ethu must inform the local authority within whose area of authority a provisionally protected site falls within two months of service of notice on the owner thereof.

(7) The board may at its own discretion, or must following a successful appeal against its decisions withdraw provisional protection via notice in the *Gazette* and the serving of such notice on the owner.

Sensitive site

26. (1) The board may protect the immediate environs of heritage landmarks and Provincial landmarks by designating a suitable buffer area as a sensitive site.

(2) Such buffers must be protected in that -

- (a) no person must damage, alter, subdivide or in any other way develop such a site without consulting Amafa Ethu, such process of consultation being provided for in regulations to be jointly published by the MEC and the MEC responsible for Local Government, and which must provide for consultation to commence at least 60 days prior to the initiation of such changes to such sites;

- (b) where they exist, the title deeds and survey diagrams of all sensitive sites shall be endorsed concerning their status;
- (c) regulations jointly published by the Member of the Executive Council, the Member of the Executive Council of Local Government and the Member of the Executive Council of Traditional Affairs shall provide for minimum incentives to be made available by local authorities for the proper treatment of sensitive sites;
- (d) where a local authority so wishes it may in any relevant plan, or by other means, provide incentives which are additional to those provided for in subsection 26(2)(c).

CHAPTER 4

General protections

Structures

27. Any proposed demolition, addition or alteration of structures or parts thereof which are older than 60 years must be subject to the following:

- (a) at least thirty days prior to the commencement of such a proposed demolition a permit shall be applied for from Amafa Ethu;
- (b) the board may at its own discretion and through publication of a notice in the *Gazette* lift this provision within a defined geographical area, or for certain defined categories of sites within a defined geographical area, when it is satisfied that heritage resources falling into the defined geographical area or category have been identified and are adequately provided for in terms of sections 21 to 26;
- (c) should the board believe it to be necessary it may, following a three-month notice period which will be published in the *Gazette*, withdraw or amend a notice which has previously lifted this provision;

- (d) conditions stipulated in terms of permits issued under this provision shall be of such a nature so as to facilitate the recycling of historical building materials and the revision of design proposals;
- (e) where a permit is refused, the board shall within a three-month period give consideration to the protection of the site in terms of one of the formal classification provided for in sections 19 to 24.

Graves of African royalty

28. Graves of African royalty must -

- (a) without the need for publication of a notice in the *Gazette*, enjoy protection equivalent to that of Heritage Landmark or Provincial Landmark provided for in terms of section 21;
- (b) be subject to the proviso that no permit shall be issued by Amafa Ethu without prior knowledge of the relevant monarch and his advisors, and in terms of regulations prescribed in this Act.

Graves of victims of conflict

29. No person must damage, alter, exhume, or remove from its original position the grave of a victim of conflict, cemetery made up of such graves, or that part of a cemetery which contains such graves except after consultation with Amafa Ethu, and in terms of regulations prescribed in this Act.

Traditional burial places

30. (1) All other graves not otherwise protected by this Act and not located in formal cemeteries administered by local authorities, must not be damaged, altered, exhumed, removed from their original positions, or otherwise disturbed except under the authority of permit issued after consultation with Amafa Ethu, and in terms of regulations prescribed in this Act.

(2) The board must only recommend that such a permit be issued once it has been satisfied that the applicant has made a concerted effort to contact and consult communities and individuals who by tradition have an interest in the graves and have reached agreements regarding the future thereof.

(3) Regulations must provide a time period and minimum requirements for such consultation.

Battlefields, public monuments and memorials

31. Battlefields, public monuments and memorials must without the need to publish a government notice to this effect, be protected in the same manner as sites which are on the heritage register as established in section 23.

Archeology, rock art, palaeontology, battlefields and meteorite sites

32. (1) No person may destroy, damage, excavate, alter, write or draw upon, or otherwise disturb any archaeological, rock art, palaeontological, battlefield or meteorite site except under the authority of a permit issued by Amafa Ethu, provided that Amafa Ethu may, regarding archaeological sites, take account of existing small-scale agricultural activities.

(2) Upon discovery of archaeological or palaeontological material or a meteorite, a person engaged in small-scale agriculture shall immediately cease operations in the vicinity of such material and report their presence to Amafa Ethu.

(3) After consultation with the owner, the board may, by way of serving of a notice too that effect on an owner or other controlling authority, prevent what it considers to be inappropriate activities within 50 metres of sites which obtain rock art.

(4) No person may exhume, remove from its original position, otherwise disturb, damage, destroy, own or collect any archaeological or palaeontological object or material, or objects which the board deems to be associated with a battlefield, or meteorite, except under the authority of a permit issued at Amafa Ethu.

(5) No person may bring any equipment which assists in the detection of metals and archaeological and palaeontological objects and material, or excavation equipment onto an archaeological or palaeontological site or a battlefield, or use similar detection or excavation equipment for the recovery of meteorites, except under the authority of a permit issued by Amafa Ethu.

Objects

33. (1) All archaeological objects and palaeontological material, objects on battlefields, and meteorites must at all time of discovery become the property of the Province as represented by Amafa Ethu.

(2) Amafa Ethu may at its own discretion dispose of such objects and material to relevant and responsible institutions subject to it complying with the standards and procedures of disposal as prescribed by the provincial authority responsible for museums.

(3) No person may trade in, export or attempt to export from the Province any category of archaeological object or palaeontological material, or objects which the board deems to have been recovered from a battlefield, or meteorite, other than those categories of objects or material which may by regulations be excluded from such provisions.

(4) Regulations must prescribe how persons or institutions in possession of archaeological objects and palaeontological materials, or objects which could reasonably be expected to have been recovered from battlefields, must lodge lists of such objects and material, and other required information, for auditing with Amafa Ethu.

(5) Subject to regulations, objects and materials listed in section 28(7) must remain in the ownership of the person lodging the list.

(6) Regulations must provide a system whereby Amafa Ethu regularly monitors such objects and materials.

(7) All other such objects and materials not listed within the prescribed period must be deemed to have been recovered after the date on which this Act came into effect.

(8) Regulations may prescribe the manner in which a moratorium may be instituted on the declaration and possession of such material and objects.

(9) Regulations may prescribe the manner in which objects of any form, material, or manufacture which have, in the opinion of Amafa Ethu been in the Province for longer than 60 years, be protected in that they may be to be removed from the Province or alienated or disposed of except under the authority of a permit issued by Amafa Ethu.

Standards and conditions

34. The setting of standards and conditions regarding curation and excavation of material covered in this section and the conditions pertaining to their temporary or otherwise export, the lodging of a financial deposit which will be held in trust to establish bona fides before a permit is issued, conditions of forfeiture of deposit, the submission of reports on research, must be the subject of regulations promulgated by the MEC.

Covenants

35. Amafa Ethu must where it is in the interests of the conservation of heritage resources and by mutual agreement enter into a covenant with a local authority, community, person or persons regarding any arrangement whereby a certain clearly defined heritage resource, or a resource which it has facilitated regardless of, and in addition to, any other provisions provided for in this Act, for any aspect of the conservation of that resource such a covenant may incorporate in its terms a provision for financial, or other assistance from Amafa Ethu and must be in the form of a binding contract.

Expropriation

36. The MEC may, on the recommendation of the board, under the following circumstances expropriate property protected in terms of sections 21 to 26 when –

- (a) in her or his opinion a site or artefact is neglected to the extent that it will lose its potential for conservation; and
- (b) following negotiation with and thereafter the serving of a notice of intention to expropriate on the owner;
- (c) if within at least sixty days from the date of serving such notice the MEC the opinion that no satisfactory steps have been taken to rectify the conservation problems; and
- (d) a site that is registered in terms of section 23 is threatened with demolition or alterations, or other actions, which will in her or his opinion severely compromise its value as a heritage resource and if the period of negotiations provided for has not resolved the matter to the satisfaction of the MEC.

Heritage resources management

37. (1) Any person wishing to undertake a project described in terms of the following categories:

- (a) construction of a road, wall, power line, pipeline, canal or other similar form of linear development or barrier exceeding 300 metres in length;
- (b) construction of a bridge or similar structure exceeding 50 metres in length; and
- (c) any development, or other activity which will change the character of an area of land or water -
 - (i) exceeding 10 000 square metres in extent;
 - (ii) involving three or more existing erven or subdivisions thereof; or
 - (iii) involving three or more erven, or subdivisions thereof, which have been consolidated within the past five years; or
 - (iv) the costs of which will exceed a sum set in terms of regulations; or
 - (v) any other category of development provided for in regulations,

must at her or his own initiative and at the very earliest stages of initiating such a development, notify the board and furnish it with details regarding the location, nature and extent of the proposed development.

(2) Within 14 days of the receipt of a notification under section 28(1) the board must -

- (a) if there is reason to believe that a heritage resource or resources will be affected by such development, notify the person who intends to undertake the development that it requires the submission to it of an impact assessment report, compiled at the cost of the person proposing the development, by a person or persons approved by the board with relevant qualifications and experience in heritage resource management; or
 - (b) notify the person concerned that the provisions of this section must not apply.
- (3) Regulations must specify the information to be provided in a report required under section 28(2)(a) provided that the following must be included:
- (a) The identification and mapping of all heritage resources in the area affected;
 - (b) An assessment of the significance of such resources in terms of the heritage assessment criteria set out in regulations;
 - (c) An assessment of the impact development on such heritage resources;
 - (e) If heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
 - (f) Plans for mitigation of any adverse effects during and after completion of the proposed development.
- (4) The report must be considered timeously by the board which must, after consultation with the person proposing the development, decide -
- (a) whether or not the development may proceed;
 - (b) whether any limitations or conditions are to be applied to the development;
 - (c) what general protections in terms of this Act apply, and what formal protections may be applied to such heritage resources;

- (d) whether compensatory action must be required in respect of any heritage resources damaged or destroyed as a result of the development; and
- (e) whether the appointment of specialists is required as a condition of approval of the proposal.

(5) The board must make any decision under section 28(4) above with respect to any development which impacts on a heritage resource protected at national level unless it has first consulted the national heritage conservation agency.

- (6) The applicant may appeal against the decision of the board to the MEC, who-
 - (a) must consider the views of both parties; and
 - (b) may at her or his discretion –
 - (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the provincial heritage authority;
 - (ii) consult the South African Heritage Resources Agency; or
 - (iii) consult the provincial Executive Council regarding the appeal; and
 - (c) must uphold, amend or overturn such decision.

(7) The provision of this section must not apply to a development described in section 28(1) affecting any heritage resource formally protected by this Act or national heritage legislation unless the relevant authority concerned decides otherwise.

(8) The provisions of this section must not apply to a development as described in section 28(1) if any evaluation of the impact of such development on heritage resources is required in terms of national legislation, *inter alia* the integrated environmental management (IEM) guidelines issued by the Department of Environmental Affairs and Tourism, the Environment Conservation Act, 1989 (Act No. 73 of 1989), the Minerals Act,

1991(Act No. 50 of 1991) or other planning and development legislation applicable in the Province, provided that the board must ensure that the evaluation fulfils the requirements of the Act in terms of section 29(3) and any comments and recommendations of the board with regard to such development have been taken into account prior to the granting of any consent.

(9) The MEC may, on the recommendation of the board, and by notice in the *Gazette*, exempt from the requirements of this section, any place specified in the notice.

(10) Any person who has complied with the decision of the board in section 28(4) or of the MEC in section 28(6) or other requirements referred to in section 28(8) must be exempt from compliance with all other protections in terms of this section, but any existing heritage covenants made in terms of section 27(9) must continue to apply.

Permits

38. (1) Regulations must prescribe the manner in which an application must be made to the board for any permit under this Act and other requirements for permit applications, including –

- (a) any particulars or information to be furnished in the application and any documents, drawings, plans, photographs and fees which should accompany the application;
- (b) minimum qualifications and standards of practice required of persons making application for a permit to perform specified actions in relation to particular categories of protected heritage resources;
- (c) standard and conditions for the excavation and curation of archaeological and palaeontological objects and material and meteorites recovered under authority of a permit;
- (d) the conditions under which, before a permit is issued, a financial deposit must be lodged and held in trust for the duration of the permit or such period as the regulation may specify, and conditions of forfeiture of such deposit;

- (e) conditions for the temporary export and return of objects protected under section 22 or 27(7);
- (f) the submission of reports on work done under authority of a permit; and
- (g) the responsibilities of the board regarding monitoring of work done under authority of a permit.

(2) On application by any person in the manner prescribed under section 29(1), the board may in its discretion issue to such person a permit to perform such actions at such time and subject to such terms, conditions and restrictions or directions as may be specified in the permit, including a condition

- (a) that the applicant give security in such form and such amount determined by the board, having regard to the nature and extent of the work referred to in the permit to ensure the satisfactory completion of such work, or the curation of objects and material recovered during the course of the work;
- (b) providing for the recycling or deposit in the Amafa Ethu Conservation Materials Bank referred to in section 9(2)(ac);
- (c) stipulating that design proposals be revised; or
- (d) regarding the qualifications and expertise required to perform the actions for which the permit is issued.

(3) Notwithstanding (1) and (2) above no person must, by obtaining any permit, permission or authority under this Act, be absolved from the duty to comply with the provisions of any other law.

Exemptions

39. The MEC may, on the recommendation of the board, at his discretion, in respect of any heritage resource protected under this Act by notice in the *Gazette*, grant an exemption from the requirement to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as are specified in the notice.

Appeals

40. (1) Regulations must provide for a system of appeal to the board against the decision of a committee or other delegated representative of the board and to the MEC against the decision of the board.

(2) In considering an appeal referred to in section 31(1) the MEC must have due regard to –

- (a) the advice of at least two independent assessors appointed by the MEC to assist in the matter by virtue of their expertise with regard to the matter;
- (b) the cultural significance of the heritage resources in question;
- (c) heritage conservation principles; and
- (d) any other relevant factors which are brought to her or his attention by the appellant or the heritage authority.

(3) Should the MEC find in favour of the appellant, he or she may require that appropriate compensation for the loss of heritage resources be made to the board or other appropriate body for use in ensuring the continued conservation of other heritage resources.

(4) An appeal against the decision of a local authority regarding an application for special consent for a listing or removal of sites from the heritage register and matters connected therewith and protection of heritage conservancies and matters connected therewith must, subject to the protective provisions referred to in sections 23 and 24 respectively, be made to the applicable planning appeal body in accordance with the planning appeal procedures applicable in the Province: Provided that –

- (a) the local authority must inform the board on the institution of an appeal; and
- (b) in considering such appeal the planning appeal body must have due regard to the cultural significance of the place in question, heritage conservation principles and any other relevant factors which are brought to its attention by the appellant, the local authority or the board.

Appointments and powers of heritage inspectors

41. (1) The MEC may make regulations in terms of which the board may –
- (a) levy admission of guilt fines up to an amount determined by such regulations, for infringement of the terms of this Act; and
 - (b) serve a notice upon a person who is contravening a specified provision of the Act or has not complied with the terms of a permit issued by the board, imposing a daily penalty for the duration of the contravention, subject to a maximum period of 365 days;
 - (c) confiscate any vehicle, craft, equipment or other contraption utilised by any person who contravenes a specified provision of the Act.

Offences

42. Any person who –
- (a) whether or not on the request of the board, fails to provide any information that is required to be given under this Act or the regulations;
 - (b) for the purpose of obtaining, whether for herself or himself or for any other person, any permit, consent or authority under this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;
 - (c) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to her or him under this Act;
 - (d) obstructs the holder of a permit under this Act in exercising a right granted to her or him by means of such permit;

- (e) damages takes or removes, or causes to be damaged, taken or removed from a place protected in terms of the provisions of this Act by badge or sign or any interpretive display or any other property or object erected by the national heritage agency, the board, or a competent local authority;
- (f) received any badge or any other property or object unlawfully taken or removed from a place protected in terms of the provisions of this Act;
- (g) within the terms of this Act commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon her or him by its terms, or who counsels, procures, solicits or employs any other person to do so shall be guilty of an offence.

Laying of charges

43. Any person who believes that there has been an infringement of any provision of this Act may lay a charge with the South African Police Services or any other competent authority.

Jurisdiction of the magistrate's court

44. A magistrate's court must, notwithstanding the provisions of any law, be competent to impose any penalty under this Act.

Orders to make good

45. Whenever any person has been convicted of any contravention of this Act, which has resulted in damage to or alteration of a protected heritage resource the court must –

- (a) order such person to put right the result of the action of which he or she was found guilty, in the manner so specified and within such period as may be so specified, and upon failure of such person to comply with the terms of such order, order such person to pay to the board a sum equivalent to the cost of making good; or

- (b) when it is of the opinion that such person is not in a position to make good damage done to a heritage resource by virtue of the offender not being the owner or occupier of a heritage resource or for any other reason, or when it is advised by the board that it is unrealistic or undesirable to require that the results of the action be made good, order such person to pay to the board a sum equivalent to the cost of making good.

No-development orders

46. (1) In addition to other penalties, if the owner of a place has been convicted of an offence against this Act involving the destruction of, or damage to, the place, the MEC on the advice of the board, may serve on the owner an order that no development of such place may be undertaken, except making good the damage and maintaining the cultural value of the place, for a period not exceeding 5 years and that such be recorded against the title deeds of the property concerned.

(2) Before making the order, the local authority and any person with a registered interest in the land must be given a reasonable period to make submissions on whether the order should be made and for how long.

(3) A no-development order under section 37(1) attaches to the land and is binding not only on the owner as at the date of the order, but also on any person who becomes an owner of the place while the order remains in force.

(4) The MEC on the advice of the board may reconsider a no-development order and may in writing amend or repeal such an order.

Community service

47. In any case involving vandalism, and whenever a court deems it appropriate, community service involving conservation of heritage resources may be substituted for, or instituted in addition to, a fine or imprisonment.

Forfeiture

48. (1) Where a court convicts a person of an offence in terms this Act, it may order the forfeiture to the board of a vehicle, craft, equipment or any other contraption used or otherwise involved in the commission of the offence.

(2) A vehicle, craft, equipment or other contraption confiscated in terms of section 32(1)(c) may be sold or otherwise disposed of as the board thinks fit.

CHAPTER 5

GEOGRAPHICAL NAMES

Assignment of functions and establishment of Provincial Geographical Names Committee

49. (1) The MEC must assign to Amafa Ethu the relevant provincial functions for the Province as provided in the Geographical Names Act, 1998 (Act No. 118 of 1998), in which case the board must establish a committee to handle the geographical names aspects, to be known as the Eastern Cape Geographical Names Committee.

(2) The Department must appoint, in terms of sections 15, 16 and 17, appropriate staff on the staff establishment of Amafa Ethu to ensure that the objectives and functions relating to Geographical names are carried out.

(3) The powers and functions of the Eastern Cape Geographical Names Committee as established by section 40, and the method of operation of Amafa Ethu in this regard, must be prescribed by the MEC.

CHAPTER 6

GENERAL AND SUPPLEMENTARY PROVISIONS

Exemption from duties, taxes and fees

50. Notwithstanding anything to the contrary contained in any other law, no duty, tax or fees, other than duty, tax or fees under the laws relating to customs and excise and to the survey of land must be payable to the Province by the board in respect of anything done or any transaction under this Act, or in respect of any document required in connection with anything so done or any such transaction.

Notices in the Gazette

51. (1) The MEC may, by publication of a further notice, amend or withdraw any notice in the *Gazette* which he has caused to have published.

(2) The MEC may prescribe the manner in which legally enforceable property descriptions may be published in notices in the Gazette in terms of the provisions of the Act including –

- (a) methods of technology permissible in measuring areas; and
- (b) methods to be used in compensating for margins of error in measurement.

Delegation of powers by the MEC

52. The MEC may delegate any power, duty or function conferred or imposed upon her or him under this Act to the head of the Department or the Director.

Bylaws by local authorities

53. A local authority wishing to publish bylaws pertaining to heritage management must do so in consultation with Amafa Ethu.

Limitations of liability

54. No person must be liable in respect of anything done under this Act in good faith and without negligence.

Legal succession

55. Amafa Ethu must be the legal successor in all respects, including liabilities, assets, contractual arrangements, staff, policy and other decisions of respective governing bodies, fixed and movable property personnel, to the National Monuments Council in the Province, subject to section 58 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Repeal of laws

56. The Historical Monuments Act, 1989 (Act No. 10 of 1989) (Ciskei), is hereby repealed, and anything done in terms of that law is deemed to have been done in terms of this Act.

Short title

57. This Act is called the Eastern Cape Heritage Resources Act, 2002.

EXPLANATORY MEMORANDUM ON THE HERITAGE RESOURCES BILL, 2002(EASTERN CAPE)

PART 1 (GENERAL PRINCIPLES)

BACKGROUND

The Heritage Resources Bill, 2002 is intended to rationalize Provincial Legislation governing heritage in the Province. The Province Inherited different pieces of legislation from the former administrations of Ciskei, Transkei and Cape Provincial Administration. This Bill is intended to apply uniformly throughout the Province.

POLICY

The Bill provides for the Establishment of a statutory body called Amafa Ethu to identification, management conservation and promotion of heritage resources of the Province and to generally foster heritage conservation and management for the benefit of present and future generations.

CONSTITUTIONAL IMPACT

This Bill falls within Schedule 4 to the Constitution of Republic of South Africa, 1996(Act No. 108 of 1996), which is an area of concurrent legislative competence between National and Provincial Government.

PART 2
(CLAUSE BY CLAUSE ANALYSIS)

- CLAUSE 1 - SETS OUT THE DEFINITIONS**
- CLAUSE 2 - PROVIDES FOR THE ESTABLISHMENT OF AMAFA ETHU**
- CLAUSE 3 - SETS OUT THE OBJECTS AND JURISDICTION OF AMAFA ETHU**
- CLAUSE 4 - PROVIDES FOR CONSTITUTION OF THE BOARD**
- CLAUSE 5 - SETS OUT TENURE OF OFFICE OF BOARD MEMBERS**
- CLAUSE 6 - PROVIDES FOR VACANCIES OF THE BOARD AND FILLING THEREOF**
- CLAUSE 7 - PROVIDES FOR DISQUALIFICATION FOR MEMBERSHIP OF THE BOARD**
- CLAUSE 8 - PROVIDES FOR A QUORUM OF THE BOARD**
- CLAUSE 9 - SETS OUT THE POWERS, DUTIES AND FUNCTIONS OF THE BOARD**
- CLAUSE 10 - PROVIDES FOR INSPECTION BY THE BOARD AND DOCUMENTATION**
- CLAUSE 11 - ADMISSION OF GUILT**
- CLAUSE 12 - PROVIDES FOR MAINTENANCE OF REGISTERS**
- CLAUSE 13 - PROVIDES FOR IDENTIFICATION AND DOCUMENTATION OF HERITAGE RESOURCES**

- CLAUSE 14 - PROVIDES FOR ASSISTANCE BY THE BOARD TO INDIVIDUALS AND COMMUNITIES**
- CLAUSE 15 - PROVIDES FOR STAFF ESTABLISHMENT, SALARIES AND ALLOWANCES**
- CLAUSE 16 - PROVIDES FOR APPOINTMENT AND TERMINATION OF SERVICES OF STAFF**
- CLAUSE 17 - SETS OUT CONDITIONS OF EMPLOYMENT**
- CLAUSE 18 - PROVIDES FOR SUBSIDIES TO AMAFA ETHU BY THE DEPARTMENT**
- CLAUSE 19 - SETS OUT RIGHTS AND DUTIES OF OTHER AUTHORITIES AND INDIVIDUALS REGARDING HERITAGE**
- CLAUSE 20 - PROVIDES FOR APPLICABILITY OF NATIONAL LEGISLATION AND RELATIONS WITH OTHER HERITAGE BODIES**
- CLAUSE 21 - PROVIDES FOR FORMAL PROTECTIONS FOR HERITAGE LANDMARKS**
- CLAUSE 22 - PROVIDES FOR HERITAGE OBJECT STATUS**
- CLAUSE 23 - PROVIDES FOR HERITAGE REGISTER**
- CALUSE 24 - PROVIDES FOR HERITAGE CONSERVANCIES**
- CLAUSE 25 - PROVIDES FOR PROVISIONAL PROTECTION OF HERITAGE RESOURCES**
- CLAUSE 26 - PROVIDES FOR A SENSITIVE SITE**

- CLAUSE 27 - PROVIDES GENERAL PROTECTION FOR STRUCTURES**
- CLAUSE 28 - PROVIDES FOR GENERAL PROTECTION FOR GRAVES AFRICAN ROYALTY**
- CLAUSE 29 - PROVIDES FOR GENERAL PROTECTION FOR GRAVES OF VICTIMS OF CONFLICT**
- CLAUSE 30 - PROVIDES FOR GENERAL PROTECTION OF TRADITIONAL BURIAL PLACES**
- CLAUSE 31 - PROVIDES FOR GENERAL PROTECTION FOR BATTLEFIELDS, PUBLIC MONUMENTS AND MEMORIALS**
- CLAUSE 32 - PROVIDES FOR GENERAL PROTECTION FOR ARCHEOLOGY, ROCK ART, PALAEOLOGY, BATTLEFIELDS AND METEORITE SITES**
- CLAUSE 33 - PROVIDES FOR OWNERSHIP AND CONTROL OF OBJECTS**
- CLAUSE 34 - PROVIDES FOR STANDARDS AND CONDITIONS TO BE DETERMINED BY THE MEC BY REGULATION**
- CLAUSE 35 - PROVIDES FOR COVENANCE**
- CLAUSE 36 - PROVIDES FOR EXPROPRIATIONS BY THE MEC ON RECOMMENDATION OF THE BOARD**
- CLAUSE 37 - PROVIDES FOR HERITAGE RESOURCE MANAGEMENT**
- CLAUSE 38 - PROVIDES FOR PERMITS**
- CLAUSE 39 - PROVIDES FOR EXEMPTIONS**
- CLAUSE 40 - PROVIDES FOR APPEALS**

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- CLAUSE 41 - PROVIDES FOR APPOINTMENT AND POWERS OF HERITAGE INSPECTORS**
- CLAUSE 42 - SETS OUT OFFENCES**
- CLAUSE 43 - PROVIDES FOR LAYING OF CHARGES**
- CLAUSE 44 - PROVIDES FOR JURISDICTION OF THE MAGISTRATES' COURT**
- CLAUSE 45 - PROVIDES FOR ORDERS TO MAKE GOOD**
- CLAUSE 46 - PROVIDES FOR NO-DEVELOPMENT ORDERS**
- CLAUSE 47 - PROVIDES FOR COMMUNITY SERVICE**
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- CLAUSE 49 - PROVIDES FOR ASSIGNMENT OF FUNCTIONS AND ESTABLISHMENT OF PROVINCIAL GEOGRAPHICAL NAMES COMMITTEE**
- CLAUSE 50 - PROVIDES FOR EXEMPTION FROM DUTIES, TAXES AND FEES**
- CLAUSE 51 - PROVIDES FOR NOTICES IN THE PROVINCIAL GAZETTE**
- CLAUSE 52 - PROVIDES FOR DELEGATION OF POWERS BY THE MEC**
- CLAUSE 53 - PROVIDES FOR BY-LAWS BY LOCAL AUTHORITIES**
- CLAUSE 54 - PROVIDES FOR LIMITATION OF LIABILITY**
- CLAUSE 55 - PROVIDES FOR LEGAL SUCCESSION**
- CLAUSE 56 - PROVIDES FOR REPEAL OF LAWS**
- CLAUSE 57 - PROVIDES FOR SHORT TITLE**

No. 50**25 October 2002****PROTECTED AREAS BILL, 2002 (EASTERN CAPE)**

The above-mentioned Bill is hereby published in terms of rule 153 of the Standing Rules of the Legislature for a period of fourteen (14) days.

Members of the public are invited to submit their comments to the Head of Department, Department of Economic Affairs, Environment and Tourism
Private Bag x54 Bisho 5605

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PROVINCE OF THE EASTERN CAPE

**DEPARTMENT OF ECONOMIC AFFAIRS, ENVIRONMENT AND
TOURISM**

PROTECTED AREAS BILL, 2002 (EASTERN CAPE)

(As introduced)

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL
RESPONSIBLE FOR ECONOMIC AFFAIRS, ENVIRONMENT AND
TOURISM)**

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BILL

To provide for the declaration of Provincial protected areas; to provide for the establishment of Provincial Parks Board and the appointment of members thereof; to provide for the protection of wildlife in the Province; and to provide for matters connected therewith.

Definitions

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

“Biodiversity Act” means the National Environmental Management: Biodiversity Act, 2002

“biological diversity” or **“biodiversity”** means the diversity of animals, plants or other organisms, including the diversity of animals, plants or other organisms found within and between –

- (a) ecosystems;
- (b) habitats;
- (c) the ecological complexes of which these systems and habitats are part; and
- (d) species;

“biological resource” means any resource of a biological nature, including –

- (a) a living or dead animal, plant or other organism;
- (b) a derivative of an animal, plant or other organism; or
- (c) any genetic or propagation material;

“Board” means the Eastern Cape Provincial Parks Board which governs protected areas declared in terms of this Act;

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“category” in relation to protected areas, means a category mentioned in section 35;

“Constitution” means the Constitution of the Republic of South Africa, 1996(Act No. 108 of 1996);

“delegation” in relation to a duty, includes an instruction to perform the duty;

“Department” means the Department responsible for environment in the Province;

“ecological integrity” means the sum of the biological, physical and chemical components of an ecosystem, and their interactions which maintain the ecosystem and its products, functions and attributes;

“ecosystem” means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;

“Executive Council” means the appointed in terms of section 132 of the Constitution;

“Gazette” means the *Provincial Gazette* of the Province;

“Head of department” means the head of the Department;

“indigenous species” means an animal, plant or other organism that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes an animal, plant or other organism that has been introduced through human intervention;

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"IUCN category" in relation to a protected area, means protected area management category, based on primary management objective and published by the IUCN;

"local community" means any community of people living or having rights or interests in a distinct geographical area, and includes a traditional community;

"local protected area" means a protected area declared as such by a municipality or managed by a municipality;

"management" in relation to a protected area, includes control, protection, conservation, maintenance and rehabilitation of the area;

"management authority", in relation to a protected area, means an authority to whom the management of a protected area has been assigned;

"MEC" means the member of the Executive Council responsible for environmental matters in the Province;

"municipality" means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"National Environmental Management Act" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"national environmental management principles" means the principles contained in –

- (a) section 2 of the National Environmental Management Act;
- (b) national legislation governing coastal management; and

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- (c) section 2 of the National Environmental Management: Marine Living Resources Act, 1998 (Act No. 18 of 1998);

"prescribe" means prescribe by the MEC by regulation in *Gazette*;

"protected area" means a protected area referred to in section 35;

"Provincial Parks" means the Provincial parks declared in terms of section 41;

"regulation" means a regulation made by the MEC hereunder;

"species" means –

- (a) a kind of animal, plant or other organism, including any subspecies, cultivar, variety, geographic race, strain, hybrid or geographically separate population; or
- (b) a single animal, plant or other organism, including a seed, egg, gamete or propagule or part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits;

"subordinate legislation" in relation to this Act, means –

- (a) any regulation made in terms of section 89;
- (b) any norms and standards published in terms of section 5; or
- (c) any notice published in the *Gazette* in terms of this Act;

"this Act" includes any subordinate legislation made hereunder;

"traditional community" means a community which –

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- (a) lives in a distinct geographical area according to customary law and tradition;
- (b) has established rights or interests in the biological resources of the area; and
- (c) uses their knowledge, innovations, practices and technologies to exploit those resources;

“vessel” means any waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transporting anything by water.

Objectives of this Act

2. The objectives of this Act are –
- (a) to provide, within the framework of the National Environmental Management Act, for the declaration and management of protected areas;
 - (b) to give effect to international agreements on protected areas which are binding on the Republic; and
 - (c) to provide for co-operative governance in the declaration and management of protected areas.

Application of this Act

3. (1) This Act applies in throughout the Province.
- (2) This Act, except sections 35 and 36, does not apply to an area declared in terms of section 8 of the National Forests Act, 1998 (Act No. 84 of 1998), as a specially protected forest area, forest nature reserve or forest wilderness area.

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Application of National Environmental Management Act

4. This Act must be interpreted and applied in accordance with -
- (a) the national environmental management principles; and
 - (b) environmental management principles provided in any Provincial legislation,
- and read with Chapter 9A of the National Environmental Management Act.

Norms and standards

5. (1) The MEC may, by notice in the *Gazette*, issue norms and standards for --
- (a) the achievement of any of the objectives of this Act; and
 - (b) the management and development of protected areas.
- (2) The norms and standards issued by the MEC in terms of subsection (1) must not be in conflict with the norms and standards issued by the national Minister of Environment and Tourism in terms of national legislation.
- (3) Before issuing norms and standards and setting indicators to measure compliance with those norms and standards, the MEC must consult with municipalities.
- (4) Norms and standards may apply --
- (a) throughout the Province;
 - (b) in a specific area only;
 - (c) to a specific management authority or category of management authorities only; or
 - (d) to a specific category of persons only.

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- (5) Different norms and standards may be issued for –
- (a) different areas;
 - (b) different management authorities or categories of management authorities; or
 - (c) different categories of persons.

CHAPTER 2

Part 1: Establishment, composition, powers and functions of the Eastern Cape Provincial Parks Board

Establishment of Eastern Cape Provincial Park Board

6. There is hereby established the Eastern Cape Provincial Parks Board which is a juristic person.

Composition

7. (1) Eastern Cape Provincial Parks Board is governed by a board consisting of –
- (a) the Head of Department; and
 - (b) no more than twelve other members appointed in terms of section 11.
- (2) The MEC must determine the number of members to be appointed in terms of subsection (1) (b).

Powers and functions

8. (1) The Board must –
- (a) manage protected areas in accordance with this Act;

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- (b) ensure the protection and conservation of protected areas, and the biological diversity in these areas;
 - (c) on the MEC's request, advise him or her on any matter concerning protected areas, including the implementation of this Act and any international agreements relating to protected areas which are binding on the Republic; and
 - (d) take decisions in the exercise of its powers and functions.
- (2) The Board may in managing a protected area which is a Provincial park –
- (a) manage breeding and cultivation programmes, and reserve areas in the park as breeding places and nurseries;
 - (b) sell, exchange or donate any species occurring in the park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to introduce into the park;
 - (c) carry out any development, and construct or erect any works, necessary for the management of the park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels;
 - (d) allow visitors to the park;
 - (e) take steps to ensure the security and well-being of visitors and staff;
 - (f) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;
 - (g) carry on any business or trade necessary to provide services for the convenience of visitors and staff;;
 - (h) determine and collect fees for –
 - (i) entry to the park; or

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- (ii) any service provided by it;
- (i) authorise any person, subject to any conditions and the payment of any fees it may determine, to provide –
 - (i) a service which it may provide in terms of this section; and
 - (ii) the infrastructure for such service;
- (j) by agreement with –
 - (i) a municipality, provide any service in the park which that municipality may or must provide in terms of legislation; or
 - (ii) another organ of state, perform a function in the park which that organ of state may or must perform in terms of legislation; or
- (k) do such other things as may be prescribed.

General powers of Board

9. The Board may –
- (a) appoint its staff, subject to section 28;
 - (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
 - (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
 - (d) open and operate its own bank accounts;
 - (e) invest, subject to section 30, any of its funds referred to in section 29;
 - (f) borrow money, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (g) charge fees for any work performed or services rendered by it or collect royalties resulting from any discoveries, inventions or computer programmes;

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- (h) insure itself against –
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act;
- (i) insure members of the Board and staff members in respect of bodily injury, disablement or death resulting solely and directly from an accident occurring in the course of the performance of their duties; and
- (j) perform legal acts, including acts in association with or on behalf of any other person or organ of state.

Part 2: Board members

Qualifications

10. (1) A member of the Board must –
- (a) be a fit and proper person to hold office as a member; and
 - (b) have appropriate qualifications or experience.
- (2) The following persons are disqualified from becoming or remaining a member of the Board:
- (a) a person holding office as a member of Parliament, a provincial legislature or a municipal council; and
 - (b) a person who has been removed from office in terms of section 17.

Appointment procedure

11. (1) The Head of Department must, on the commencement of this Act and whenever it is necessary to replace a member –
- (a) through advertisements in the media circulating widely in the Province, invite nominations for appointment of such members;

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- (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee; and
- (c) submit the list to the MEC.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be accompanied by –

- (a) the personal details of the nominee;
- (b) particulars of the nominee's qualifications or experience in the matters listed in subsection (3);
- (c) a letter of acceptance of nomination by the nominee; and
- (d) a sworn declaration by the nominee that he or she is not disqualified in terms of section 10.

(3) The MEC must make the required number of appointments from the list submitted in terms of subsection (1) (c).

(4) When selecting persons for appointment, the MEC must -

- (a) consult municipalities in the Province;
- (b) have regard to the need for appointing persons disadvantaged by unfair discrimination; and
- (c) have regard to the geographic representativity in the Province; and
- (d) ensure that the board is composed of persons covering a broad range of appropriate experience and expertise.

Chairperson and Deputy Chairperson

12. (1) The MEC must appoint a member of the Board as the Chairperson and another member as the Deputy Chairperson.

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- (2) The Deputy Chairperson acts as Chairperson when –
- (a) the Chairperson is absent or unable to perform the functions of Chairperson; or
 - (b) the office of Chairperson is vacant.

Term of office

13. Members of the Board are –
- (a) appointed for a period not exceeding three years; and
 - (b) eligible for re-appointment for one additional term not exceeding three years.

Conditions of appointment

14. (1) The MEC must determine the conditions of appointment of members of the Board.
- (2) The conditions of appointment of members who are not in the public service or in the service of a municipality or other public entity may include the payment of remuneration and allowances in consultation with the MEC responsible for Finance.
- (3) Members who are in the public service or in the service of a municipality or other public entity are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses in consultation with their respective institutions.

Conduct of members

15. (1) A member of the Board –

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- (a) must perform the functions of office in good faith and without favour or prejudice;
- (b) must disclose to the Board any personal or private business interest of that member, or any spouse, partner or close family member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that member in the matter is trivial or irrelevant;
- (c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and
- (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Board.

(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

16. (1) A member of the Board ceases to be a member when he or she -
- (a) is no longer eligible in terms of section 10 to be a member;
 - (b) resigns; or
 - (c) is removed from office in terms of section 17.

(2) A member may resign by giving at least three month's written notice to the MEC, who may accept a shorter period in a specific case.

Removal from office

17. The MEC may remove a member of the Board on the grounds of -
- (a) misconduct, incapacity or incompetence; or

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- (b) absence from three consecutive meetings of the Board without the prior permission of the Board, except on good cause shown.

Filling of vacancies

18. (1) A vacancy in the board occurs when a member –
- (a) dies;
 - (b) resigns in terms of section 16(2);
 - (c) is subject a disqualification contemplated in section 10;
 - (d) is removed from office in terms of section 17; and
 - (e) has served his or her term of office.
- (2) The Executive Council may, at any time, if it considers it to be in the public interest or in the interest of the proper administration of this Act simultaneously terminate the term of office of all members of the Board and direct the MEC to replace such members in terms of section 11.

Part 3: Operating procedures of Board

Meetings

19. (1) The Chairperson of the Board must decide when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a meeting at a time and place set out in the request.
- (2) The Chairperson or the Deputy Chairperson presides at meetings of the Board, but if both are absent from a meeting, the members present must elect another member to preside at the meeting.

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Access to meetings

20. (1) Meetings of the Board are open to interested persons, including the media, but the Board may close its meeting when it deliberates or votes on a confidential matter or on any other matter when it deems necessary.

(2) No person may attend or be present at a meeting which has been closed in terms of subsection (1), except –

- (a) with the permission of the Board; or
- (b) when authorised in terms of any legislation or an order of court.

(3) The question whether a matter is a confidential matter must be determined in accordance with prescribed criteria.

Procedures

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

(2) The Board must keep a record of its proceedings.

Quorum and decisions

22. (1) A majority of the members of the Board constitutes a quorum for a meeting of the Board.

(2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.

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(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to his or her deliberative vote.

Committees

23. (1) The Board may establish one or more committees to assist it in the performance of its functions.

(2) When appointing members to a committee, the Board may include in any of its committees such other persons as it may deem necessary.

(3) The board –

- (a) must determine the function of a committee;
- (b) must appoint the chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time; and
- (d) may determine a committee's procedure.

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

(5) Section 14 read with the necessary modifications as the context may require, applies to the conditions of appointment of committee members.

(6) A staff member of the Board appointed to a committee is an *ex officio* member of the committee.

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Delegation of powers and duties

24. (1) When necessary for the proper performance of its functions, the Board may delegate any of its powers or duties to –

- (a) a member;
- (b) a committee referred to in section 23; or
- (c) a staff member of the Board.

(2) A delegation in terms of subsection (1) –

- (a) is subject to any limitations, conditions and directions the Board may impose;
- (b) must be in writing; and
- (c) does not divest the Board of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Part 4: Administration of Board***Appointment of Chief Executive Officer***

25. (1) The Board must appoint a person determined by it with the concurrence of the MEC, as the Chief Executive Officer of the Board.

(2) The person appointed as the Chief Executive Officer –

- (a) must have appropriate qualifications and experience for such appointment; and

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- (b) is employed subject to the terms and conditions of employment determined by the Board with the concurrence of the MEC.

Responsibilities of Chief Executive Officer

26. (1) The Chief Executive Officer is the head of the administration of the Board.

(2) As head of administration, the Chief Executive Officer is responsible for –

- (a) implementing the policies and carrying out the decisions of the Board;
- (b) the formation and development of an efficient administration;
- (c) the organisation, control and management of the staff; and
- (d) the exercise of any of the powers of the Board –
 - (i) assigned to the Chief Executive Officer in terms of this Act; or
 - (ii) delegated to the Chief Executive Officer in terms of section 24.

(3) The Chief Executive Officer must report to the Board on the administration as often as the Board may require.

Acting Chief Executive Officer

27. Whenever the Chief Executive Officer is for any reason absent or unable to carry out the functions of office, or whenever there is a vacancy in the office of the Chief Executive Officer, the Board may appoint another employee of the Board as acting Chief Executive Officer.

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Employment of staff

28. (1) The Chief Executive Officer –
- (a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Board; and
 - (b) may appoint persons in posts on the staff establishment.
- (2) An employee of the Board is employed subject to the terms and conditions of employment determined by the Chief Executive Officer with the concurrence of the Board.
- (3) (a) A person in the service of another organ of state may be seconded to the Board by agreement between the Chief Executive Officer and such organ of state.
- (b) Persons seconded to the Board perform their functions under the supervision of the Chief Executive Officer.
- (4) A person in the service of the Board may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

Part 5: Financial matters**Funding**

29. The funds of the Board consist of –
- (a) income derived by it from the performance of its functions;
 - (b) money appropriated for its purposes through the Department by the Legislature;
 - (c) grants received from organs of state;

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- (d) voluntary contributions, donations and bequests received by it;
- (e) money borrowed by it in terms of section 9 (f);
- (f) income derived by it from investments;
- (g) fines received or recovered in respect of offences committed within protected areas; and
- (h) money derived from any other source.

Investments

30. The Board may invest any of its funds not immediately required –
- (a) subject to any investment policy that may be prescribed in terms of section 7 (4) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
 - (b) in a manner approved by the MEC.

Financial accountability

31. (1) The Board is the accounting authority in terms of the Public Finance Management Act, and must to that end comply with the provisions of that Act.
- (2) The Chief Executive Officer of the Board must –
- (a) keep the Board informed of all issues relevant to the financial management of the Board; and
 - (b) assist the Board to comply with its responsibilities in terms of the Public Finance Management Act.

Exemptions from tax and licenses

32. The Board is exempted from –
- (a) tax on its income;

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- (b) municipal rates on property within a protected area of which it is the management authority, but only insofar as that property is excluded from property rates in terms of the Local Government: Municipal Property Rates Act, 2002, or exempted by the municipality having jurisdiction in that area; and
- (c) obtaining any trading or business license or paying any duty or fee for any commercial activity carried out by it in a protected area of which it is the management authority, subject to applicable laws.

Part 6: General***MEC's supervisory powers***

33. The MEC may –
- (a) monitor performance by the Board of its functions;
 - (b) by regulation in terms of section 97 determine norms and standards for the performance by the Board of its functions;
 - (c) issue directives to the Board to ensure that it operates efficiently and economically; and
 - (d) determine limits on fees charged by the Board in the exercise of its functions and powers.

CHAPTER 3
DECLARATION OF PROTECTED AREAS

Part 1: Purpose, types and register of protected area

Purpose of protected areas

34. The purpose of the declaration of areas as protected areas is –
- (a) to select ecologically viable areas representative of South Africa's biological diversity;
 - (b) to preserve the ecological integrity of those areas;
 - (c) to conserve biodiversity in those areas;
 - (d) to manage the interrelationship between natural environmental biodiversity and human settlement and economic development; and
 - (e) generally to contribute to human, social, cultural, spiritual and economic development.

Protected areas in the Province

35. (1) There are the following types of protected areas in the Province:
- (a) Special nature reserves, conforming to IUCN category 1a;
 - (b) Provincial parks, conforming to IUCN category 2;
 - (c) Nature reserves, which include IUCN categories 1b, 3, 4 and 6;
 - (d) Sites of ecological importance;
 - (e) Protected natural environments, which approximate IUCN category 5; and
 - (f) Limited development areas.
- (2) For the purposes of this Act, an area declared in terms of –

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- (a) section 8 of the National Forests Act, 1998 (Act No. 84 of 1998), as a specially protected forest area, forest nature reserve or forest wilderness area, must be regarded to be a nature reserve;
- (b) the Lake Areas Development Act, 1975 (Act No.39 of 1975), as a lake development area, must be regarded to be a Provincial park;

(3) The protected areas mentioned in subsection (1) are not affected by the designation of a protected area or part of a protected area in terms of this Act or any other legislation as –

- (a) a wilderness area;
- (b) a specially protected coastal area;
- (c) a marine reserve;
- (d) a specially protected forest area, forest nature reserve or forest wilderness area;
- (e) conservancy or resource use area;
- (f) a biosphere reserve;
- (g) a World Heritage site; or
- (h) any other kind of special conservation area.

Register of Protected Areas

36. (1) The MEC must cause to be maintained a register called the Register of Protected Areas.

(2) The Register must be a list of all protected areas in the Province, whether declared in terms of this Act or any other legislation.

(3) The Register must reflect the following particulars in respect of each protected area:

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- (a) the name of the area;
- (b) the statutory provision in terms of which the area was declared;
- (c) the category in which the area falls, including its approximate IUCN category;
- (d) the specific designation of the area or any part of the area, if the area or part of the area has been designated as contemplated in section 35 (2);
- (e) whether it is a provincial or local protected area;
- (f) the size of the area in hectares;
- (g) its location; and
- (h) the name of its management authority.

Application of this Act to protected areas declared or designated in terms of legislation repealed by this Act

37. This Act applies to all areas declared or designated as protected areas in terms of legislation repealed by this Act as if they were declared or designated in terms of this Act.

Part 2: Special nature reserves

Declaration of special nature reserves

38. (1) The MEC may by notice in the *Gazette* –
- (a) declare an area specified in the notice as –
 - (i) a special nature reserve; or
 - (ii) a part of an existing special nature reserve; and
 - (b) assign a name to such special nature reserve.

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(2) A special nature reserve includes the air space above the reserve or area to a level of 1000 metres above ground level.

Criteria for declaring special nature reserves

39. An area may be declared as a special nature reserve or part of an existing special nature reserve as contemplated in section 38, only if the area –

- (a) is a highly sensitive area of national or international biodiversity significance possessing outstanding ecosystems, geological or physiological features or species;
- (b) is unable to accommodate any eco-tourism;
- (c) is unable to tolerate any use of its biological resources;
- (d) is either –
 - (i) owned by the state;
 - (ii) under the exclusive physical control of the state; or
 - (iii) owned by a person, other than an organ of state, who has consented to the declaration by way of a written agreement with the MEC; and
- (e) is to be dedicated exclusively to conservation and scientific research.

Withdrawal of declarations or exclusion of parts of special nature reserves

40. The declaration of an area as a special nature reserve, or part of an existing special nature reserve, may not be withdrawn and no part of a special nature reserve may be excluded from the reserve except by an Act of the Legislature.

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Part 3: Provincial parks***Declaration of Provincial parks***

41. (1) The MEC may by notice in the *Gazette* –
- (a) declare an area specified in the notice as a Provincial park; and
 - (b) assign a name to the Provincial park.
- (2) A Provincial park includes the air space above the area to a level of 1000 metres above ground level.

Criteria for declaring Provincial parks

42. An area may be declared as a Provincial park only if the area –
- (a) is of unique Provincial biodiversity significance possessing outstanding or representative ecosystems, geological or physiological features or species;
 - (b) requires the setting and implementation of strict conservation standards –
 - (i) to protect the components of biodiversity occurring in the area for present and future generations; and
 - (ii) to prevent exploitation and harmful occupation;
 - (c) is either –
 - (i) owned by the state;
 - (ii) under the exclusive physical control of the state; or

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- (iii) owned by a person other than an organ of state who has consented to the declaration by way of a written agreement with the MEC; and
- (d) is to be dedicated exclusively to –
 - (i) conservation and scientific research;
 - (ii) nature based tourism; and
 - (iii) spiritual, educational and recreational opportunities which are environmentally and culturally compatible.

Withdrawal of declarations or exclusion of parts of Provincial parks

43. A declaration of an area as a Provincial park may not be withdrawn, and no part of a Provincial park may be excluded from the park, except by an Act of the Legislature.

Part 4: Nature reserves

Declaration of nature reserves

44. The MEC may by notice in the *Gazette* –
- (a) declare any area specified in the notice as –
 - (i) a nature reserve; or
 - (ii) a part of an existing nature reserve; and
 - (b) assign a name to the nature reserve.

Criteria for declaring nature reserves

45. An area may be declared as a nature reserve or part of an existing nature reserve as contemplated in section 44, only if the area –

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- (a) contains predominantly unmodified natural systems which requires the setting and implementation of strict conservation standards to ensure –
 - (i) long term protection and maintenance of the biological diversity in the area; and
 - (ii) a sustainable flow of natural products and services from the area to meet human needs;
- (b) is either –
 - (i) owned by the national government, a provincial government or a municipality;
 - (ii) under the exclusive physical control of the national government, a provincial government or a municipality; or
 - (iii) owned by a private person who has consented to the declaration by way of a written agreement with the MEC; and
- (c) has not or does not form part of an area that has been declared as a category 1, 2, 3 or 5 protected area.

Designation of nature reserves

46. (1) A nature reserve declared by the MEC in terms of section 44 must be designated in the notice as –
- (a) a wilderness area;
 - (b) a controlled resource use area;
 - (c) a marine reserve;
 - (d) a landscape, ecosystem, habitat or species reserve; or
 - (e) any other kind of nature reserve.

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(2) A nature reserve declared by the MEC in terms of section 44 must be designated in the notice as –

- (a) a wilderness area;
- (b) a controlled resource use area;
- (c) a landscape, ecosystem, habitat or species reserve; or
- (d) any other kind of nature reserve.

Criteria for designating wilderness areas

47. An area may be designated as a wilderness area if the area –

- (a) is or forms part of a Provincial park;
- (b) generally appears to have been affected primarily by the forces of nature, with the imprint of human influence substantially unnoticeable;
- (c) is of sufficient size to make practicable its preservation and use in an unimpaired condition;
- (d) is unable to accommodate substantial eco-tourism, but offers opportunities for solitude or a primitive and unconfined type of recreation for limited numbers of visitors;
- (e) is unable to sustain any commercial or community use of its biological resources;
- (f) is to be dedicated exclusively to its conservation and preservation for future generations.

Withdrawal of designation or exclusion of parts of wilderness areas

48. The designation of a Provincial park, or part of a Provincial park, as a wilderness area may not be withdrawn and no part of a wilderness area may be excluded from the area, except by an Act of the Legislature.

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Criteria for designating controlled resource use areas

49. An area may be designated as a controlled resource use area or a part of an existing controlled resource use area, only if the area –

- (a) has intermediate biodiversity value; and
- (b) in order to protect the biodiversity in the area, is in need of restrictions on the use of biological resources in the area.

Criteria for designating marine reserves

50. (1) An area may be designated as a marine reserve or part of an existing marine reserve –

- (a) for the protection of biodiversity, or a particular species of biodiversity, and the physical features on which such biodiversity depend;
- (b) to facilitate fishery management by protecting spawning stock, allowing stock recovery, enhancing stock abundance in adjacent areas, and providing pristine communities for research; or
- (c) to diminish any conflict that may arise from competing uses in the reserve.

(2) A marine reserve includes the air space above the reserve to a level of 1000 metres above ground level.

Consequences of designation of areas as marine reserves

51. (1) No person may take any action which will or is likely to have a negative impact on the ecological integrity and status of a marine reserve.

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(2) The MEC, for the purpose of subsection (1), may by notice in the *Gazette*, prohibit or restrict any activity –

- (a) of a nature that may negatively impact on the ecological integrity of the marine reserve; and
- (b) which is specified in the notice.

(3) Any activity restricted in terms of subsection (2) must be regarded as an activity identified in terms of section 24 (2) of the National Environmental Management Act.

Amendment or withdrawal of notices

52. The MEC may by notice in the *Gazette* amend or withdraw any notice issued in terms of section 51.

Part 5: Sites of ecological importance

Declaration of sites of ecological importance

53. (1) The MEC may by notice in the *Gazette* –

- (a) declare an area as –
 - (i) a site of ecological importance;
 - (ii) part of an existing site of ecological importance; and
- (b) assign a name to the site.

(2) A site of ecological importance includes the air space above the area to a level of 1000 metres above ground level.

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Criteria for declaring sites of ecological importance

54. An area may be declared as a site of ecological importance, or part of an existing site of ecological importance, only if the area –

- (a) is of particular ecological significance by reason of its indigenous species, ecological communities, general biodiversity, natural ecosystems, habitats or landscapes;
- (b) is under threat of harm;
- (c) has high conservation value; and
- (d) has not or does not form part of an area that has been declared as a category 1, 2, 3 or 4 protected area.

Consequences of declaration

55. (1) No person may take any action which will or is likely to have a negative impact on the ecological integrity and status of a provincial site of ecological importance.

(2) The MEC may for the purpose of subsection (1), by notice in the *Gazette* prohibit or restrict any activity –

- (a) of a nature that may negatively impact on the ecological integrity of such site; and
- (b) which is specified in the notice.

(3) Any activity restricted in terms of subsection (2) must be regarded as an activity identified in terms of section 24 (2) of the National Environmental Management Act.

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Amendment or withdrawal of notices

56. The MEC may by notice in the *Gazette* amend or withdraw a notice issued in terms of section 55.

Part 6: Protected natural environments***Declaration of protected natural environments***

57. The MEC may by notice in the *Gazette* –

- (a) declare any area specified in the notice as –
 - (i) a protected natural environment; or
 - (ii) a part of an existing protected natural environment; and
- (b) assign a name to the protected natural environment.

Criteria for declaring protected natural environments

58. An area may be declared as a protected natural environment or part of an existing protected natural environment, only if the area –

- (a) contains specific natural features, natural systems, natural beauty, ecological processes or species of indigenous wildlife of outstanding or unique heritage value because of their inherent rarity, cultural or aesthetic significance or representative quantities;
- (b) is either –
 - (i) owned by the Provincial government or a municipality;
 - (ii) under the exclusive physical control of the Provincial government or a municipality; or

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- (iii) owned by a private person who has consented to the declaration by way of a written agreement with the MEC;
and
- (c) has not or does not form part of an area that has been declared as a category 1, 2, 4 or 5 protected area.

Amendment or withdrawal of notices

59. The MEC may by notice in the *Gazette* amend or withdraw a notice issued in terms of section 57.

Part 7: Limited development areas

Declaration of limited development areas

60. The MEC may by notice in the *Gazette* –
- (a) declare any area specified in the notice as –
 - (i) a limited development area; or
 - (ii) a part of an existing limited development area; and
 - (b) assign a name to the limited development area.

Criteria for declaring limited development areas

61. An area may be declared as a limited development area or a part of an existing limited development area, only if the area –
- (a) functions as a buffer zone to a protected area of higher biodiversity value;

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- (b) in order to protect the biodiversity in that protected area, is in need of restrictions on harmful land use or commercial activities in the area; and
- (c) has not or does not form part of an area that has been declared as a protected area of another category.

Amendment or withdrawal of notices

62. The MEC may by notice in the *Gazette* amend or withdraw any notice issued in terms of section 60.

Part 8: General***Initiation of declarations***

63. (1) The declaration of private land as a protected area, or part of an existing protected area, may be initiated either by the MEC or the owners of private land in the affected area, acting individually or collectively.

(2) Any request received by the MEC or a municipality from the owners of private land for their land to be declared as a protected area, or part of an existing protected area, must be considered by the MEC.

Endorsements by Registrar of Deeds

64. (1) The MEC must in writing notify the Registrar of Deeds whenever an area is declared as a nature reserve, a limited development area, a protected natural environment or a site of ecological importance, or as part of an existing nature reserve, a limited development area, a protected natural environment or a site of ecological importance or in respect of which a declaration has been withdrawn or altered.

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(2) The notification must include a description of the land involved.

(3) On receipt of the notification, the Registrar of Deeds must make an endorsement against the title deed of each affected piece of land reflecting the declaration or alteration.

Declaration of local protected areas

65. (1) A municipality may in terms of a municipal by-law, declare a local protected area other than a protected area it manages on behalf of another sphere of government: Provided that such a declaration is –

- (a) not in conflict with any declaration made in terms of this Act; and
- (b) is in accordance with the norms and standards prescribed by the MEC in terms of section 5.

(2) The municipal by-law referred to in subsection (1) must provide for a process where by the municipality -

- (a) consults with relevant organs of state before such a declaration;
- (b) consults in accordance with the principles of cooperative governance as set out in Chapter 3 of the Constitution;
- (c) invite representation or objections from the public before such a declaration; and
- (d) consider representations and objections received.

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CHAPTER 4
PROCESS FOR DECLARING AND DESIGNATING PROTECTED AREAS

Part 1: Provincial protected areas

Consultation

66. (1) Before declaring an area in terms of Chapter 3, or designating an existing protected area or part of an existing protected area, the MEC must follow a consultative process as may be appropriate in the circumstances.
- (2) The MEC must, as may be appropriate in terms of subsection (1) –
- (a) consult all national organs of state affected by any proposed declaration or designation of an area;
 - (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the municipality or municipalities in which the area or part of the area is situated; and
 - (c) allow public participation in the process in accordance with section 67.

Notice of declaration or designation

67. (1) The MEC must –
- (a) give notice in the *Gazette* and in at least one newspaper distributed in the area in which that area is situated of the intention to declare the area as a Provincial protected area of a particular category or as part of an existing protected area in terms of Chapter 3; and
 - (b) send a copy of the notice by registered post to the last known postal address of every owner whose land will directly be affected by the declaration.

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- (2) The notice must –
- (a) invite members of the public, including owners referred to in subsection (1) (b), to submit to the MEC written representations on or objections to the proposed declaration or designation within 30 days from the date of publication of the notice; and
 - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration or designation.

(3) The MEC may in appropriate circumstances allow any interested person or a traditional community to present oral representations or objections to the MEC or a person designated by the MEC. This subsection must be applied where the declaration or designation of an area will affect the rights or interests of a traditional community.

(4) The MEC must give due consideration to all representations or objections received or presented before declaring or designating the area.

Concurrence of Premier in respect of Provincial land

68. The MEC may declare an area which consists of or includes Provincial land, as a protected area or as part of an existing protected area only with the concurrence of the Premier in terms of the Land Disposal Act, 2000 (Act No.7 of 2000).

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CHAPTER 5
MANAGEMENT OF PROTECTED AREAS

Part 1: Management authorities and management plans

Management authorities

69. The MEC must assign, in writing, the management of a Provincial protected area to a management authority that must be a Provincial organ of state.

Preparation of management plans

70. (1) An assignment in terms of section 69 may only be made –

- (a) with the concurrence of the prospective management authority;
- and
- (b) on approval by the MEC of a management plan for the protected area prepared by the prospective management authority.

(2) A municipality must prepare a management plan for a protected area managed by it and submit a copy of the plan to the MEC.

(3) When preparing a management plan, the prospective management authority or the municipality must consult with other organs of state which have a vested interest in the area comprising the protected area concerned.

Management criteria

71. (1) The management authority of a protected area must manage the area –

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- (a) exclusively for the purpose for which it was declared; and
 - (b) in accordance with –
 - (i) the management plan for the area;
 - (ii) this Act and other applicable National and Provincial legislation.
- (2) The management authority of a Provincial protected area –
- (a) must report annually to the MEC on aspects of the area agreed on in the management plan; and
 - (b) may amend the management plan by agreement with the MEC.

Contents of management plans generally

72. The management plan for a protected area must reflect –
- (a) the manner in which and the conditions subject to which the area must be managed;
 - (b) the existing infrastructure and any proposed infrastructure development for the conservation of the area, including the conservation of biodiversity in the area;
 - (c) norms and standards that must be met in –
 - (i) the management of the area; and
 - (ii) the conservation of the area, including the conservation of biodiversity in the area;
 - (d) indicators for monitoring compliance with those norms and standards;
 - (e) costing and funding arrangements with regard to –
 - (i) the management of the area;
 - (ii) the conservation of the area, including the conservation of biodiversity in the area; and

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- (iii) any land acquisitions, if this is necessary;
- (f) any existing and proposed area within the protected area designated or proposed to be designated as –
 - (i) a wilderness area;
 - (ii) a specially protected coastal area;
 - (iii) a marine reserve;
 - (iv) a wetland area of international importance;
 - (v) a transfrontier conservation area;
 - (vi) a biosphere reserve;
 - (vii) a world heritage site; or
 - (viii) any other kind of special conservation area; and
- (g) any management arrangements that apply in any such area.

Additional requirements for management plans of Provincial parks

73. (1) In addition to the matters listed in section 72, the management plan for a Provincial park must reflect –

- (a) the existing infrastructure and any proposed infrastructure development in the park for conservation and eco-tourism, including the conservation of biodiversity in the park;
- (b) costing and funding arrangements with regard to –
 - (i) the management of the park;
 - (ii) the conservation of the park, including the conservation of biodiversity in the park;
 - (iii) infrastructure development and maintenance;
- (c) expected rate of income from –
 - (i) tourism;
 - (ii) sale of resources; and
 - (iii) other revenue generating activities; and

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- (d) any proposed private sector –
 - (i) investment in the park; and
 - (ii) involvement in the management of eco-tourism or conservation.

(2) When the management plan of a protected area allows activities in the area aimed at financing conservation of the area and the biodiversity in the area, those activities must be carried out in a sustainable manner, subject to section 80.

Co-management of protected areas

74. (1) The management authority managing a protected area may enter into an agreement with another organ of state, a local community or a local community association for –
- (a) the co-management of the area by the parties; or
 - (b) the regulation of human activities that affect the environment in the area.
- (2) A co-management agreement may provide for –
- (a) the delegation of powers by the management authority to the other party to the agreement;
 - (b) the apportionment of any income generated from the management of the protected area between the parties;
 - (c) the collection, catching or use of biological resources in the area;
 - (d) access to sites of cultural or religious significance in the area; and
 - (e) any other relevant matter.
- (3) A co-management agreement must be consistent with this Act;

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(4) The MEC may cancel a co-management agreement after giving reasonable notice to the parties if the agreement is not effective or is inhibiting the attainment of any of the protected area management objectives.

Part 2: Monitoring and supervision

Performance indicators

75. (1) The MEC may establish indicators for monitoring performance with regard to the management of provincial and local protected areas and of the conservation of biodiversity in those areas.

(2) If the MEC so requests, the management authority of a protected area must –

- (a) monitor the area against any indicators set in terms of subsection (1) or (2); and
- (b) report on its findings to the MEC or a person designated by the MEC.

Termination of mandates to manage protected areas

76. (1) If the management authority of a protected area is not fulfilling its duties in terms of the management plan for the area, or is under-performing with regard to the management of the area, including the biodiversity of the area, the MEC must –

- (a) notify the management authority in writing of the failure to fulfil its duties or of the under-performance; and
- (b) direct the management authority to take within a specified time corrective steps set out in the notice.

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(2) If the management authority fails to take the required steps, the MEC may

- (a) terminate that management authority's mandate to manage the protected area; and
- (b) assign another organ of state as the management authority of the area.

(3) The MEC implements this section in relation to Provincial and local protected areas.

Provincial supervision of municipal management

77. (1) If a municipality fails to ensure that a local protected area is managed in accordance with any norms and standards prescribed in terms of section 5, the MEC may take such steps as may be necessary in the circumstances, including an intervention in terms of section 139 of the Constitution.

(2) Before the MEC intervenes in terms of section 139 of the Constitution, he or she must first in writing to the relevant municipality –

- (a) indicate in what respect those norms and standards are not being met; and
- (b) set reasonable time frames for compliance with those norms and standards.

Part 3: Access to protected areas

Access to special nature reserves

78. (1) No person may –

- (a) enter a special nature reserve;

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- (b) reside in a special nature reserve; or
- (c) perform any activity in a special nature reserve.

(2) Subsection (1) does not apply to –

- (a) an official of the Department or another organ of state designated by the MEC in writing to monitor –
 - (i) the state of conservation of the reserve or any biodiversity in the reserve; or
 - (ii) the implementation of the management plan and this Act;
- (b) any police, customs or excise officer entering the area in the execution of official duties; or
- (c) a person acting in terms of an exemption granted in terms of subsection (3).

(3) The management authority of a special nature reserve may, in writing and on conditions determined by it after consulting the MEC, grant exemption from a provision of subsection (1) to –

- (a) a scientist to perform scientific work;
- (b) a person to perform an activity related to the conservation of the reserve or any biodiversity in the reserve;
- (c) an official of the management authority to perform official duties; or
- (d) an official of an organ of state to perform official duties.

Access to Provincial parks and nature reserves

79. (1) No person may without the written permission of the management authority of a Provincial park or a nature reserve –

- (a) enter the park or reserve; or
- (b) reside in the park or reserve.

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- (2) If any part of the park or nature reserve has been designated as a wilderness area, a marine reserve, no person may without the written permission of the management authority –
- (a) enter that wilderness area, marine reserve; or
 - (b) reside in that wilderness area or specially protected coastal area.
- (3) Subsections (1) and (2) do not apply to –
- (a) an official of the Department or another organ of state designated by the MEC to monitor –
 - (i) the state of conservation of the park or reserve or any biodiversity in the park or reserve; or
 - (ii) the implementation of the management plan and this Act;
 - (b) an official of the management authority to perform official duties in the park or reserve;
 - (c) any police, customs or excise officer entering the park or reserve in the execution of official duties; or
 - (d) a person travelling through the park or reserve by railway insofar as that person stay on the train or within the precincts of any railway station.
- (4) If the management authority of a park or reserve refuses permission to an official of an organ of state to enter the park or reserve or that wilderness area, marine reserve or specially protected coastal area for the performance of official duties, the MEC may –
- (a) reconsider the matter; and
 - (b) either confirm the refusal or grant the permission.

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Part 4: Restrictions***Prohibited activities***

80. (1) No person may within a protected area –
- (a) be in possession of any weapon, explosive, trap or poison;
 - (b) hunt, catch, capture or kill any animal by any means, method or device whatsoever, or, with intent to hunt, catch, capture or kill, search for, pursue, lie in wait for, lure, allure, discharge a missile at or injure any animal;
 - (c) disturb or feed any animal;
 - (d) take, damage or destroy any egg or nest of any animal;
 - (e) take honey from a beehive;
 - (f) cause a veld fire;
 - (g) damage or destroy any site or object of geological, archaeological, historical, ethnological, oceanographic, educational or scientific value;
 - (h) cut, damage, remove, chop off, uproot or destroy any plant, including any marine plant;
 - (i) remove a flower, seed or any other part from any plant;
 - (j) be in possession of or exercise physical control over –
 - (i) any animal, plant or other organism; or
 - (ii) any biological resource.
- (2) No person may –
- (a) take into a protected area any weapon, explosive, trap or poison;
 - (b) introduce into a protected area any animal, plant or other organism;
or
 - (c) bring any domestic animal into a protected area; or

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- (d) cause or allow any domestic animal to stray into or enter a protected area.
- (3) The provisions of –
- (a) subsections (1) and (2) do not apply to a protected natural environment or a limited development area except to the extent that may be prescribed;
 - (b) subsections (1) and (2) do not apply to –
 - (i) the management authority of the protected area;
 - (ii) an official of the management authority of the protected area in performing official duties; or
 - (iii) a person acting on the instruction or with the permission of the management authority of the protected area;
 - (c) subsections (1) (a) and (2) (a) do not apply to any police, customs or excise officer entering the protected area and performing in the area official duties; and
 - (d) subsection (1) (j) do not apply to a person conveying animals, plants or other organisms or biological resources by railway through the protected area.

Commercial and community activities in Provincial parks, nature reserves and protected natural environments

81. (1) The management authority of a Provincial park, nature reserve or protected natural environment may, with the written approval of the MEC and the management authority of a Provincial nature reserve or protected natural environment –

- (a) carry out or allow –

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- (i) a commercial activity in the park, nature reserve or protected natural environment; or
 - (ii) an activity in the park, reserve or environment aimed at raising revenue; or
- (b) enter into a written agreement with a traditional community inside or adjacent to the park, reserve or environment to allow members of the community to collect biological resources in the park, reserve or environment for own consumption.
- (2) An activity allowed in terms of subsection (1) (a) or (b) may not negatively affect the survival of any species in or disrupt the integrity of the ecological systems of the park, nature reserve or protected natural environment.
- (3) The MEC may –
- (a) give an approval in terms of subsection (1) on conditions specified in the written approval;
 - (b) amend or withdraw in writing any condition or any such approval at any time; or
 - (c) set norms and standards for an activity allowed in terms of subsection (1).
- (4) The management authority of the Provincial park, nature reserve or protected natural environment must establish systems to monitor –
- (a) the impact on the park, reserve or environment and the biodiversity in the park, reserve or environment, of activities allowed in terms of subsection (1) (a) or (b); and
 - (b) compliance with –

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- (i) any norms and standards set in terms of subsection (3) (c);
and
- (ii) any agreement entered into in terms of subsection (1) (b).

(5) (a) An activity referred to in subsection (1) must be regarded as having been approved in terms of this section if that activity was lawfully being carried out on the date immediately before –

- (i) this Act took effect; or
 - (ii) the declaration of the area as a Provincial park, nature reserve or protected natural environment, or as part of an existing park, nature reserve or protected natural environment.
- (b) The management authority may restrict an activity referred to in paragraph (a) to the extent that it was carried out around that date.

(6) This section does not apply to activities mentioned in, and regulated by, the management plan for the park, nature reserve or protected natural environment.

Certain rights and entitlements to be respected

82. Sections 78, 79, and 80 may not be applied in a manner that would obstruct –

- (a) an owner of riparian land to exercise any rights to water in a public stream to which that owner is entitled in terms of the National Water Act, 1998 (Act No.36 of 1998), if that public stream, or the bed or any part of the bed, falls within a protected area; or
- (b) members of a traditional community to collect in accordance with an agreement in terms of section 81 biological resources for own consumption in a Provincial park, nature reserve or protected natural environment.

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Part 5: Internal rules where tourism is allowed**Rules**

83. (1) The management authority of a protected area where tourism is allowed may, in accordance with any prescribed norms and standards make rules for the proper administration of the area.

(2) Rules made in terms of subsection (1) must be consistent with this Act and the management plan for the protected area, and may include rules determining –

- (a) the powers and duties of officials of the management authority, including powers and duties with regard to –
 - (i) the exclusion of the public from certain areas in the area;
 - (ii) the killing, capturing or impounding of any animals in the area and the disposal of animals killed, captured or impounded;
 - (iii) the burning of grass, the cutting of trees, reeds and grass and the gathering of marine plants in the area; and
 - (iv) the disposal of any animal, vegetable, mineral or other product of the area;
- (b) the periods during which or times within which the area or any portion of the area will be open to the public;
- (c) the conditions of a permission to enter the area;
- (d) the points of entry to and tourist routes in the area;
- (e) the conditions relating to the admission of vehicles and vessels to and the use of vehicles and vessels in the area;
- (f) the regulation of traffic in the area;
- (g) the requirements to which vehicles and vessels must conform;
- (h) norms and standards of behaviour for visitors to the area;
- (i) the conditions for the use and enjoyment of the area;

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- (j) the conditions on which food and refreshments, and any merchandise allowed by the management authority, including liquor, may be sold;
- (k) the conditions subject to which any animals or goods may be conveyed through the area and the route or routes over which such animals or goods must be conveyed;
- (l) the conditions on which any person entering, sojourning in or passing through the area, may obtain the services of any official of the management authority, and the fees to be paid in respect of such services;
- (m) the conditions relating to the taking of photographs in the area;
- (n) measures –
 - (i) to protect the area, its natural features and infrastructure, and the biodiversity in the area; and
 - (ii) to protect visitors and staff;
- (o) the conditions on which a staff member or other person to whom permission has been granted may reside in the area;
- (p) the conditions of appointment of persons and organisations interested in assisting the management authority of the area on a voluntary basis in the performance of any of its functions; or
- (q) the powers, duties and privileges of such persons and organisations.

CHAPTER 6

ACQUISITION OF RIGHTS IN OR TO LAND

Acquisition of private land by the Province

84. (1) The MEC may, acting with the concurrence of the Premier, acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a Provincial protected area, by –

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- (a) purchasing the land or right;
- (b) exchanging the land for other land; or
- (c) expropriating the land or right, if no agreement is reached with the owner or holder of the right.

(2) The Expropriation Act, 1975 (Act No. 63 of 1975), applies with respect to any acquisition of land or right in or to land in terms of subsection (1) (c).

Acquisition of private land by Board

85. (1) The Board may, with the approval of the MEC and acting with the concurrence of the Premier, acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a Provincial park –

- (a) by purchasing the land or right; or
- (b) if the land or right is donated or bequeathed to it, by accepting the donation or bequest.

(2) If the Board fails to agree on a purchase price for the land or right in terms of subsection (1) (a), the MEC may on behalf of the Board expropriate the land or right in terms of Expropriation Act, 1975 (Act No. 63 of 1975).

Cancellation of servitudes on, or privately held rights in or to Provincial land

86. (1) The MEC may, with the concurrence of the Premier, take any steps necessary to cancel a servitude on state land, or a privately held right in or to Provincial land, which has been or is proposed to be declared as or included in a Provincial protected area.

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(2) If the MEC fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the MEC may expropriate the servitude or right in terms of the Expropriation Act, 1975 (Act No. 63 of 1975).

Cancellation of servitudes on, or privately held rights in or to, land owned by the Board

87. (1) The Board may, with the approval of the MEC, take any steps necessary to cancel a servitude on land owned by the Board, or a privately held right in or to such land, which has been or is proposed to be declared as or included in a Provincial park.

(2) If the Board fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the MEC may on behalf of the Board expropriate the servitude or right in terms of the Expropriation Act, 1975 (Act No. 63 of 1975).

Financing

88. (1) The MEC may finance the acquisition of private land or a right in or to private land in terms of section 84, or the cancellation of a servitude on, or a privately held right in or to, provincial land in terms of section 86, from money appropriated for this purpose by the Legislature.

(2) The Board may finance the acquisition of private land or a right in or to private land in terms of section 85, or the cancellation of a servitude on, or a privately held right in or to, land owned by the Board in terms of section 87, from the funds of the Board.

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CHAPTER 7

ADMINISTRATION OF ACT

Regulations by the MEC

89. (1) The MEC may make regulations for Provincial and local protected areas in the Province –
- (a) assigning additional powers and duties to management authorities of those protected areas;
 - (b) regulating –
 - (i) biodiversity management and conservation in those protected areas;
 - (ii) the use of biological resources in those protected areas to secure sustainability of those resources;
 - (iii) access to protected areas;
 - (iv) tourism in those protected areas where tourism is allowed;
 - (v) activities that may be carried out in terms of section 81; or
 - (vi) the use of land and water in those protected areas;
 - (c) prohibiting or restricting –
 - (i) activities that have an adverse effect in those protected areas;
 - (ii) the use of biological resources in those protected areas when necessary to secure sustainability of those resources; or
 - (iii) land uses in those protected areas that are harmful to the environment; or
 - (d) providing for the establishment of advisory committees for those protected areas, the appointment of members and their powers and functions;

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- (e) providing for any other matter that will facilitate the implementation of this Act in relation to those protected areas;
- (f) setting, enforcing and monitoring of norms and standards issued in terms of section 5, and for any of the above matters; and
- (g) providing for any other matter that may be necessary to facilitate the implementation of this Act.

(2) Regulations made in terms of subsection (1) must be consistent with any norms and standards prescribed in terms of section 89.

(3) Any regulation which will entail the expenditure of funds in future years, may be made only with the concurrence of the MEC responsible for finance in the Province.

(4) Before publishing any regulations in terms of subsection (1), the MEC must publish draft regulations in the *Gazette* for public comment.

General

90. (1) Regulations made in terms of section 89 or this section may –

- (a) restrict or prohibit any act either absolutely or conditionally;
- (b) apply –
 - (i) generally throughout the Province, as the case may be, or only in a specified area or category of areas;
 - (ii) generally to all persons or only a specified category of persons; or
 - (iii) generally with respect to all species or only a specified species or category of species; or

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- (c) differentiate between –
 - (i) different areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.

(2) Regulations made in terms of section 89 or this section may, when appropriate, provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to –

- (a) imprisonment for a period not exceeding five years;
- (b) an appropriate fine; or
- (c) both a fine and imprisonment.

Database

91. (1) The MEC must cause the establishment and regular update of an electronic database containing –

- (a) the text of this Act;
- (b) the text of all subordinate legislation issued in terms of this Act;
- (c) information in the Register of Protected Areas referred to in section 36;
- (d) information about all management authorities, including –
 - (i) their names;
 - (ii) their functions;
 - (iii) the protected areas they manage; and
 - (iv) particulars of contact persons;
- (e) information about any other matter that may be useful for the proper implementation of this Act.

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(2) The database must be accessible by any person.

(3) The MECs and all municipalities managing protected areas must assist the MEC in establishing and regularly updating the database.

Incentives

92. The MEC may take steps to provide incentives, whether fiscal, scientific, technological or otherwise, to stimulate activities and programmes which contribute to the achievement of the objectives of this Act.

Extension of time periods

93. The MEC may on reasonable grounds extend, or condone a failure by a person to comply with, a time period in terms of this Act, except a time period which binds the MEC.

CHAPTER 8 OFFENCES AND PENALTIES

General offences

94. A person is guilty of an offence if that person contravenes or fails to comply with section 78 to 80.

Offences relating to management authorities

95. A person is guilty of an offence if that person –

- (a) hinders or interferes with a management authority, or a member or

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staff member of a management authority, in the execution of official duties; or

- (b) falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer.

Penalties

96. (1) Any person who is convicted of an offence under this Act is liable-
- (a) in case of an offence referred to in section 94;
- (i) on a first conviction, to a fine not exceeding R250 000 or imprisonment for a period not exceeding 15 years, or to both such a fine and such imprisonment; and
- (ii) in the case of a second or subsequent conviction for the same, to a fine not exceeding R500 000 or imprisonment for a period not exceeding 30 years, or to both such a fine and such imprisonment;
- (b) in case of an offence referred to in section 95 to a fine not exceeding R5000,00 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

CHAPTER 9 MISCELLANEOUS

Repeal of legislation

97. The Environmental Conservation Act, 1989 (Act No. 73 of 1989), is repealed.

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Savings

98. Anything done in terms of legislation repealed in terms of section 97 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

Short title and commencement

99. (1) This Act is called the Protected Areas Act, 2002, (Eastern Cape).

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EXPLANATORY MEMORANDUM ON THE PROTECTED AREAS BILL, 2002 (EASTERN CAPE)

PART I (GENERAL PRINCIPLES)

BACKGROUND

The Department of Economic Affairs, Environment and Tourism has extracted from the Provincial framework legislation governing the environment, namely the Environmental Bill, 2002(Eastern Cape), provisions relating to protected areas and has developed a separate Bill thereon.

POLICY ASPECTS

The Protected Areas Bill, 2002 provides for the powers of the MEC to make a declaration of protected areas in the Province and to provide for the protection of wildlife in the Province. The Bill provides for the continued existence of nature conservations established in terms of the Nature Conservation Act, 1987(Act No. 10 of 1987), and provides for the administration and powers of Provincial Parks.

CONSTITUTIONAL IMPLICATIONS

This Bill falls within Schedule 4 to the Constitution of the Republic of South Africa, 1996(Act No. 108 of 1996), which provides for a concurrent legislative jurisdiction between the Province and the National Government. The Bill has been drafted within the legislative framework developed by the National Department of Environmental Affairs and Tourism, which Department in terms of the Constitution is responsible for prescribing norms and standards.

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**PART II
(CLAUSE BY CLAUSE ANALYSIS)**

- CLAUSE 1 - SETS OUT THE DEFINITIONS
- CLAUSE 2 - PROVIDES THE OBJECTIVES OF THE BILL WHICH INCLUDE THE DECLARATION AND MANAGEMENT OF PROTECTED AREAS WITHIN THE FRAMEWORK OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT
- CLAUSE 3 - APPLICATION OF THE ACT
- CLAUSE 4 - APPLICATION OF NATIONAL ENVIRONMENTAL MANAGEMENT ACT
- CLAUSE 5 - PROVIDES FOR THE MEC TO ISSUE NORMS AND STANDARDS FOR THE ACHIEVEMENT OF THE OBJECTIVES OF THE ACT AND MANAGEMENT AND DEVELOPMENT OF PROTECTED AREAS
- CLAUSE 6 - PROVIDES FOR THE ESTABLISHMENT OF THE EASTERN CAPE PROVINCIAL PARKS BOARD
- CLAUSE 7 - PROVIDES FOR THE COMPOSITION OF THE BOARD
- CLAUSE 8 - PROVIDES FOR POWERS AND FUNCTIONS OF THE BOARD
- CLAUSE 9 - PROVIDES FOR GENERAL POWERS OF THE BOARD
- CLAUSE 10 - ESTABLISHES QUALIFICATION CRITERIA
- CLAUSE 11 - PROVIDES FOR PROCEDURES FOR APPOINTMENT OF MEMBERS OF THE BOARD
- CLAUSE 12 - PROVIDES FOR APPOINTMENT CHAIRPERSON AND DEPUTY CHAIRPERSON OF THE BOARD
- CLAUSE 13 - SETS OUT THE TERM OF OFFICE OF MEMBERS OF BOARD

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- CLAUSE 14 - PROVIDES FOR CONDTITIONS OF APPOINTMENT OF MEMBERS
- CLAUSE 15 - PROVIDES FOR CONDUCT OF MEMBERS
- CLAUSE 16 - PROVIDES FOR TERMINATION OF MEMBERSHIP
- CALUSE 17 - PROVIDES FOR REMOVAL FROM OFFICE OF MEMBERS
- CLAUSE 18 - PROVIDES FOR FILLING OF VACANCIES OF THE BOARD
- CLAUSE 19 - PROVIDES FOR MEETINGS OF BOARD
- CLAUSE 20 - DEALS WITH ACCESS TO MEETINGS OF BOARD
- CLAUSE 21 - PROVIDES FOR THE BOARD TO DETERMINE ITS OWN PROCEDURES FOR MEETINGS
- CLAUSE 22 - ESTABLISHES QUORUM FOR MEETINGS AND DECISIONS OF BOARD
- CLAUSE 23 - ESTABLISHES COMMITTEES OF THE BOARD
- CLAUSE 24 - PROVIDES FOR DELEGATION OF POWERS AND DUTIES
- CLAUSE 25 - PROVIDES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER
- CLAUSE 26 - ESTABLISHES RESPONSIBILITIES OF A CHIEF EXECUTIVE OFFICER
- CLAUSE 27 - PROVIDES FOR THE APPOINTMENT AN ACTING CHIEF EXECUTIVE OFFICER
- CLAUSE 28 - DEALS WITH EMPLOYEMENT OF STAFF OF THE BOARD
- CLAUSE 29 - PROVIDES FOR SOURCE OF FUNDING OF THE BOARD
- CLAUSE 30 - EMPOWERS THE BOARD TO INVEST FUNDS NOT IMMEDIATELY REQUIRED
- CLAUSE 31 - DIRECTS THAT THE BOARD SHALL BE THE ACCOUNTING AUTHORITY

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- CLAUSE 32 - PROVIDES FOR EXEMPTION FROM TAXES AND LICENCES
- CLAUSE 33 - PROVIDES FOR THE MEC'S SUPERVISORY POWERS
- CLAUSE 34 - DETAILS THE PURPOSE OF DECLARATION OF PROTECTED AREAS
- CLAUSE 35 - SETS OUT TYPES OF PROTECTED AREAS IN THE PROVINCE
- CLAUSE 36 - PROVIDES FOR THE CREATION AND MAINTENANCE OF PROTECTED AREAS REGISTER
- CLAUSE 37 - PROVIDES FOR TRANSITIONAL PROVISIONS IN RESPECT OF PROTECTED AREAS
- CLAUSE 38 - EMPOWERS THE MEC TO DECLARE SPECIAL NATURE RESERVES
- CLAUSE 39 - SETS OUT CRITERIA FOR DECLARATION SPECIAL NATURE RESERVES
- CLAUSE 40 - PROVIDES FOR WITHDRAWAL OF DECLARATION OR EXCLUSION OF SPECIAL NATURE RESERVES OR PARTS THEREOF
- CLAUSE 41 - EMPOWERS THE MEC TO DECLARE PROVINCIAL PARKS
- CLAUSE 42 - SETS OUT CRITERIA FOR DECLARATION OF PROVINCIAL PARKS
- CLAUSE 43 - PROVIDES FOR WITHDRAWAL OF DECLARATIONS OR EXCLUSIONS OF PROVINCIAL PARKS OR PARTS THEREOF
- CLAUSE 44 - EMPOWERS MEC IN CONSULTATION WITH STAKEHOLDERS TO DECLARE NATURE RESERVES
- CLAUSE 45 - SETS OUT CRITERIA FOR DECLARATION OF NATURE RESERVES
- CLAUSE 46 - PROVIDES FOR DESIGNATION OF NATURE RESERVES

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- CLAUSE 47 - SETS OUT CRITERIA FOR DESIGNATING WILDERNESS AREAS
- CLAUSE 48 - PROVIDES FOR WITHDRAWAL OF DESIGNATION OR EXCLUSION OF WILDERNESS AREAS OR PARTS THEREOF
- CLAUSE 49 - SETS OUT CRITERIA FOR DESIGNATING CONTROLLED RESOURCE USE AREAS
- CLAUSE 50 - SETS OUT CRITERIA FOR DESIGNATING MARINE RESERVES
- CLAUSE 51 - PROVIDES FOR CONSEQUENCES OF DESIGNATION OF AREAS AS MARINE RESERVES
- CLAUSE 52 - PROVIDES FOR AMENDMENT OR WITHDRAWAL OF NOTICES
- CLAUSE 53 - PROVIDES FOR DECLARATION OF SITES OF ECOLOGICAL IMPORTANCE
- CLAUSE 54 - SETS OUT CRITERIA FOR DECLARING SITES OF ECOLOGICAL IMPORTANCE
- CLAUSE 55 - PROVIDES FOR CONSEQUENCIES OF DECLARING SITES OF ECOLOGICAL IMPORTANCE
- CLAUSE 56 - PROVIDES FOR AMENDMENT OR WITHDRAWAL OF NOTICES
- CLAUSE 57 - PROVIDES FOR DECLARATION OF PROTECTED NATURAL ENVIRONMENTS
- CLAUSE 58 - CRITERIA FOR DECLARING PROTECTED NATURAL ENVIRONMENTS
- CLAUSE 59 - PROVIDES FOR AMENDMENT OR WITHDRAWAL OF NOTICES
- CLAUSE 60 - EMPOWERS THE MEC TO DECLARE LIMITED DEVELOPMENT AREAS

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- CLAUSE 61 - SETS OUT CRITERIA FOR DECLARING OF LIMITED DEVELOPMENT AREAS
- CLAUSE 62 - PROVIDES FOR AMENDMENT OR WITHDRAWAL OF NOTICES
- CLAUSE 63 - SETS OUT PROCEDURE FOR THE INITIATION OF DECLARATIONS
- CLAUSE 64 - SETS OUT A REQUIREMENT FOR ENDORSEMENT BY REGISTRAR OF DEEDS
- CLAUSE 65 - EMPOWERS MUNICIPALITIES TO DECLARE LOCAL PROTECTED AREAS AFTER CONSULTATION
- CLAUSE 66 - SETS OUT REQUIREMENTS FOR CONSULTATION
- CLAUSE 67 - SETS OUT PROCEDURE FOR DECLARATION OR DESIGNATION
- CLAUSE 68 - PROVIDES FOR THE REQUIREMENT FOR CONCURRENCE OF THE PREMIER
- CLAUSE 69 - PROVIDES FOR MANAGEMENT AUTHORITIES
- CLAUSE 70 - SETS OUT REQUIREMENTS OF A MANAGEMENT PLAN
- CLAUSE 71 - SETS OUT MANAGEMENT CRITERIA
- CLAUSE 72 - SETS OUT CONTENTS OF A MANAGEMENT PLAN
- CLAUSE 73 - PROVIDES FOR ADDITIONAL REQUIREMENTS FOR MANAGEMENT PLANS OF PROVINCIAL PARKS
- CLAUSE 74 - PROVIDES FOR CO-MANAGEMENT OF PROTECTED AREAS
- CLAUSE 75 - EMPOWERS MEC TO SET PERFORMANCE INDICATORS
- CLAUSE 76 - PROVIDES FOR TERMINATION OF MANAGEMENT AUTHORITY

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- CLAUSE 77 - ALLOWS THE PROVINCE TO INTERVENE IN TERMS OF SECTION 139 OF THE CONSTITUTION
- CLAUSE 78 - LIMITS ACCESS TO PROTECTED AREAS
- CLAUSE 79 - LIMITS ACCESS TO SPECIAL NATURE RESERVES
- CLAUSE 80 - PROVIDES FOR PROHIBITED ACTIVITIES
- CLAUSE 81 - PROVIDES FOR CO-EXISTENCE OF COMMERCIAL AND COMMUNITY ACTIVITIES IN PROVINCIAL PARKS, NATURE RESERVES AND PROTECTED NATURAL ENVIRONMENTS
- CLAUSE 82 - PROVIDES FOR CERTAIN EXISTING RIGHTS AND ENTITLEMENTS
- CLAUSE 83 - PROVIDES FOR INTERNAL RULES IN AREAS WHERE TOURISM IS ALLOWED
- CLAUSE 84 - EMPOWERS THE MEC TO ACQUIRE PRIVATE LAND
- CLAUSE 85 - EMPOWERS THE BOARD TO ACQUIRE PRIVATE LAND
- CLAUSE 86 - EMPOWERS MEC TO CANCEL SERVITUDES ON LAND, OR PRIVATELY HELD RIGHTS IN OR TO, PROVINCIAL LAND
- CLAUSE 87 - EMPOWERS THE BOARD TO CANCEL SERVITUDES ON, OR TO PRIVATELY HELD RIGHTS ON OR TO LAND OWNED BY THE BOARD
- CLAUSE 88 - PROVIDES FOR FINANCING FOR THE ACQUISITION OF PRIVATE LAND OR RIGHTS THEREIN
- CLAUSE 89 - PROVIDES FOR REGULATIONS
- CLAUSE 90 - PROVIDES FOR CONDITIONS ATTACHING TO REGULATIONS
- CLAUSE 91 - ESTABLISHES A DATABASE
- CLAUSE 92 - PROVIDES FOR MEC TO PROVIDE INCENTIVES

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- CLAUSE 93 - EMPOWERS THE MEC TO EXTEND OR CONDONE FAILURE TO COMPLY WITH THE TIME FRAMES IN THE ACT
- CLAUSE 94 - PROVIDES FOR GENERAL OFFENCES
- CLAUSE 95 - PROVIDES FOR OFFENCES RELATED TO MANAGEMENT AUTHORITIES
- CLAUSE 96 - PROVIDES FOR PENALTIES
- CLAUSE 97 - PROVIDES FOR LAWS REPEALED
- CLAUSE 97 - EXISTING PROTECTED AREAS
- CLAUSE 98 - PROVIDES FOR TRANSITIONAL PROVISIONS
- CLAUSE 99 - PROVIDES FOR SHORT TITLE AND COMMENCEMENT

No. 51

25 October 2002

LIBRARIES AND INFORMATION SERVICE BILL, 2002 (EASTERN CAPE)

The above-mentioned Bill is hereby published in terms of rule 153 of the Standing Rules of the Legislature for a period of fourteen (14) days.

Members of the public are invited to submit their comments to the Head of Department, Department of Economic Affairs, Environment and Tourism
Private Bag x54 Bisho 5605

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PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF SPORT, RECREATION, ARTS AND CULTURE

**LIBRARIES AND INFORMATION SERVICE BILL, 2002 (EASTERN
CAPE)**

(As introduced)

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL
RESPONSIBLE FOR SPORT, RECREATION, ARTS AND
CULTURE)**

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BILL

To provide for the establishment, administration and control of library and information services in the Province; and for matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:-

Definitions

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

"**Council**" means the Eastern Cape Provincial Library and Information Services Council established by section 6;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996);

"**Department**" means the Department responsible for the administration of library matters in the Province;

"**Directorate**" means the Directorate responsible for the Service in the Department;

"**Executive Council**" means the Executive Council of the Province contemplated in section 132 of the Constitution;

"**Gazette**" means the Provincial Gazette of the Province;

"**Head of Department**" means the administrative head and accounting officer of the Department responsible for library matters in the Province;

"**Legislature**" means the Provincial Legislature of the Province;

"**library**" means an institution registered with the Service, housing a collection of material, organized and systematically arranged for easy access to information and managed by a library authority;

"**library authority**" means any person who accepts responsibility for the control and conduct of a library;

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"**library committee**" means a committee that as an advisory body of a library;

"**library official**" means an official appointed to render a library service;

"**library material**" means any book, periodical, manuscript, chart, map, video cassette, slide, filmstrip, microfilm, audio cassette, audio-compact disc, computer software or any other material supplied by the Service;

"**MEC**" means the Member of the Executive Council responsible for libraries in the Province;

"**new literate**" means a person who is newly registered with a library;

"**place of deposit**" means place of deposit as defined in the Legal Deposit Act, 1997 (Act No. 54 of 1997);

"**prescribed**" means prescribed by;

"**Province**" means the Province of the Eastern Cape established by section 103(1)(a) of the Constitution;

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

"**Service**" means the Library, Information and Technology Service of the Department that will strive to ensure easy access to reading and information sources and resource-based learning material to every citizen in the Province; and

"**this Act**" includes regulations made hereunder.

Application

2. Subject to the Constitution, this Act applies to the rendering of the Service in the Province.

Objectives of Act

3. The following objectives apply to this Act:

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- (a) To ensure the sustainability, development and transformation of library services in the Province;
- (b) to ensure a public understanding of the role of the Service;
- (c) to maintain an effective and efficient library service in the Province;
- (d) to ensure integration of all library service activities and programmes;
- (e) to provide equitable access to and provision of library services, to all communities in the Province;
- (f) to promote learning, reading and recreational culture through information resources;
- (g) to provide material which meets informational, educational, research, recreational and cultural needs of all communities in the Province;
- (h) to ensure that the Directorate works with libraries to identify training needs in the Province and to coordinate activities to address those needs;
- (i) to promote the use of libraries in the Province;
- (j) to develop and maintain in the Province a wide library electronic information system; and
- (k) To ensure that the Directorate works with interested parties or groups to coordinate and provide a library service to special community groups, namely -
 - (i) the disabled;
 - (ii) multicultural language groups; and

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(iii) new literates.

Powers and functions of MEC

4. (1) The MEC may, in consultation with the Council, by notice in the Gazette, determine a library and information policy for the Province.

(2) The MEC may establish, maintain and manage libraries and any services incidental thereto.

(3) The MEC must determine the nature and extent of subsidies to be provided by the Service to libraries in the Province as contemplated in section 5(1)(e).

(3) As from the date of commencement of this Act, all existing libraries in the Province must be deemed to be libraries established in terms of this section.

(4) The MEC may at any time, after consultation with interested parties, by notice in the Gazette, close a library.

Powers and functions of Head of Department

5. (1) The Head of Department must exercise the following powers and functions:

- (a) the control and rendering library and information services to all libraries in the Province;
- (b) the administration of the establishment of library committees;
- (c) the implementation of Provincial and national library policies in consultation with the MEC and the Council;
- (d) the rendering of advice the MEC on library matters;
- (e) the provision subsidies in the form of funds or library material, as determined by the MEC, to libraries in the Province;

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- (f) the support and promotion of libraries as a source of information, study, research and culture;
- (g) the rendering of professional advice and guidance to library authorities;
- (h) the determination of library standards to be complied with by libraries;
- (i) the development of departmental libraries of the Province, subject to the condition that such departments must provide funding for such libraries;
- (j) the determination of requirements which Provincial departments must meet in order to obtain assistance from the service;
- (k) to take such steps and measures as he or she may deem fit for the admission to the Service, on such conditions as he or she may determine, of libraries controlled and conducted by a library authority;
- (l) to determine the manner in which any library or library material is controlled or conducted; and
- (n) to perform all such functions as are necessary for the achievement of the objects of this Act.

(2) The Head of Department may, in addition to the powers and functions referred to in subsection (1), visit any library for the purposes of carrying out the provisions of this Act;

Establishment of Provincial Library and Information Services Council

6. There is hereby established a Provincial Library and Information Services Council which has the powers and functions entrusted to it by section 11.

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Appointment and term of office of members of Council

7. (1) The Council must be composed of not more than 9 members appointed by the MEC, subject to subsection (3).

(2) The MEC must ensure that the Council is based on democratic, non-racist and non-sexist principles.

(3) The members of the Council must not be appointed unless the MEC has invited interested parties by notice in a newspaper with wide circulation in the Province, to nominate candidates as prescribed, for consideration by the MEC.

(4) A member of the Council must, subject to subsection (6), hold office for such period, not exceeding 3 years, as the MEC may determine at the time of his or her appointment and must be eligible for reappointment at the termination of his or her term of office.

(5) Upon expiration of the period for which members were appointed, they must remain in office until their successors have been appointed, but in no case for a further period of more than 3 months.

(6) The MEC may, after he or she has afforded a member of the Council the opportunity to make representations, at any time terminate the term of office of such member if -

(a) there are sufficient reasons for doing so;
or

(b) he or she has been absent from more than 2 consecutive meetings of the Council without the prior leave of the chairperson.

(7) If for any reason the office of a member of the Council becomes vacant before the expiration of the period for which he or she was appointed, the MEC may, subject to subsection (3), appoint any other person to fill the vacancy for the unexpired portion of the period for which such a member was appointed.

(8) Members of the Council who are not in the full-time service of the Province may, out of money appropriated by the Legislature for this purpose, be paid reasonable

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subsistence and traveling expenses when attending a meeting of the Council, or a committee thereof, as the case may be.

Meetings

8. (1) The first meeting of the Council must be held at a time and place determined by the MEC, and all subsequent meetings must be held at such times and places as the chairperson may determine.

(2) The chairperson of the Council may at any time, and must on a written request of at least five members of the Council, call a special meeting of the Council to be held at a time and place as determined by him or her.

(3) Five members must form a quorum at any meeting of the Council.

(4) A decision of the Council must be taken by a majority of the votes of members present at any meeting of the Council, and, in the event of an equality of votes on any matter, the chairperson must have a casting vote in addition to his or her deliberative vote as a member of the Council.

(5) The Council may, whenever it deems it necessary to obtain advice in respect of a particular matter, co-opt any person as a member for that specific purpose: Provided that such a person must not be regarded as a member for purposes of subsections (3) and (4).

Chairperson and deputy chairperson of Council

9. (1) The MEC must appoint a member of the Council as chairperson of the Council.

(2) At its first meeting the Council must elect one of its members to be deputy chairperson of the Council.

(3) If the chairperson is absent or is for any reason unable to act as chairperson, the deputy chairperson must perform the functions of the chairperson.

(4) In the event of the absence of both the chairperson and the deputy chairperson from any meeting of the Council, the members present at the meeting must elect one of their number to preside at such meeting.

Committees of Council

10. The Council may appoint one or more committees from members of the community to assist it in the carrying out of its duties.

Powers and duties of Council

11. (1) The Council must advise the MEC on the formulation, development and implementation of a Provincial policy for library and information services.

(2) The Council must implement measures to redress the imbalances of the past relating to the unequal provision of library and information services.

(3) The Council must monitor the rendering of library and information services in terms of this Act and advise the MEC accordingly.

(4) The Council must assist the Directorate to ensure that the Directorate performs the functions allocated to it to the benefit of the Province as a whole.

(5) The Council must annually draw up a budget for its own activities and submit it to the Department.

(6) The Council must advise the MEC on any matter that he or she may refer to the Council or which in the opinion of the Council, should be brought to the notice of the MEC.

(7) The Council must at the end of the year submit to the MEC an annual report on its activities during the year.

(8) The Council must keep books of accounts which must be audited annually by the Auditor General.

Agreements

12. (1) In order to further the objects of this Act, the MEC may enter into agreements with other government departments, spheres of government, non-governmental organisations or any other person, but no agreement placing financial obligations on the Department may be entered into

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without consulting the MEC responsible for finance in the Province.

(2) The MEC may in terms of section 126 of the Constitution assign any power or function relating to library and information service to a Municipal Council.

Regulations

13. (1) The MEC may make regulations with regard to -
- (a) any matter which by this Act is required or permitted to be prescribed;
 - (b) the establishment, maintenance, management, control of library and information services, closure of libraries and the suspension of activities at libraries;
 - (c) the inspection of libraries;
 - (d) the establishment of library committees;
 - (e) the admission of members to libraries;
 - (f) the conditions under which libraries may be admitted to membership of the Service;
 - (g) The loan of library material to libraries and library depots admitted to membership of the Service;
 - (h) the imposition of fines against borrowers of library material in respect of delays in returning such library material, and the recovery of moneys in respect of lost and damaged library material;
 - (i) penalties for any contravention of any regulation, a fine or imprisonment for a period not exceeding six months or both such fine and such imprisonment; and
 - (j) generally any matter, which he or she considers necessary or expedient for achieving the objects of this Act.

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(2) The MEC must not make any regulations as to any fee or allowance payable to or by any person, or as to the control of any moneys, except in consultation with the MEC responsible for finance in the Province.

Delegations

14. (1) The MEC may, subject to such conditions as he or she may determine, delegate any power or duty conferred upon him or her under this Act, except the power to make regulations, to the Head of Department, and the MEC may authorise the Head of Department to delegate that power or duty to any officer in the establishment of the Directorate.

(2) A delegation under subsection (1) must not prevent the MEC or the Head of Department, as the case may be, from exercising such power or performing such duty, as the case may be, himself or herself.

Repeal of laws and savings

15. (1) The following laws are hereby repealed:

(a) Ciskeian Library Services Act, 1980
(Act No.19 of 1980);

(b) National Library Services Act, 1977
(Act No.11 of 1977)(Transkei); and

(c) Provincial Library Services Ordinance,
1981(Ordinance No.16 of 1981).

(2) Anything done or deemed to have been done in terms of a provision of a law repealed by subsection (1) must be deemed to have been done in terms of the corresponding provision of this Act.

Short title

16. This Act is called the Libraries and Information Service Act, 2002(Eastern Cape).

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**EXPLANATORY MEMORANDUM ON THE LIBRARIES AND
INFORMATION SERVICE BILL, 2002 (EASTERN CAPE)****PART 1
(GENERAL PRINCIPLES)****BACKGROUND**

The Department of Sport, Arts and Culture has developed this Bill as part of the rationalization of laws in the Province. The Bill consolidates laws governing the administration of libraries inherited from the former administrations of Ciskei, Transkei and the Cape Province.

POLICY CONTEXT

The Libraries and Information Service Bill, 2002 (Eastern Cape), provides for the establishment of a libraries and information service in the Province, to be administered by Eastern Cape Provincial Library and Information Services Council. The Bill empowers the MEC to determine the amount of subsidy to be paid by the Department to library authorities.

CONSTITUTIONAL IMPACT

The Bill falls within Schedule 4 to the Constitution of the Republic of South Africa 1996 (Act No. 108 of 1996), which is an area of concurrent legislative competence between the Provincial and National levels of Government.

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**PART 2
(CLAUSE-BY CLAUSE ANALYSIS)**

- CLAUSE 1 SETS OUT THE DEFINITIONS**
- CLAUSE 2 PROVIDES FOR APPLICATION OF THE ACT**
- CLAUSE 3 SETS THE OBJECTIVES OF THE ACT**
- CLAUSE 4 SETS OUT POWERS AND FUNCTIONS OF THE MEC**
- CLAUSE 5 SETS OUT POWERS AND FUNCTIONS OF THE
HEAD OF DEPARTMENT**
- CLAUSE 6 PROVIDES FOR THE ESTABLISHMENT OF THE
EASTERN CAPE PROVINCIAL LIBRARIES AND
INFORMATION SERVICES COUNCIL**
- CLAUSE 7 PROVIDES FOR APPOINTMENT AND TERM OF
OFFICE OF MEMBERS OF THE COUNCIL**
- CLAUSE 8 PROVIDES FOR MEETINGS OF THE COUNCIL**
- CLAUSE 9 PROVIDES FOR CHAIRPERSON AND DEPUTY
CHAIRPERSON OF THE COUNCIL**
- CLAUSE 10 PROVIDES FOR COMMITTEES OF THE COUNCIL**
- CLAUSE 11 SETS OUT POWERS AND DUTIES OF THE
COUNCIL**
- CLAUSE 12 PROVIDES FOR THE MEC TO ENTER INTO
AGREEMENTS**
- CLAUSE 13 PROVIDES FOR REGULATIONS BY THE MEC**
- CLAUSE 14 PROVIDES FOR DELEGATIONS BY THE MEC**
- CLAUSE 15 PROVIDES FOR REPEAL OF LAWS AND SAVINGS**
- CLAUSE 16 SETS OUT THE SHORT TITLE**

No. 52

25 October 2002

MUSEUMS BILL, 2002 (EASTERN CAPE)

The above-mentioned Bill is hereby published in terms of rule 153 of the Standing Rules of the Legislature for a period of fourteen (14) days.

Members of the public are invited to submit their comments to the Head of Department, Department of Economic Affairs, Environment and Tourism
Private Bag x54 Bisho 5605

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PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF SPORT, RECREATION, ARTS AND CULTURE

MUSEUMS BILL, 2002 (EASTERN CAPE)

(As introduced)

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE
FOR SPORT, RECREATION, ARTS AND CULTURE)**

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BILL

To provide for the establishment and management of Province-aided and community museums; and to provide for matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape as follows:-

CHAPTER 1**DEFINITIONS****Definitions**

1. (1) In this Act, unless the context indicates otherwise -

“accessions register” means a written record in which all items forming part of a collection are recorded;

“board” means the board of trustees of a Province-aided museum contemplated in section 5;

“collection” means a collection of specimens or objects acquired by or in the possession of a board or management committee for purposes of conservation, research, exhibition or education for the public;

“community museum” means a museum which has been declared in terms of section 22;

“Department” means the Department responsible for the administration of museum matters in the Province;

“district council” means a district council as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“employee” means a person in the services of a board who has been appointed to a non-establishment post in a temporary capacity in terms of section 15 (c);

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“Gazette” means the Provincial *Gazette* of the Province;

“Head of Department” means the administrative head and accounting officer of the Department responsible for museum matters in the Province;

“local authority” means a municipality, in which a museum is either wholly or partially situated;

“local museum” means a Province-aided museum which has a predominantly local emphasis in its programmes and has been declared as such in terms of section 2(5);

“management committee” means the management committee of a community museum in terms of section 24;

“Manager” means the head of the museum and accounting officer responsible for a Province-aided museum appointed on the staff establishment by the Department and the most senior representative of the Department in the museum;

“MEC” means the Member of the Executive Council responsible for museums in the Province;

“museum” refers to an institution collecting, storing, conserving, researching and exhibiting artefacts or natural science specimens for the public benefit and may include any snake park, oceanarium or any institution where live animals are kept for exhibition or display and any vacant land associated with any museum, snake park, oceanarium or any such institution, and on which there are features, whether natural or artificial, of public interest or on which a collection is kept;

“non-establishment post” means a post, other than a post of the staff establishment, in a museum, to which a board may appoint a person in terms of section 15(c);

“official” means a person in the employment of the Department in terms of the Public Service Act, 1994(Proclamation No. 103 of 1994), located at a museum;

“Premier” means the Premier of the Province;

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“prescribed” means prescribed by regulation;

“Province” means the Province of the Eastern Cape established by section 103 of the Constitution;

“Provincial museum” means a Province-aided museum which has a predominantly provincial emphasis in its programmes and which has been declared as such in terms of section 2(5);

“Province-aided museum” means a museum declared to be a Province-aided museum in terms of section 2;

“staff establishment” means the staff establishment of a Province-aided museum as determined in section 14; and

“subscriber” means a person who annually subscribes to the funds of a Province-aided museum an amount fixed by the board of the museum concerned.

CHAPTER 2

PROVINCE-AIDED MUSEUMS

Declaration of a Province-aided museum

2. (1) The management committee, governing body or owner of any museum may apply to the MEC to declare such a museum to be a Province-aided museum, and must in such application furnish the MEC with full particulars as prescribed.

(2) The MEC may, after consideration of any application in terms of subsection (1), cause an inspection of the museum concerned to be made and require the applicant to furnish such further information in respect of the museum which may be deemed necessary.

(3) If the MEC is of the opinion that the prescribed criteria have been met, he or she may by notice in the *Gazette* declare such a museum to be a Province-aided museum and, in consultation with the applicant, assign to the museum an appropriate name.

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(4) The MEC may, in consultation with the board concerned, alter the name assigned to any Province-aided museum under subsection (3) or any such name which has been altered in terms of this subsection.

(5) The MEC must determine whether the museum is to be classified as a Province-aided museum on the basis of the museum programmes, scope of collections, buildings, staffing structure and any such criteria the Department may determine.

Province-aided museum to be under the management and control of a board of trustees

3. (1) A Province-aided museum must be under the management and control of a board of trustees constituted as provided for in section 5 which must be a corporate body with perpetual succession and must, subject to the provisions of this legislation or any other law, by such name be capable in law of suing and being sued, of purchasing or otherwise acquiring, holding, hiring, letting, exchanging, selling or otherwise alienating movable and immovable property, of entering into contracts and generally of doing or performing such acts and things as bodies corporate may by law do and perform.

(2) The board of trustees of a museum must operate within the broad policy framework for museums as determined by the MEC.

Succession

4. Any board constituted in terms of section 5 must for all purposes be deemed to be the successor in title to any management committee, governing body or owner in whom the management and control of the museum vested immediately prior to such constitution and in relation to such museum –

- (a) the ownership of all movable and immovable property and other assets of such managing body must vest in such board;
- (b) all moneys payable to or recoverable by such managing body must be payable to or recoverable by such board; and
- (c) all other rights, privileges, liabilities and obligations of such managing body must devolve upon and vest in such board.

DD2**Constitution of a board**

5. (1) Subject to this section, a board of a local museum must consist of –

- (a) three members appointed by the MEC in the prescribed manner from public nominations;
- (b) one member appointed by the MEC from nominations received from the relevant local authority;
- (c) one member appointed by the MEC from nominations received from the relevant district council in whose area of jurisdiction the museum is partially or wholly located;
- (d) two members elected by subscribers;
- (e) the chief executive officer of the museum; and
- (f) one member elected by the staff of the museum concerned.

(2) Subject to the succeeding provisions of this section, the board of a Provincial-aided museum must consist of –

- (a) six members appointed by the MEC in the prescribed manner from public nominations;
- (b) three members appointed by the MEC from nominations received from the relevant local authority;
- (c) one member appointed by the MEC from nominations received from the relevant district council in whose area of jurisdiction the museum is partially or wholly located;
- (d) two members elected by subscribers;
- (e) the chief executive officer; and
- (f) one member elected by staff at the museum concerned.

(3) The MEC may, in addition to the members of a board appointed in terms of subsections (1) and (2), as the case may be, appoint any person a

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member of any such board by reason of any special services rendered to the museum concerned by such person or by any organization represented by such person or for any other adequate reason.

Tenure of office of board members

6. (1) The terms of office of members of a board appointed by the MEC must be three years, except in the case of a board member elected in terms of either section 5(1) (d) or 5(2) (d), in which case such a board member will hold office until the next election of a subscribers' representative at a meeting held in terms of section 11.

(2) An appointed member must vacate office if he or she –

- (a) resigns in writing;
- (b) has been absent without leave of the board for three consecutive meetings;
- (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine;
- (d) is an unrehabilitated insolvent; and
- (e) is found to be of unsound mind by a competent court.

(3) The MEC may, after consultation with the board, remove a member if in the opinion of the MEC there are sound reasons for doing so.

(4) Any board member whose period of office has expired, other than for reasons set out in subsection (2) or (3), must be eligible for re-appointment or re-election, as the case may be.

Vacancies on board and filling thereof

7. (1) A vacancy of an appointed or elected member must be filled by the appointment or election of a successor by the person or body responsible for the appointment or election of the original member whose position has become vacant.

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(2) The MEC is not obliged to fill vacancies in the office of a member appointed in terms of section 5(3).

(3) Any member of a board who has been appointed or elected in terms of subsection (1) must hold office for the unexpired period of office of his or her predecessor.

Disqualification for membership of a board

8. No person must be eligible for appointment or election to a board if –

- (a) he or she is not a South African citizen unless the MEC has authorised such appointment or election; and
- (b) within the preceding five years he or she has been convicted of an offence and sentenced to imprisonment without the option of a fine.

Quorum

9. The quorum for a meeting of a board must be half the number of board members plus one.

Powers and functions of a board

10. (1) The primary powers and functions of a board in relation to the museum are in respect of management and control of finances of the museum, as a public entity as required by the Public Finances Management Act, 1999 (Act No.1 of 1999).

(2) In addition to the powers and functions referred to in subsection (1), the board must enjoy the following powers and functions –

- (a) to receive, hold, conserve, restore and study all movable and immovable property acquired by it or in its possession for the purposes of the museum;
- (b) to exhibit or display for the benefit of the public such specimens, other objects or collections as it may consider suitable;

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- (c) to maintain an accessions register;
- (d) to decide upon a theme, approved by the Department, for its museum and to conduct and manage the museum with a view to the development of such theme;
- (e) to determine, subject to the approval of the Department, the normal hours of opening and conditions subject to which members of the public may visit the museum or part thereof, and the charges for admission;
- (f) to promote the interests of the museum generally and to ensure community involvement in the museum concerned;
- (g) to develop a museum policy in line the policies of the Department and Provincial government, ensure that a museum strategic plan is compiled and ensure that annual action plans and reports are compiled; and
- (h) generally to carry out the purposes and objects of the museum to the highest professional and ethical standards.

(3) A board must also raise funds or cause funds to be raised and may accept any donation or bequest of any moneys or of any movable or immovable property made to it or its museum, provided that no board must without the approval of—

- (a) the MEC, purchase, hire, sell, let, exchange or otherwise alienate in any manner encumber immovable property; or
- (b) the Head of Department, sell, exchange or otherwise alienate any specimen, object, collection or other movable property recorded in its accessions register.

(4) Each board must, not less than once per year, cause a meeting to be held of itself and the museum staff to review policy, plans and finances and incorporate such agreed upon decisions which are reached in the museum's strategic plan and implementation strategy.

(5) A board may appoint such committees and sub-committees as it may deem necessary or desirable and any such committee or sub-committee

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must exercise such powers and perform such duties and functions as the board may delegate to it or as may be prescribed.

Annual report and annual general meeting of subscribers

11. (1) Every board must as soon as possible after the thirty-first day of March of each year prepare and submit to the MEC a report on its activities and the conduct and management of the museum together with an audited statement of its income and expenditure and balance sheet of the previous year.

(2) Every board must cause a general meeting of subscribers to be held not later than the end of the month of June in each year at which –

- (a) the report and statements contemplated in subsection (1) must be read and, if necessary, discussed; and
- (b) the member or members of the board contemplated in section 5(1)(d) or 5(2)(d), as the case may be, must be elected.

(3) Every subscriber must be given notice of the general meeting referred to in subsection (2) by letter sent to him or her by ordinary post at least fourteen days before the date of such meeting.

Special general meeting of subscribers

12. (1) The chairperson of the board must –

- (a) if required to do so by a petition signed by not less than ten subscribers, in good standing, specifying the purpose of the meeting; or
- (b) if requested to do so by the board,

convene a special general meeting of subscribers on a date not later than twenty-one days after the date of receipt of the petition referred in subsection (1) or after the date of the request referred to in subsection (2), as the case may be.

(2) The provisions of section 11(3) must also apply in the case of a special general meeting contemplated in subsection (1).

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Chairperson at annual and special general meeting of subscribers

13. The chairperson or in his absence, the deputy chairperson of a board must preside at any annual or special general meeting referred to in section 11 (1) and 12(1) respectively; and if both are absent from any such meeting the subscribers present at such meeting must elect any other member of the board to preside at such meeting.

Staff establishment, conditions of service, salaries and allowances

14. (1) The Department must determine the staff establishment of a Province-aided museum and the grading of posts on such establishment in terms of the prevailing public service norms and standards and must make provision on such establishment for a post of manager of the museum concerned.

(2) Staff appointed to posts on the staff establishment of Province-aided museums must be appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and Public Service Regulations of 1999.

(3) The conditions of employment of staff on the staff establishment in a museum shall be prescribed by the Public Service Act, 1994 (Proclamation No.103 of 1994), and Public Service Regulations of 1999 and no board must alter or amend these conditions of employment.

(4) The salaries and allowances of staff appointed in terms of subsections (2) and (3) by the Department must be remunerated from monies appropriated by the Legislature to the annual budget of the Department for this purpose.

(5) Subject to the provisions of section 15 (c), no board must appoint or engage any staff in excess of the staff establishment determined for the museum.

Appointment and termination of services of staff

15. A board may, subject to the provisions of this legislation -

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- (a) recommend candidates to the Department for appointment to the vacancies on the staff establishment;
- (b) recommend to the Department the termination of services of an officer on the staff establishment;
- (c) employ any person at its own cost, with the approval of the Department, additional to the staff establishment of the museum, in a temporary capacity if such employment is necessary –
 - (i) due to illness or absence of the incumbent of a post; or
 - (ii) to provide for the performance of work for which staff is not ordinarily maintained on a permanent basis; or
 - (iii) when such vacant posts cannot be readily filled by the Department.

Subsidies

16. (1) There must be paid by the Department, from moneys appropriated by the Legislature for the purpose, to each board of a Province-aided museum, an annual subsidy as the MEC may generally or specifically determine.

(2) There may be paid by the Department, from moneys appropriated by the Legislature for the purpose, to a board of a Province-aided museum -

- (a) special project funding for which the board submits detailed and motivated requests;
- (b) such amount as the MEC may generally or specifically determine, of the interest and redemption payments on any loan raised by the board under section 19 if the MEC, when approving such loan in terms of such section, has determined that such loan must be subsidisable under this section.

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(3) The amount of any subsidy paid to a board under subsection (1)(a) and (2)(a) and (2)(b) must be used exclusively for the purposes for which it is granted.

(4) In order to obtain any subsidy payable in terms of this section a board must submit in such manner and by such date as the MEC may direct, to the Department, estimates of the subsidisable expenditure of the board for the following year.

(5) On receipt of such estimates as referred to in subsection (4) the Department must determine the approved subsidisable expenditure of the board on the estimates of expenditure submitted and subsidy in terms of subsection (1) must be paid on such approved subsidisable expenditure.

(6) Nothing in this section must be construed so as to preclude a board from spending more than its approved subsidisable expenditure in connection with the museum concerned, but any such expenditure in excess of the approved subsidisable expenditure must be from self-generated funds and must not rank for subsidy.

Raising of loans

17. (1) A board may, subject to the Public Finance Management Act, 1999 (Act No.1 of 1999), and only with the written approval of the MEC –

- (a) raise loans for any purpose it deems necessary or desirable in connection with the exercise or performance of its powers and functions; and
- (b) as security for the repayment of any loan, mortgage or otherwise encumber any property vested in it.

(2) Subject to the provisions of subsections (3) and (4) the MEC may request the MEC responsible for financial matters in the Province to guarantee the repayment of any loan raised under subsection (1) and the payment of any interest thereon.

(3) No guarantee in terms of subsection (2) in respect of a loan raised for the purpose of acquiring immovable property or the erection of a building shall be of force or effect unless and until the immovable property to be

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acquired or on which the building is to be erected, has been registered in the name of the board.

(4) No immovable property registered in the name of a board as contemplated in subsection (3) must be alienated unless—

- (a) any loan raised for the purpose of acquiring such property or the erection of the building concerned, together with any interest thereon, has been repaid in full and all payments made and expenses incurred by the Department in respect of the pursuance of a guarantee in terms of subsection (2) in respect of such loan have been refunded; or
- (b) such guarantee has been cancelled,

whichever occurs the earlier.

(5) The MEC may for the purpose of recovering any payments made and expenses incurred in consequence of a guarantee in terms of subsection (2), withhold any subsidy payable to the board concerned in terms of section 18.

Receipt, management and accounting for finances by a board

18. (1) All moneys received by a board must be accounted for in the prescribed manner and must be managed in terms of Chapter 6 of the Public Finance Management Act, 1999(Act No.1 of 1999).

(2) All moneys held by a board and not immediately required by it in connection with the exercise and performance of its powers, duties and functions shall be deposited by such board with a bank registered in terms of the Banks Act, 1990(Act No. 94 of 1990).

Audit of accounts

19. (1) The accounts of a Province-aided museum must be made up in the prescribed manner and must be audited by the office of the Auditor-General, in terms of Section 58 (1)(a) of the Public Finance Management Act, 1999 (Act No.1 of 1999).

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(2) Copies of the audited accounts must be forwarded to the MEC in terms of Section 61 of the Public Finances Management Act, 1999 (Act No.1 of 1999).

Ordinary meetings of a board

20. (1) A board must hold an ordinary meeting at least once every three months and a copy of the minutes of every such meeting must be forwarded to the manager within thirty days of the meeting at which minutes are approved.

(2) If no ordinary meeting of a board is held during any period of six months the MEC may discharge the members of the board from service on the board in terms of section 6(2)(d) and the provisions of section 7 must thereupon apply in respect of the vacancies arising in consequence of this discharge.

CHAPTER 3

COMMUNITY MUSEUMS

Declaration of a museum to be a community museum

21. (1) The committee of management, governing body, council in control or owner of any museum other than a Province-aided museum may apply to the MEC to declare such museum a community museum.

(2) Upon receipt of any application in terms of subsection (1) the MEC may cause an inspection of such museum to be made in terms of prescribed criteria and may require the applicant to furnish such additional information as may be deemed necessary or desirable.

(3) If the MEC is of the opinion that such museum will, if it is declared to be a community museum, serve the educational and cultural needs of the general public or of a particular community, he or she may by proclamation declare such a museum to be a community museum and, in consultation with the applicant assign a name to such museum.

(4) The MEC may, in consultation with the management committee concerned, alter the name assigned to any community museum under subsection (3) or any such name which has been altered in terms of this subsection.

DD2**Community museum to be under management, control and direction of a management committee**

22. A community museum must be under the management, control and direction of a management committee consisting of –

- (a) two members appointed by the MEC selected from public nominations;
- (b) two members appointed by the local authority in which the museum is either partially or wholly situated; and
- (c) two members elected by subscribers provided there are ten or more subscribers; and in cases where no subscribers representatives can be elected, two members appointed in terms of subsection (2).

Succession

23. Any management committee constituted in terms of this section must, for all purposes, be deemed to be the successor in title to any management body, governing body or owner in whom the management and control of the museum vested immediately prior to such constitution and in relation to such museum –

- (a) the ownership of all movable and immovable property and other assets of such managing body must vest in such management committee;
- (b) all moneys payable to or recoverable by such managing body must be payable to or recoverable by such management committee; and
- (c) all other rights, privileges, liabilities and obligations of such managing body must devolve upon and vest in such management committee.

Tenure of office of members of management committees

24. (1) The members of a management committee must hold office for a period of three years in the case of members appointed in terms of section 24

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(1) and (2) and one year in the case of members elected or appointed, as the case may be, in terms of section 24(3).

(2) Any member of a management committee whose period of office has expired must be eligible for re-appointment or re-election, as the case may be.

Vacancies on a management committee, filling thereof and disqualification for membership of committee

25. The provisions of sections 7 and 8 must apply in respect of any vacancy in the position of a member of a management committee and the appointment or election of a member of such management committee.

Financial assistance to community museums

26. (1) The Department may provide an ad hoc grant to a community museum, as declared in section 22, from monies appropriated by the Legislature of the Province.

(2) Such financial assistance as referred to in subsection (1) will be determined by the Department upon receipt of an application from the community museum concerned, which includes a statement of income and expenditure and budget estimates for the following year and will be provided on the basis of a contract entered into between the Department and the museum concerned.

CHAPTER 4

GENERAL AND SUPPLEMENTARY

Establishment of Museums Advisory Committee

27. (1) The MEC may establish a museums advisory committee as he or she may from time to time determine.

(2) Membership must consist of no fewer than five and no more than nine members, who must be appointed in the prescribed manner after a process of public nomination.

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(3) The functions of the committee must be to advise the MEC or Department, respectively, on such matters relating to museums as may be referred to it by the MEC or Department.

(4) Members of the committee must not receive remuneration for services rendered, but each member of the committee, provided he or she is not an officer, official or employee in the public service, may claim actual expenses from the Department relating to the conduct of the work of the committee.

(5) Members of the committee must hold office at the pleasure of the MEC, for a term of office not exceeding three years.

Regulations

28. The MEC may make regulations in the *Gazette* in respect any matter which he or she is empowered to prescribe in terms of this Act.

Community museum may be established as a Province-aided museum.

29. Any management committee of a community museum may apply to become a Province-aided museum, in which case the procedure in section 2 will be followed.

Dissolution of Province-aided or community museum

30. (1) The MEC may, in consultation with or on the application of any board or management committee, by proclamation and with effect from a date specified in such proclamation, dissolve the Province-aided or community museum concerned.

(2) All assets, liabilities and obligations of the board of a museum which has been dissolved in terms of subsection (1) must be disposed of and met in such manner as the MEC may, in consultation with such board or management committee, direct and the services of members of staff on the official establishment must be dealt with as prescribed.

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Delegation of powers and functions

31. (1) The MEC may delegate any power or function conferred on him or her in terms of this Act to the Head of Department, other than the power to make regulations or to issue proclamations.

(2) The Head of Department may delegate to the manager any power, duty or function conferred or imposed on him or her by this Act, other than the power to authorise the alienation of items from a collection in a museum.

Repeal and savings

32. (1) Subject to the provisions of subsections (2) and (3), the Museums Ordinance, 1975 (Ordinance No. 8 of 1975), and the Transkei Museums Act, 1978 (Act No. 24 of 1978), are hereby repealed.

(2) Any museum declared in terms of legislation repealed by subsection (1) is deemed to have been declared a Province-aided museum in terms of section 2 (5).

(3) Any board of trustees established or constituted, any member of such board appointed or elected, the staff establishment of any museum and the grading of posts on such establishment, the scales of salaries, wages and allowances fixed, any investments made, any loan raised, any proclamation issued, appointment or determination made, approval granted and any act performed or anything done under legislation repealed by subsection (1), prior to the commencement of this Act is deemed to have been established or constituted, appointed or elected, determined, fixed, made, raised, issued, granted, performed or done under the corresponding provision of this Act.

Short title and commencement

33. This Act is called the Museums Act, 2002 (Eastern Cape).

DD2**EXPLANATORY MEMORANDUM ON THE MUSEUMS****BILL, 2002 (EASTERN CAPE)****PART I
(GENERAL PRINCIPLES)****BACKGROUND**

The Department of Sport, Recreation, Arts and Culture has developed a Bill dealing with the declaration of Province-aided and community museums. This Bill forms part of the rationalization process which is currently underway in the Province. Legislation of the former administrations which were inherited by the Province are being consolidated into one piece of legislation.

POLICY ASPECTS

The Museums Bill, 2002 provides for the powers of the MEC to declare Province-aided and community museums in the Province and to provide for the management, administration and staffing requirements thereof. The Bill empowers the MEC to provide for financial assistance to declared museums for the continued protection and preservation of the natural heritage and history of the Province.

CONSTITUTIONAL IMPLICATIONS

The Bill falls within Schedule 5 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), which provides for exclusive Provincial legislative competence.

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**PART II
(CLAUSE BY CLAUSE ANALYSIS)**

- CLAUSE 1 - SETS OUT THE DEFINITIONS
- CLAUSE 2 - EMPOWERS MEC TO DECALRE A PROVINCE-AIDED MUSEUM
- CLAUSE 3 - PROVIDES FOR A BOARD OF TRUSTEES TO MANAGE AND CONTROL A PROVINCE-AIDED MUSEUM
- CLAUSE 4 - PROVIDES FOR SUCCESSION OF BOARD OF TRUSTEES WITH REGARD TO OWNERSHIP OF MOVEABLE AND IMMOVEABLE PROPERTY, MONEYS PAYABLE TO OR RECOVERABLE BY, ALL RIGHTS AND PRIVILEDGES, LIABILITIES AND OBLIGATIONS IN RESPECT OF PERSON OR PERSONS OR BODIES RESPONSIBLE FOR MANAGEMENT AND CONTROL OF MUSEUM PRIOR TO CONSTITUTION OF THE BOARD
- CLAUSE 5 - PROVIDES FOR CONSTITUTION OF THE BOARD
- CLAUSE 6 - PROVIDES FOR TENURE OF OFFICE OF BOARD MEMBERS
- CLAUSE 7 - PROVIDES FOR VACANCIES ON BOARD AND FILLING THEREOF
- CLAUSE 8 - PROVIDES FOR DISQUALIFICATION FOR MEMBERSHIP OF THE BOARD
- CLAUSE 9 - PROVIDES FOR A QUORUM FOR THE MEETING OF THE BOARD
- CLAUSE 10 - PROVIDES FOR POWERS AND FUNCTIONS OF THE BOARD
- CLAUSE 11 - PROVIDES FOR ANNUAL REPORT AND ANNUAL GENERAL MEETING OF SUBSCRIBERS
- CLAUSE 12 - PROVIDES FOR SPECIAL GENERAL MEETING OF SUBSCRIBERS
- CLAUSE 13 - PROVIDES FOR CHAIRPERSON OF THE BOARD TO PRESIDE AT ANNUAL AND SPECIAL GENERAL MEETING OF SUBSCRIBERS

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- CLAUSE 14 - PROVIDES FOR STAFF ESTABLISHMENT, CONDITIONS OF SERVICE, SALARIES AND ALLOWANCES WITH REGARD TO STAFF
- CLAUSE 15 - PROVIDES FOR APPOINTMENT AND TERMINATION OF SERVICES OF STAFF
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No. 53**25 October 2002****EASTERN CAPE ENVIRONMENTAL CONSERVATION BILL, 2002**

The above-mentioned Bill is hereby published in terms of rule 153 of the Standing Rules of the Legislature for a period of fourteen (14) days.

Members of the public are invited to submit their comments to the Head of Department, Department of Economic Affairs, Environment and Tourism
Private Bag x54 Bisho 5605

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PROVINCE OF THE EASTERN CAPE

**EASTERN CAPE ENVIRONMENTAL
CONSERVATION BILL, 2002**

As Introduced

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL
RESPONSIBLE FOR FOR ECONOMIC AFFAIRS,
ENVIRONMENT AND TOURISM)**

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BILL

To provide for the consolidation of the laws relating to environmental conservation and the control of problem wild animals applicable in the Province, the Sea-shore Act, 1935, Mountain Catchment Areas Act, 1970, Environmental Conservation Act, 1989 and the National Environmental Management Act, 1998; to provide for Provincial coastal management; to regulate air quality and waste management in the Province; and to provide for matters incidental thereto.

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CHAPTER 1**INTRODUCTORY PROVISIONS****Definitions**

1. (1) In this Act, unless the context indicates otherwise –

"accredited instructor" in relation to problem animal control, means a qualified problem control hunter or problem animal control officer, who has been accredited by the Department and who can present problem animal control training to others;

"adequately enclosed", in relation to land, means -

(a) enclosed by any fence, wall or obstruction of any kind whatsoever forming an enclosure from which a wild animal, of any species mentioned in the certificate of adequate enclosure issued under section 31 in respect of that land, is unable to escape without breaking it;

(b) enclosed by any natural boundary through or over which a wild animal of a species so mentioned will in normal circumstances not pass; or

(c) enclosed by fences, walls, obstructions or natural boundaries so combined that a wild animal of the species in question is unable to escape from that land;

"angling" means the catching of fish by means of a line and hook or hooks, whether or not any rod, bait or lure is used therewith, but does not include the jigging or snatching of fish;

"angling season", in regard to inland waters, means the period of the year other than the closed season when fish of any defined species may lawfully be caught;

"aquatic fauna" means any wild animal living in inland waters;

"aquatic growth" means any plant which grows or is able to grow in inland waters, and includes the flower, seed, spore, fruit, bulb, tuber, stem or root or any other part of such plant;

"artificial lure or spoon" means a device that by its simulation of life or by its appearance or colour is designed or likely to delude, entice or attract a fish into seizing such device;

"authority" in relation to problem animal control, means a permit issued by the Department, which authorises the holder thereof to conduct a specific act with a wild animal;

"authorization" means any authorization referred to in section 4;

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"baboon" means the species *Papio ursinus*;

"banded tilapia" means the species *Tilapia sparrmanii*;

"bait" means any organic substance, live or dead, used or to be used for attracting or catching a wild animal whether or not it is or is to be used in conjunction with any other implement or substance;

"biltong" means the meat of any wild animal which has been or is being dried, smoked, salted, cured or treated in any other manner for the purpose of preservation, but does not include such meat that has been or is being only chilled or frozen;

"biltong sausage" means sausage, whether dried or not, made wholly or partly of the meat of a wild animal;

"black bass" means any fish of the genus *Micropterus*;

"bluegill sunfish" means any fish of the species *Lepomis macrochirus*;

"buy" includes to barter or to exchange;

"cage" means any place (including a pool of water), structure or other thing that has in any manner been closed or fenced in for the purpose of keeping an animal in captivity, whether it is -

(a) closed or fenced in over the top or not; or

(b) movable or immovable;

"captivity", in relation to any wild animal other than a fish, means the holding of such animal captive in an enclosure or elsewhere in such a way that it is unable to maintain itself by natural means;

"capture", in relation to any wild animal, means to capture, catch or take such animal by any means whatsoever or to attempt to do so;

"carcass", in relation to any wild animal, means the whole or any part of the carcass including any meat or flesh (whether dried, smoked, salted or treated in any way) or the head, tooth, horn, shell, scale, tusk, bone, feather, tail, claw, paw, hoof, skin, hide, hair or viscera and includes the egg;

"carp" means the species *Aristycthis mobilis*, *Ctenopharyngodon idellus*, *Cyprinus carpio*, *Hyopophthalmichthys molitrix* or *Mylopharyngodon piceus*;

"cast-net" means a net (also known as an umbrella-net or throw-net), with or without weights on the perimeter thereof, that is cast on water so that it opens and sinks in the water;

"catch", in relation to a fish, means to take out of water or bring to land in any manner whatsoever or to possess in a net, whether or not the net is in the water, or to be in possession in or on any boat or on land, and includes any injuring, immobilizing or killing of such fish or attempting to take, injure, immobilize or kill or to pursue or disturb willfully any such fish;

"cattle egret" means the species *Bubulcus ibis*;

"certificate" means a certificate issued under this Act;

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"client" means, in relation to the hunting of a wild animal, a person who is not a South African citizen and who pays or otherwise rewards another person for or in connection with such hunting;

"closed season", in relation to a wild animal, means any period of the year during which hunting may not take place except in accordance with the provisions of a notice published under section 22 by the MEC in the *Gazette*, and, in relation to a fish, means any period of the year during which the catching of such fish may not take place except in accordance with the provisions of a notice published under section 55 by the MEC in the *Gazette*;

"coastal management area" means the coastal management area referred to in section 100;

"competency certificate" in relation to problem animal control, means a certificate that is issued by the Department, to a person who has passed an approved course in problem animal control;

"confiscate" means to appropriate to the state as a penalty;

"Council" means the Provincial Environmental Advisory Council established by section 11;

"coyote getter" means an approved appliance which projects poison when the trigger mechanism is activated by a problem animal;

"cultivate", in relation to indigenous flora, means the artificial reproduction of such flora in any manner whatsoever;

"daily bag limit" means the number of any species of protected wild animal or of fish determined in a notice issued in terms of section 58, as the case may be;

"defined area" in relation to litter, means -

- (a) the road reserve of a public road, and the land situated within 150 meters from the boundaries of such reserve in so far as such reserve or land is not situated within the area of jurisdiction of a metropolitan or urban local authority;
- (b) land which is in the possession or under the control of the Provincial Government; or
- (c) an area that has been declared a defined area by the MEC by notice in the *Gazette*;

"Department" means the department responsible for the environment in the Province;

"director of a professional hunting school" means a person who presents and conducts a prescribed course to instruct and assess a person wishing to be authorized as a professional hunter or hunting outfitter under section 44;

"electronic transponder"(Microchip) means an electronic device transmitting a radio signal;

"endangered flora" means any flora of a species mentioned in Schedule 4 or defined as endangered flora, specially protected indigenous flora or a specially protected plant in terms of a corresponding law in operation in another province of the Republic provided that it shall not include any flora of a species mentioned in

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Schedule 5 of this Act and defined as endangered flora, specially protected indigenous flora or a specially protected plant in terms of a corresponding law in operation in another province of the Republic;

"endangered wild animal" means any animal of a species mentioned in Schedule 1 or defined as an endangered wild animal, specially protected wild animal, specially protected game or specially protected bird in terms of a corresponding law in operation in another province of the Republic, provided that it shall not include any animal of a species mentioned in Schedule 2 of this Act and defined as an endangered wild animal, specially protected game, specially protected wild animal or specially protected bird in terms of a corresponding law in operation in another province of the Republic;

"Environmental Conservation Officer" means an Environmental Conservation Officer appointed in terms of section 7(1), or who is otherwise an Environmental Conservation Officer as contemplated in subsection (2) or (6) of section 7;

"Environmental Conservation Ranger" means an Environmental Conservation Ranger appointed in terms of section 10;

"exotic", in relation to any fauna or flora, means a species which occurs in a free state in nature anywhere save in the Republic, including any such species that has been introduced and become naturalized in the Republic or has been altered in any way by the direct or indirect manipulation of its genetic material;

"export" means to export from the Province;

"fauna" means any wild animal;

"firearm" includes any airgun or dart gun;

"fish" means any aquatic fauna (other than an amphibian, reptile, bird or mammal) whether vertebrate or invertebrate, and includes the egg, spawn or larvae of any such animal;

"fish hatchery" means any inland waters in which fish whether indigenous or exotic are cultivated and propagated or acclimatized;

"flora" means any plant including the whole or any part of the plant whether dead or dried or not, but does not include a plant declared to be a weed or invader plant under section 2(3) of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983), or a domesticated species or cultivar;

"full-time employee" means any employee who is employed full-time on a monthly basis and is in receipt of a salary or wage which is in accordance with local tariffs for the kind of work done by him or her;

"Fund" means the Provincial Environmental Management Fund referred to in section 102, and includes any corresponding fund established in terms of a law repealed by this Act;

"fyke-net" means a device made of rings or hoops over which a net, wire netting or any other material has been spread, or which is made of wire only, and has one or more funnel-shaped openings, and includes anything that, whether attached to such device or not, is used to guide fish to any funnel-shaped opening in such device;

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"game bird" means any bird that is a protected wild animal and may be hunted during the hunting season determined for such bird;

"Gazette" means the Provincial Gazette of the Province;

"gill-net" means a net which is set upright in water with the result that a fish can become caught or entangled therein, whether or not such net drifts or is attached to anything and which may or may not be anchored to the bed of the water;

"Head of Department" means the Head of the Department;

"high water mark" means the highest mark reached by the water of the sea on the land during the stormiest period of the year, excluding exceptional or abnormal floods;

"hiker" means any person who as a hiker makes authorized use of any part of the hiking trail system;

"hiking trail system" means the hiking trail system referred to in section 14;

"Honorary Environmental Conservation Officer" means any person appointed as such under section 9;

"hunt", in relation to a wild animal, means by any means whatsoever to hunt or search for, to kill, capture or attempt to kill or capture, or to pursue, follow or drive with intent to kill or capture, or to shoot at, poison, lie in wait for or willfully disturb;

"hunting outfitter" means a person who for reward promotes or organizes the hunting of a wild animal for a client;

"hunting season" means the period in each year determined by the MEC in terms of section 22 during which a species of protected wild animal may be hunted under the authority of a permit or licence;

"identity number" means an identity number as defined in section 1 of the Population Registration Act, 1976 (Act No. 24 of 1976), or in a corresponding law in operation in another State;

"implement", in relation to a fish, means any instrument, apparatus or device used for, or in, the catching of fish;

"indigenous," in relation to fauna or flora, means an animal or plant of a species that occurs in a free state in nature in the Republic, whether or not it is or has been kept in captivity or cultivated, as the case may be, including any such fauna or flora that has been altered in any way by the direct or indirect manipulation of its genetic material, but does not include a species that has been introduced and become naturalized in the Republic;

"inland waters" means all waters which do not permanently or at any time during the year form part of the sea;

"jet ski" means any vessel propelled by means of a water jet;

"jigging" means the catching of fish by the jerking in water of an implement consisting of, or fitted with, a hook with the intention of impaling fish thereon, but does not include a spoon or other artificial lure used for angling, and "snatching" bears a corresponding meaning;

"landing net" means a net attached to a frame in such a manner as to leave an opening not exceeding six hundred and ten millimeters measured in a straight line

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between any two points on the perimeter of the frame and which is used only for lifting out of the water a fish caught by angling;

"Legislature" means the Provincial Legislature of the Province;

"licence" means a licence issued under this Act;

"licencing authority" means a licencing authority as defined in section 1 of the Licences Ordinance, 1981 (Ordinance No. 17 of 1981);

"litter" means any refuse, rubbish, garbage, rubble or any abandoned or discarded article, fluid, matter, substance or thing;

"local authority" means a municipality as contemplated by section 151 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), or a district council;

"magistrate" includes an additional magistrate and an assistant magistrate;

"MEC" means the Member of the Executive Council responsible for environment in the Province;

"National Problem Animal Policy Committee" means a committee, made up of representatives from all the provinces in South Africa, which is responsible for problem animal control;

"net" means a fyke-net, cast-net, crab-net, landing-net, staked net or beach-seine net;

"noxious aquatic growth" means any species of aquatic growth mentioned in schedule 6;

"officer" means an officer as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"owner" means -

(a) in relation to land -

- (i) the person in whom is vested the legal title thereto;
- (ii) where the legal title thereto is vested in an association of persons, whether corporate or unincorporate, the person designated by such association in writing as the owner thereof;
- (iii) in the case of land under the control or management of a local authority, the local authority concerned;
- (iv) in the case of State land not under the control or management of a local authority or held in trust by the Minister of Land Affairs, the Minister of the Department of State or Premier having control or management thereof or any officer designated by such minister or Premier for the purpose;
- (v) controlled by a community, the executive body of the community in terms of its constitution or any law or custom;
- (vi) In relation to state land controlled by a lessee or other person as an order of a High Court-

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(i) the minister of a government department, or the member of the executive council of the Provincial Administration exercising control over that state land, or;

(ii) a person authorized by him or her.

(vii) in the case of land not occupied by the owner as contemplated by subparagraph (i), the person who is in actual occupation of the land, who exercises general control over such land and who has been authorized in writing by the owner as contemplated by the said subparagraph to exercise the rights conferred on an owner of land by this Act;

(viii) where the owner as contemplated by subparagraph (i), (ii) or (vii) is dead or insolvent or has assigned his or her estate for the benefit of his or her creditors or has been placed under curatorship by an order of court or is a company being wound up or under judicial management, the person in whom the administration of such land is vested as executor, administrator, trustee, assignee, curator, liquidator or judicial manager, as the case may be;

(b) in relation to inland waters, the owner as contemplated by paragraph (a) of the land on which the waters concerned are situated or which abuts on such waters; and

(c) in relation to any vessel includes the lessee, master or skipper of such vessel;

"peace officer" means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"performing wild animal" means any animal lawfully kept in captivity in order to perform for the entertainment of the public;

"permit" means a permit issued under this Act;

"pick", in relation to any flora, includes to cut, chop off, take, gather, pluck, break or damage such flora or to extract or tap the sap thereof, but does not include the uprooting or destruction of such flora;

"poison" means any poison, preparation or chemical substance used to catch, immobilize, sterilize, kill or physically harm an animal, whether registered in terms of any law or not;

"police official" means a member of the South African Police Service as contemplated in section 12 of Proclamation No 5 of 1995;

"Premier" means the Premier of the Province;

"prescribed" means prescribed by regulation made under this Act;

"prescribed tin" means a tin or other similar appliance of whatever material it is made which has a circular opening of not less than one hundred and fifteen millimeters in diameter and by means of which bait is squeezed out by the application of pressure on the river-bed or river bank;

"private inland waters" means any dam, reservoir, vlei or other inland waters completely surrounded by private land owned by one owner or completely

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surrounded by State land occupied under a traditional and communal form of tenure;

"private land" means land other than land owned or controlled by the State;

"problem animal control hunter" means a person declared competent after he or has been tested in terms of this Act, to use certain control methods and appliances in order to control problem animals which causes damage;

"problem wild animal" means any species of wild animal mentioned in Schedule 3;

"professional hunter" means any person who for reward escorts or agrees to escort a client to enable him or her to hunt a wild animal ;

"protected flora" means any flora of a species mentioned in Schedule 5 or defined as protected flora, a protected plant or a protected indigenous plant in terms of a corresponding law in operation in another province of the Republic, provided that it shall not include any species of flora mentioned in Schedule 4 of this Act and defined as protected flora, a protected plant or a protected indigenous plant in terms of a corresponding law in operation in another province of the Republic;

"protected wild animal" means any animal of a species mentioned in Schedule 2 or defined as a protected wild animal, protected game or game in terms of a corresponding law in operation in another province of the Republic, provided that it shall not include any animal of a species mentioned in Schedule 1 of this Act and defined as a protected wild animal, protected game or game in terms of a corresponding law in operation in another province of the Republic ;

"Province" means the Province of Eastern Cape established by section 103 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)

"public road" means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"registered protected flora grower" means a person who has been registered as a flora grower and holds a licence issued to him or her in terms of section 81(3)(a);

"registered protected flora seller" means a person who has been registered as a flora seller and holds a licence issued to him or her in terms of section 80;

"regulation" means a regulation made under this Act;

"relative", in relation to the owner of any land, means the spouse, parent, step-parent, adoptive parent, son-in-law, daughter-in-law, child, step-child, adopted child, brother, sister and grandchild of such owner provided that in relation to an owner of land which is an unincorporate association of persons, "relative" means the relative as hereinbefore defined of every member of such association;

"rock dassie" means the species *Procavia capensis*;

"sea" means the water and the bed of the sea below the high water mark and situated within South African waters;

"sea-shore" means the water and the land between the low-water line and the high-water mark;

"seedling", in relation to a species of the genus *Encephalartos* or *Stangeria*, means a plant of such species that has been cultivated from seed and the stem of which does not exceed 15 cm in diameter, except a seedling of the species *E.*

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cupidus, *E. humilis* or *E. ngoyanus* that has been cultivated from seed and the stem of which does not exceed 70 mm in diameter;

"sell" includes to hawk, peddle, barter, exchange or dispose of for a consideration or to offer, advertise, expose or possess for the purpose of selling, hawking, peddling, bartering, exchanging or otherwise disposing of for a consideration;

"setline" means a line and hook with or without any bait or lure that, used for catching fish, is not manipulated directly by any person, but does not include a line and hook attached to a reel or rod lying loose on or fixed into the ground, or on a vessel;

"shell" means the shell or any portion of the shell of an animal found in inland waters, the sea or on the sea-shore;

"solid", in relation to firearm ammunition, means any bullet that does not expand to a size bigger than the calibre concerned;

"species" includes any sub-species, geographic race, variety or form of a species but does not include a hybrid between species;

"staked net" means a net (also known as a set net, gill-net, or drift-net), with or without weights or floats, set upright in water and in which a fish may become caught or entangled, whether or not such net drifts or is attached to anything;

"State forest" means a State forest as defined in section 1 of the National Forests Act, 1998 (Act No. 84 of 1998);

"this Act" includes regulations

"trap" means any trap, spring trap, snare, cage, net or pitfall and includes birdlime, a mist net and any other device, method or substance whatsoever which can be used or adapted for the capture of any wild animal;

"Treasury" means the Provincial Treasury of the Province mentioned in Schedule 2 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"trout" means any species of the family *Salmonidae*;

"unprotected indigenous flora" means any species of indigenous flora that is not endangered flora or protected flora;

"use" includes cause or permit to be used;

"vagrant dog" means any dog that trespasses on land and, while thus trespassing, is not under the supervision of its owner or a person authorized by such owner;

"vehicle" means any form of conveyance used on land, whether powered by a motor engine or not;

"vervet monkey" means the species *Cercopithecus aethiopicus*;

"vessel" includes any canoe, lighter, floating platform, decked boat, carrier vessel, vessel equipped with an inboard or outboard motor or any other craft or boat, whether a surface craft or submarine;

"waters" includes any body of water or watercourse of any kind, whether occurring naturally or artificially created, and the bed of such waters;

"weapon" means -

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(a) any firearm and includes any ammunition for such firearm; or

(b) any other instrument that is capable of propelling a projectile, or that can itself be propelled or used, in such a way that a wild animal may be killed, injured or immobilized thereby,

and includes any spear, club, spear gun, assegai, bow and arrow, crossbow, axe, bush-knife, knife or similar instrument, any narcotic whatsoever or any other object which can be used to kill, injure or immobilize a wild animal;

"wild animal" means any vertebrate or invertebrate animal (including the egg or spawn of such animal) belonging to a non-domestic species, and includes any such animal which is kept or has been born in captivity or has been in any way altered by the direct or indirect manipulation of its genetic material, but does not include an ostrich used for farming purposes or the egg thereof, and game has a corresponding meaning.

"wilderness area" means an area not less than 5 000 hectares in extent where man-made structures and other forms of human interference with ecological processes, fauna, flora or other natural features of the landscape erected or effected since the year 1900, are not evident or are of a temporary or transitory nature; and

"year" means a period of twelve months.

Objectives and principles

2. The MEC must, in exercising any power under this Act, have regard to the following objectives and principles:

- (a) The need to achieve optimum and ecologically sustainable development of the environment;
- (b) the need to conserve the environment and its living natural resources for both present and future generations;
- (c) the need to apply precautionary approaches in respect of the management and development of the environment and its living natural resources;
- (d) the need to utilize the environment and its living natural resources to achieve sustainable economic growth, human resource development, employment creation and a sound ecological balance consistent with the development objectives of the Provincial government;
- (e) the need to protect the ecosystem as a whole, including species which are not exploited;
- (f) the need to preserve biodiversity;
- (g) the need to minimize pollution of the air, soil and water;
- (h) the need to achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act; and

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- (i) the need to fulfill any relevant obligation of the Provincial government under an international agreement or applicable rule of international law.

MEC's powers to determine general policy

3.(1) The MEC may, by notice in the *Gazette*, determine the general policy for achieving the objectives and complying with the principles mentioned in section 2.

(2) The MEC may at any time by notice in the *Gazette* substitute, withdraw or amend the policy determined in terms of subsection (1).

CHAPTER 2

ADMINISTRATION

Administration

4.(1) Any authorization required by this Act, whether as a permit, licence or other authorization, may be issued by the Head of Department or other competent authority in prescribed form and subject to conditions as may be prescribed.

(2) Such authorization must –

- (a) not be transferred, or be capable of being transferred, by the holder thereof to any other person;
- (b) confer on its holder only such authority, right or privilege and be applicable only in respect of such area and for such period as may be specified therein: Provided that, if no period is so specified, the authorization shall be valid for twelve months from the date of issue thereof unless it is sooner withdrawn or canceled; and
- (c) be available for inspection at all reasonable times at the place where the act authorized thereby is executed.

(3) No copy, other than a duplicate issued by the Head of Department or his or her delegatee, of such permit, licence or other authorization however made must be offered or accepted as proof of its issuance.

(4) The Head of Department may at any time amend the conditions of an authorization.

(5)(a) The Head Of Department may at any time in writing withdraw or cancel any authorization issued if -

- (i) the holder has failed to comply with any condition thereof or has been convicted of any offence under this Act or a corresponding law in operation in another province of the Republic;

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(ii) he or she is of the opinion that the withdrawal of such authorization is in the interest of environmental conservation generally or of the protection of the environment or any natural resource.

(b) Upon withdrawal of an authorization the holder thereof must –

(i) forthwith, on receipt of written notification of such withdrawal, surrender the authorization to the Department; and

(ii) not be entitled to refund of any fee or charge or portion of any fee paid in respect of such authorization.

(c) The conditions that may be determined or specified in terms of subsection (1) may include the payment of a fee or charge determined by the MEC in consultation with the member of the Executive Council responsible for finance in the Province.

General powers of the Department

5.(1) The Department may, out of moneys appropriated for the purpose, received in payment of fees, services and other charges or transferred from the Fund and in the interests of environmental conservation -

(a) carry out investigations and projects, make surveys and conduct experiments or cause such to be carried out, made or conducted on its behalf in connection with any fauna or flora or its habitat and may for such purpose acquire such property, whether movable or immovable, as may be necessary or desirable for the purpose;

(b) by educational means promote understanding and awareness of environmental conservation amongst the people of the Province;

(c) publish or in any other manner disseminate information relating to the matters dealt with in this Act which it acquires in the course of its activities and which may serve to further the achievement of the aims and objects of this Act;

(d) take such measures as it may deem necessary or desirable in connection with the protection, breeding or distribution of fauna that are not exotic wild animals, the hatching or acclimatization of indigenous fish, the stocking and restocking of any waters with indigenous fish, the protection, propagation or cultivation of indigenous flora, the control of problem wild animals and the control of fish and aquatic growth;

(e) erect and maintain on any land, (with prior consultation) or in any waters such beacons, notice boards, buoys, signs or other marks, as prescribed in the South African Manual for Outdoor Advertising Control (SAMOAC), as it may deem necessary for the purposes of this Act; or

(f) generally, do all such other things as are necessary for the achievement of the aims and objects of this Act, the generality of the powers conferred by this paragraph not being limited in any way by the provisions of the preceding paragraphs.

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(2) Any person generally or specially authorized thereto in writing by the Head of Department may, for any purpose mentioned in subsection (1)(d) or (e) -

- (a) enter upon the land or waters in question with such employees, assistance, animals, vehicles, appliances and instruments as may be required;
- (b) make use of any natural material, including water, found on such land or in such waters; and
- (c) cut any vegetation growing wild in the vicinity of any such beacon, buoy, notice, notice board, sign or other mark.

(3) Any person referred to in subsection (2) must, prior to the exercise by him or her of any power mentioned in the said subsection, give reasonable notice, in writing and by Registered mail, to the owner or occupier of the land or waters concerned of his or her intention to exercise such powers.

(4) The powers specified in subsection (2), except paragraph (c) thereof, may also be exercised in or in respect of any local authority or private nature reserve.

Head of Department's powers

6.(1) If the Head of Department at any time -

(a) considers it necessary or desirable that special measures should be taken to ensure the survival of any species of fauna or flora, he or she may, after consultation with the owner of any land on which such fauna or flora is found -

- (i) cause such number of either or both sexes of such animal to be captured or such number or quantity of the plants, seeds or other parts of such flora to be picked or gathered as he or she may deem necessary for the purpose of preserving or propagating such animal or such flora and thereafter cause the same to be removed to a provincial nature reserve or other place;
- (ii) take such steps as may be required for the preservation or propagation on the land in question of such species of fauna or flora, as the case may be;
- (iii) give reasonable notice to such owner of the time when, the place where and the manner in which it is proposed to capture, pick, gather, preserve, cultivate or propagate the fauna or flora referred to in subparagraph (i): Provided that the provisions of this subsection shall not apply in respect of the owner of any land to which any such animal may flee while being pursued for the purpose of being captured in terms of this section;
- (iv) in writing authorize such person as he or she may deem necessary to enter upon the land referred to in subparagraph (i) and to capture, pick or gather the fauna or flora or to take the required measures for the preservation, cultivation and propagation thereof as contemplated in subparagraph (ii) and any such person may, subject to the provisions of

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subparagraph (iii), thereupon enter upon such land and capture, pick or gather such animals or flora or take such measures thereon;

- (v) on the application of the owner of any land referred to in subparagraph (i), pay to such owner such compensation in respect of the fauna or flora removed from his or her land in terms of the said subsection or any other damage suffered by him or her in consequence of the exercise of the powers contemplated by this section as the MEC may deem reasonable in the circumstances;
- (b) is of the opinion that any fish or aquatic growth found in any waters on any private land is injurious in any respect he or she may -
 - (i) in writing order the owner of such land to take such measures as he or she may specify to catch or kill such fish or to destroy such growth;
 - (ii) if requested thereto by such owner, render such assistance to such owner as the Head of Department may deem necessary for the purpose of enabling the owner to comply with such order.

(2) If the owner of private land referred to in subsection (1)(b) refuses, or within a period of six months from the date of the order fails, to comply with an order given in terms of subsection (1)(b)(i), the Head of Department may cause the fish or growth concerned to be caught, killed or destroyed, as the case may be, and thereafter recover the costs concerned in whole or in part from such owner.

(3) If the Head of Department is of opinion that any species of wild animal found on any land -

- (a) is likely to be dangerous to human life;
- (b) is wounded, diseased or injured;
- (c) is killing livestock or other animals or causing damage to crops or other property, whether movable or immovable;
- (d) should be hunted in the interests of nature conservation; or
- (e) is detrimental to the preservation of fauna or flora,

he or she may cause such animal, or such number of such species as he or she may determine, to be hunted on such land or on any other land to which such wild animal may flee while being pursued for the purpose of being hunted in terms of this subsection.

(4) The provisions of subsections (3) and (4) of section 3 must apply in respect of the exercise of the powers conferred on the Head of Department by subsection (1) of this section.

(5) The ownership in the carcass of any wild animal killed during a hunt in terms of subsection (1) must vest in the Department.

(6) Any person who resists, hinders or willfully obstructs any person in possession of the written authority of the Head of Department issued under subsection (1)(a)(iv) in the exercise of his or her powers or functions under that subsection shall be guilty of an offence.

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Desination of Environmental Conservation Officers

7.(1) The Head of Department may, subject to the law governing the Department and the provisions of subsections (2) and (3), designate officers on its staff as Environmental Conservation Officers for the carrying out of the provisions of this Act.

(2) Every police officer must be deemed an Environmental Conservation Officer *ex officio*.

(3) The Head of Department must cause to be issued to every Environmental Conservation Officer, other than a police officer, a certificate of designation, and whenever the holder of any such certificate exercises or performs any power, duty or function under this Act, he or she must, at the request of any person affected thereby, produce the certificate to such person for inspection.

(4) A certificate of designation issued under subsection (3) must remain valid, in the case of -

(a) an Environmental Conservation Officer, until he or she ceases to be employed by the Department or the local authority concerned, as the case may be, or until withdrawn by the Head of Department, whichever is the shorter period; and

(b) an honorary Environmental Conservation Officer, for the period specified in the certificate.

(5) An environmental conservation officer may in the exercise of the powers or the performance of the duties conferred or imposed on him or her by or under this Act, take with him or her one or more assistants who must, whilst under his or her direction, be deemed to be environmental conservation officer, as the case may be.

(6) The MEC may, with the concurrence of the Minister of Defence, designate certain ranks in the South African National Defence Force as temporary Environmental Conservation Officers: Provided that any person so designated must -

(a) be furnished by the Department with a certificate of designation showing his or her rank, name and number and the duration of such designation; and

(b) whenever he or she exercises any power or performs any duty or function in terms of this Act, he or she must at the request of any person affected thereby, produce that certificate to such person for inspection.

(7) Any person designated as a temporary environmental conservation officer in terms of subsection (6) must during the period of such designation exercise the powers and functions of an Environmental Conservation Officer.

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Powers and Duties of Environmental Conservation Officers

- 8.(1) An Environmental Conservation Officer, including an Environmental Conservation Officer *ex officio*, must, in relation to any offence or suspected offence under this Act, be deemed to be a peace officer as contemplated in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2) An Environmental Conservation Officer may -
- (a) arrest any person whom he or she reasonably suspects to have committed an offence under this Act;
 - (b) in making such arrest, must-
 - (i) not use more force than is reasonably necessary if the arrest is resisted;
 - (ii) respect the constitutional rights of the person arrested;
 - (c) demand from any person performing, or whom he or she reasonably suspects of having performed, any act for the performance of which a licence, permit, exemption, order or the written permission of the owner of land or of any other person is necessary under any provision of this Act, the production of such licence, permit, exemption, order or permission;
 - (d) question any person who in his or her opinion may be able to furnish any information required by him or her in connection with the enforcement of any provision of this Act and for that purpose demand that any vehicle, vessel, boat, craft, float, aircraft or other means of conveyance be brought to a standstill;
 - (e) demand from any person who is required under this Act to keep any book, statement or invoice the production of such book, statement or invoice;
 - (f) conduct any investigation he or she considers necessary in order to ascertain whether any provision of this Act is being complied with by any person, and may for such purpose with a warrant or with the consent of the owner or person in control, enter upon any land, premises, vehicle, place, building, tent, vessel, boat, craft, float, aircraft or other means of conveyance and there-
 - (i) carry out such inspection and investigation as may be necessary including an inspection or investigation of any container or other thing found thereon or therein;
 - (ii) seize anything which may, in his or her opinion, afford evidence of the commission of an offence under this Act;
 - (iii) seize and confiscate any wild animal that is found in possession of or being kept in captivity by any person who on demand fails to produce a permit authorizing such possession or keeping, or if such animal is possessed or kept contrary to any condition specified in the permit produced;

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- (g) In the course of any inspection or investigation in the exercise of his or her powers and the performance of his or her functions under this act, demand that any vehicle, vessel, boat, craft, aircraft or other means of conveyance be brought to a standstill and be kept stationary until he or she has searched it.
- (3) An Environmental Conservation Officer or ranger who seizes anything under any provision of paragraph (f) must, report such seizure to the police.
- (4) The Head of Department may delegate any of the powers that he or she has in terms of this act.

Designations and powers of Honorary Environmental Conservation Officers

9. (1) The Head of Department may appoint any person he or she considers suitable as an Honorary Environmental Conservation Officer for the carrying out of the provisions of this Act.

(2) Every Honorary Environmental Conservation Officer must have, and may exercise, all the powers conferred on an Environmental Conservation Officer by subsections (1) and (2) of section 8.

(3) The provisions of section 7(3) shall apply in respect of the appointment of an Honorary Environmental Conservation Officer.

(4) When an Honorary Environmental Conservation Officer takes with him or her an interpreter or assistant as contemplated by section 7(3), such interpreter or assistant must be deemed to be an Honorary Environmental Conservation Officer.

Designation of Environmental Conservation Rangers by the Department and local authorities

10. The Department or a local authority may, subject to the law governing the appointment of employees of such authority designate so many persons in its employ as it may deem expedient as environmental conservation rangers for the carrying out of the provisions of this Act within the area or areas of jurisdiction of such authority: Provided that the provisions of subsections (3), (4) and (5) of section 7 shall apply in respect of such designations.

CHAPTER 3

PROVINCIAL ENVIRONMENTAL ADVISORY COUNCIL

Establishment, functions and duties of Council

11. (1) There is hereby established a council to be known as the Provincial Environmental Advisory Council (hereinafter called the Council).

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(2) It is the function and duty of the Council to advise the MEC on any matter -

- (a) on which he or she has to consult the Council in terms of this Act;
- (b) which he or she refers to it; and
- (c) which it deems necessary for the attainment of the objects of this Act.

(3) The MEC must inform the Council of any decision made or action taken in consequence of any advice given by the Council under subsection (2), and in the event that such decision or action is not in accordance with such advice he or she must inform the Council of the reasons therefor.

Constitution of Council

12. (1) The Council must consist of not less than five or more than nine persons, not in the employ of the State, who must be representative of the interests detailed hereunder and who must be appointed by the MEC as follows -

- (a) one person nominated by the Eastern Cape Tourism Board;
- (b) three persons representing natural sciences;
- (c) not more than three persons representing non-governmental organizations concerned with the conservation of the environment in the Province;
- (d) two other persons may be appointed with the view to making the board representative of the people of the Province.

(2) The MEC may, during the absence or incapacity of any member of the Council, appoint a person to act as substitute for such member, and while so acting such substitute shall for all purposes be a member of the Council.

(3) Appointments of members must be subject to such conditions, including tenure of office, with a maximum of three years, and must be reimbursed for actual expenses incurred.

(4) If any member, without leave of the Council, absents himself or herself from two consecutive meetings of which he or she has been notified, he or she ceases to be a member of the Council.

(5) Any five members must form a quorum at meetings of the Council.

(6) The MEC must annually appoint a chairperson from amongst the members, and whenever the chairperson is absent or for any reason incapacitated, the members present at any meeting must elect from amongst their number a chairperson at such meeting.

(7) The chairperson at any meeting of the Council must have both a deliberative and casting vote.

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(8) A member may not be present at any meeting or take part in any proceedings of the Council while any matter in which he or she directly or indirectly has any interest is being dealt with.

(9) Subject to there being a quorum at any meeting of the Council, any vacancy in the membership of the Council must not invalidate the proceedings thereof.

Powers and staffing of Council

13. (1) The Council may, either for general or specific purposes, appoint from amongst its ordinary members committees of not less than two members each, and the Council may delegate to such committees either absolutely or conditionally such of its functions or duties as it approves.

(2) The Council, or a committee of the Council, may co-opt one or more persons who are not members of the Council to assist it in respect of any function or duty of the Council.

(3) Meetings of the Council may be held from time to time as the Council may decide: Provided that not less than two ordinary meetings shall be held in every calendar year, and that the chairperson may cause a special meeting to be called at any time.

(4) The Head of Department may, subject to the laws governing the Department, be responsible for providing all such officers as may be necessary to assist the council in the performance of its functions, and all such officers shall be under the control of the Head of Department.

F(5) The Department must undertake all administrative work arising out of the performance by the council of its functions.

CHAPTER 4

PROVINCIAL HIKING TRAILS

Provincial hiking trails

14. The hiking trail systems established by section 35 of the Environmental Conservation Decree, 1992 (Decree No. 9 of 1992), of the former Republic of Transkei, and by section 36 of the Nature Conservation Act, 1987 (Act No. 10 of 1987), of the former Republic of Ciskei, shall continue to exist and be included in the Provincial hiking trail system, notwithstanding the repeal of the said Decree and the said Act by section 119 of this Act, and shall consist of -

- (a) main trails;
- (b) supplementary or connecting trails;
- (c) quarters or sites for overnight stays, shelters and other essential amenities; and

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- (c) trail indicators and notices referred to in section 17 and beacons as contemplated in sections 83.

Construction, control and maintenance of Provincial hiking trails

15. (1) The construction of the main trails and any supplementary or connecting trail including the provision of facilities, amenities and other requirements referred to in section 14, must be undertaken by the Department out of moneys appropriated for that purpose by the Provincial Legislature.

(2) The tariff of charges for the use of the facilities and amenities so provided must be determined from time to time by the MEC with the concurrence of the MEC responsible for finance.

Hiking trails over private land

16. (1) Whenever a main trail or any supplementary or connecting trail must necessarily proceed along or traverse private land, or whenever the facilities or amenities referred to in section 14 must necessarily be provided on private land, the right to construct such trail or provide such facilities or amenities may be acquired by the Department by agreement in writing entered into with the owner of such private land.

(2) The agreement contemplated in subsection (1) must provide that -

- (a) the route of the hiking trail must not be surveyed but may be indicated by trail indicators;
- (b) the width of the walking surface of the hiking trail must not exceed one metre;
- (c) the Department may erect along the hiking trail, in addition to indicators referred to in section 14, any warning or other notices that it may deem necessary;
- (d) the limits of the facilities or amenities contemplated in subsection (1), must be demarcated by unsurveyed beacons acceptable to both parties;
- (e) the Department must be responsible for the repair of any soil erosion resulting from the presence of the hiking trail;
- (f) the provisions of section 17 must be made known to hikers in warning notices contemplated in section 14 and in any permit issued to them; and
- (g) that the owner of the private land in question must at all reasonable times admit to such land any officer or employee of the State to enable him or her to exercise on that land any powers vested in him or her by or under this Act.

(3) The Department must as soon as practicable lodge a copy of the aforesaid agreement with the Registrar of Deeds and the Registrar must thereupon endorse upon the title deed of the land filed in his or her office and in

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the appropriate registers and upon the owner's title deed, as soon as it may for any reason be lodged in his or her office, a reference to the agreement.

(4) A hiker on any hiking trail constructed on or over private land by virtue of the provisions of this section must be liable for damage caused by him or her to private property on that land.

(5) This section must not be construed as preventing or prohibiting any person other than the State from providing on private land any facility or amenity, which, under this section, may be provided by the State.

Prohibition of certain activities on hiking trails

17. No person may -

- (a) damage, remove, alter, obstruct, shift or interfere with any trail indicator, notice, quarters for overnight stays or shelter provided under this chapter or obstruct any entrance to the hiking trail system or disturb any hiker on any hiking trail;
- (b) damage, destroy, alter, shift, remove or interfere with any beacon, fence or other boundary mark on land over which a hiking trail is constructed;
- (c) light or assist in the lighting or use, rekindle or add fuel to any fire along or on the hiking trail system except at a place provided or designated for that purpose;
- (d) without authorization, take, remove, injure, damage, destroy or interfere with any animal, building or crop on land over which the hiking trail is constructed;
- (e) without authorization, hunt any wild animal on or along any hiking trail;
- (f) without authorization, pick, cut, damage, destroy, collect or remove any flora along or on a hiking trail;
- (g) willfully place any name, mark, letter or sign upon any rock, building or flora along or on the hiking trail system or carve any name, mark, letter or sign into any of the same; or
- (h) deposit or leave, at a place other than a place set aside for that purpose on a hiking trail, any rubbish, refuse, empty container or packaging.

CHAPTER 5

PROTECTION OF WILD ANIMALS OTHER THAN FISH

PART I: HUNTING, CAPTURE, DONATION AND POSSESSION OF WILD ANIMALS

Application of Chapter 5

18. For the purposes of this Chapter the term "wild animal" shall not include any fish.

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Miscellaneous provisions relating to endangered wild animals

19. (1) Notwithstanding anything to the contrary contained in this Act, no person may, without a permit -

- (a) import into, export from or transport in or through the Province, hunt, capture, be in possession of, control, buy, sell, donate or receive as a donation any live endangered wild animal;
- (b) import into, export from or transport through the Province, be in possession of, control, buy, sell, donate or receive as a donation the carcass (whether untreated, processed, prepared, cured, tanned or treated in any other manner whatsoever) of any endangered wild animal;
- (c) process, prepare, cure, tan or in any manner whatsoever treat the carcass of any endangered wild animal for the purpose of -
 - (i) manufacturing any article therefrom,
 - (ii) exhibiting such carcass or any article manufactured therefrom, or
 - (iii) mounting such carcass;
- (d) remove, willfully disturb or interfere with or destroy or sell or offer for sale or purchase the egg of any endangered wild animal, or willfully damage or interfere with the nest of any endangered wild animal.

(2) Subsection (1) must not be construed as prohibiting the possession without a permit by any owner of private land of any endangered wild animal, but not including a rhinoceros, living in a natural state on such land.

(3) A person to whom a permit has been issued in terms of subsection (1)(a) to transport or capture a live endangered wild animal must, while carrying out such transport or capture, comply with the requirements of the South African Bureau of Standards.

Hunting of wild animals in captivity

20. No person may hunt any wild animal that is in captivity except on the authority of a permit issued by the Department.

Hunting of wild animals and protected wild animals

21. (1) Subject to the provisions of subsections (2) and (3) no person may hunt any species of protected wild animal -

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- (a) during any hunting season determined under section 22 in respect of such species, unless he or she is the holder of a permit or of a licence in the prescribed form issued to him or her by the Head of Department or any person authorized by the Head of Department to do so, on payment of the prescribed fee; or
- (b) at any other time unless he or she is the holder of a permit to do so.

(2) The provisions of subsection (1)(a) do not apply to any owner of land, or any relative of such owner acting on the authority of such owner, in respect of a species of wild animal for which a hunting season has been determined and that is hunted on the land of such owner.

(3) Subject to the provisions of any regulation made under this Act, the provisions of subsection (1) do not apply to any person not in possession of a weapon, who -

- (a) in the presence of the owner of any land on which any wild animal is being hunted by any other person; or
- (b) in the absence but with the written permission of such owner, assists such other person during such hunt by acting as a beater.

Hunting season for wild animals

22. The MEC may, by notice in the *Gazette* in respect of the Province or any area therein specified in such notice, each year determine the period in such year during which a species of wild animal mentioned in such notice may be hunted under the authority of a permit or licence referred to in section 21(1)(a): Provided that in any year in respect of which a notice is not published in the *Gazette*, the period in such year during which a species of wild animal may be hunted must be the same as that determined in respect of the previous year.

Prohibition on killing or capturing of wild animals in excess of daily bag limit

23. No person authorized by any provision of this Act to hunt a wild animal may at any time kill or capture a greater number of any species of wild animal than the daily bag limit determined by the MEC by notice in the *Gazette* in respect of such species.

Prohibited methods of hunting

24. (1) No person may, unless he or she is the holder of a permit authorizing him or her to do so, hunt any wild animal -

- (a) by means of fire or poison;
- (b) with the aid of artificial light;
- (c) on or from a public road;
- (d) by means of any trap;

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- (e) during the period between one hour after sunset on any day and one hour before sunrise on the following day;
- (f) subject to the provisions of section 25, by means of a firearm that discharges a rim-fire cartridge of a calibre less than five comma six millimetres;
- (g) by means of a firearm that discharges more than two cartridges without being manually reloaded;
- (h) by means of a bow-and-arrow, crossbow, spear, spear gun, assegai;
- (i) by means of any device that injects an intoxicating or a narcotic agent or poison into such animal;
- (j) with the use of a dog, except for the purpose of following or searching for a wild animal that has been wounded during a lawful hunt;
- (k) with the use of a vessel in or upon any inland waters or tidal river or tidal lagoon for the purpose of hunting or chasing any bird;
- (l) with the use of any bullet commonly known as a "solid" but not including the hunting of a bird or any of the pachiderms;
- (m) that is under the influence of a tranquilizing, narcotic, immobilizing or similar agent: Provided that in respect of the hunting of -
 - (i) any rats and mice, the provisions of paragraphs (a),(d),and (e) do not apply;
 - (ii) a proclaimed problem animal, the provisions of paragraphs (a),(d),(i),(j) and (l), do not apply, if used by a Problem Animal Control Hunter, and if used by the owner of land, provisions paragraphs(d),(j) and (l) do not apply;
 - (iii) any bird or other wild animal, but not including any endangered wild animal, protected wild animal or wild animal of the order *Artiodactyla*, the provisions of paragraph (f) do not apply;
 - (iv) any wild animal by a registered veterinary surgeon in the practice of his or her profession, the provisions of paragraph (j) do not apply;
 - (v) a game bird with the use of a pointer, setter or retriever breed of dog during the hunting season determined for such bird, the provisions of paragraph (k) do not apply; or
 - (vi) any wild animal by means of a bow and arrow by a hunter in possession of a permit authorizing him or

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her to do so, the provision of paragraph (h) do not apply; and

(n) Applications for a permit referred to in paragraph (m)(vi) may only be considered if the application is accompanied by a Competency Certificate for bow hunting, issued by an accredited body;

Prohibition on use of certain firearms for hunting certain wild animals

25. No person may use any firearm having a barrel of less than 500 mm (20 inches) in length with a calibre of less than -
- (a) nine comma three millimetre ('362 inch) and a muzzle energy value of less than 5`2 KJ to hunt any African elephant, buffalo, hippopotamus or rhinoceros; or
 - (b) seven millimetre ('284 inch) and a muzzle energy value of less than 4 KJ to hunt any Cape Mountain zebra, Hartmann's Mountain Zebra, Burchell's zebra, giraffe or eland; or
 - (c) six comma five millimetres ('257 inch) and a Muzzle Energy Value of less than 3 KJ to hunt any blue wildebeest, black wildebeest, gemsbuck, red hartebeest, waterbuck, nyala or kudu; or
 - (d) six millimetres ('243 inch) and a Muzzle Energy Value of less than 2`6 KJ to hunt any bushbuck, impala, bontebok, blesbuck, common reedbuck, fallow deer, bushpig or warthog; or
 - (e) five comma six millimetres ('224 inch) and a Muzzle Energy Value of less than 0`95 KJ to hunt any blue duiker, steenbuck, Cape grysbuck, common duiker, oribi, grey rhebuck, springbuck or mountain reedbuck.

Prohibition on keeping of wild animals in captivity

26. (1) No person may without a permit authorizing him or her to do so, keep any wild animal or any bird that is an exotic wild animal in captivity.
- (2) No person shall at any time, whether authorized by a permit issued under subsection (1) or not, restrain any wild animal by means of a rope, cord, chain or any similar contrivance.

Release of exotic wild animals

27. No person may without a permit authorizing him or her to do so, release any exotic wild animal or bird in the Province.

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Alteration or removal of fences or interference therewith**28.** No person may without a permit -

- (a) alter, remove or partly remove or cause to be altered, removed or partly removed any fence, whether on a common boundary or on his or her own property, in such a manner that any wild animal that, as a result thereof, gains access or may gain access to his or her property or to a camp on his or her property and thereafter cannot return or is likely not to be able to return through the same point of entry; or
- (b) heap up or cause to be heaped up soil or any other material on one side of a fence, whether on a common boundary or on his or her own property, or remove or cause to be removed soil on one side of such fence in such manner that such heaping up or such removal has the effect of reducing or increasing the height, as the case may be, of such fence on one side, unless a wild animal, that gains or may gain access to such property or a camp on such property over such lower section of such fence, can return or is likely to be able to return over the same section of such fence.

Prohibition on laying of poison

29. (1) Notwithstanding the provisions of any other law but subject to the provisions of subsection (2) and section 49 and 50 of this Act, no person may without a permit lay or cause or allow to be laid any poison at any place where it is likely to, or in such manner that it may, be assimilated or ingested by a wild animal

(2) The provisions of subsection (1) do not apply in respect of the laying in a building of a poison registered under a law for the purpose of killing rats and mice in accordance with the provisions of such law.

Prohibition on use of vessel, motor vehicle or aircraft for hunting, of wild animals

30. (1) No person may without a permit, use any vessel, motor vehicle or aircraft to hunt, disturb, drive or stampede any wild animal for any purpose whatsoever.

(2) The provisions of subsection (1) do not preclude the use of a motor vehicle for the hunting in accordance with the provisions of this Act of any wild animal by the owner of any land or person authorized in writing thereto by such owner on such land.

Certificate of adequate enclosure

31. (1) Any owner of land on which any species of wild animal is found may, in the prescribed manner and form and in relation to such species, apply to the Head of Department for a certificate of adequate enclosure as contemplated in subsection (4) in respect of the whole or any portion of such land.

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- (2) An application under subsection (1) must -
- (a) include a full description of the land in respect of which application is made, its boundaries and size and the vegetation thereon;
 - (b) state the species of protected wild animal to which the application relates, the estimated number of such species in a free state of nature and the number of such species in captivity on the land referred to in paragraph (a);
 - (c) set forth the grounds on which the land in question is considered to be adequately enclosed; and
 - (d) contain such further information as may be prescribed.

(3) For the purpose of deciding upon any such application, the Head of Department may require the applicant to furnish such further information as the he or she may consider necessary or desirable.

- (4) If the Head of Department -
- (a) having regard to the size of the land in respect of which application has been made under subsection (1), the numbers of the species of protected wild animal to which such application relates which are normally found on such land and such other circumstances as he or she may consider relevant, is of the opinion that the animals in question are in effect being kept in captivity, he or she must refuse the application; or
 - (b) is satisfied that such land is adequately enclosed in relation to such species, he or she may in his or her discretion grant the application subject to such conditions as he or she may consider necessary or desirable and issue to the applicant a certificate of adequate enclosure in respect of such land and must in such certificate specify the conditions, if any, subject to which it is issued, define the boundaries of the land concerned and specify the species of protected wild animals to which it relates.

(5)(a) A certificate of adequate enclosure issued in terms of subsection (4) must, subject to the provisions of paragraph (b) of this subsection, be valid for the period specified therein or until the land concerned ceases to be adequately enclosed, whichever is the shorter period.

(b) A certificate of adequate enclosure may at any time during the period of validity thereof, be withdrawn with prior notice to the holder thereof, provided that such withdrawal may be set aside by the Head of Department if, after consultation with such holder, he or she is of the opinion that such setting aside is necessary or desirable.

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Rights of holder of certificate of adequate enclosure

32. Any owner of land to whom a certificate of adequate enclosure has been issued in terms of section 31, any relative of such owner, any full-time employee of such owner acting under the authority of such owner and any other person in possession of a permit or of a licence referred to in section 21 and acting with the permission of such owner issued under section 35 may, notwithstanding anything to the contrary contained in this Act but subject to any conditions specified in such certificate, at any time by any means other than by the use of fire, poison or and on the land in respect of which such certificate was issued, hunt any number of the species of protected wild animal mentioned in such certificate.

Certificate of adequate enclosure lapses on transfer or lease of land

33. Any certificate of adequate enclosure issued in terms of section 31, lapses upon the transfer or lease of the land or any portion thereof in respect of which it was issued.

Transfer of hunting and other rights

34. (1) The Head of Department may in writing authorize any owner of land to transfer, whether temporarily or permanently, to a person approved him or her and subject to such conditions as he or she may impose -

- (a) in the case of an owner of land to whom a certificate of adequate enclosure has been issued in terms of section 31, the rights conferred on such owner by section 32; or
- (b) in the case of any other owner of land, the rights of such owner under this Act.

(2) In the application of the provisions of this Act, any person to whom any right has been transferred as contemplated by subsection (1), must as from the date of such transfer, and in the case of a temporary transfer for the duration of the period concerned, be deemed to be the owner of the land in question.

Permission of owner of land to other persons to hunt wild animals on his or her land

35. (1) No owner of land may permit or otherwise authorize any other person to hunt any wild animal on, or remove any wild animal or its carcass from, the land of such owner unless the said hunting or removal is done in accordance with the provisions of this Act.

(2) No permission or other authority granted in terms of subsection (1) is valid unless it is reduced to writing prior to the hunt, is signed and dated by the landowner and contains -

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- (a) the full name, identity number and address of the owner concerned and the person to whom it is granted;
- (b) the species, number and sex of wild animal that may be hunted; and
- (c) the date or dates and a description of the land in respect of which it is granted.

Hunting of wild animals on land belonging to another person

36. No person may on land of which he or she is not the owner hunt any wild animal or remove any such animal or its carcass from such land without the permission of the owner of such land granted in terms of section 35.

Donation or sale of wild animal or carcass thereof

37. No person may donate or sell any wild animal or the carcass of such animal to any other person unless, when he or she delivers such animal or carcass to such other person, he or she furnishes the recipient with a written document signed by him or her containing -

- (a) the full name, identity number and address of the person by whom it was furnished;
- (b) the full name, identity number and address of the person to whom it was furnished;
- (c) the species, number and sex of wild animal or carcass thereof that has or have been so donated or sold and the date on which it was donated and sold; and
- (d) a statement by him or her that he or she has donated or sold such animal or carcass to the person mentioned in paragraph (b), and subject to section 42.

Possession of wild animal or carcass thereof

38. Any person found in possession of any wild animal or the carcass of such animal is guilty of an offence unless, in the event of -

- (a) the animal having been hunted by him or her on the land owned by another person, he or she is in possession of the written permission contemplated in section 35;
- (b) the animal or carcass having been acquired by him or her from another person, he or she is in possession of the written document contemplated in section 37;

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- (c) the animal or carcass having been acquired in any other manner, he or she is in possession of the written authority of the Head of Department.

Documents relating to permission to hunt or to the donation of wild animals or the carcasses thereof to be retained for certain period

39. Every document referred to in section 35 or 37 must be retained by the person to whom it was furnished for a period of at least two months from the date on which it was so furnished or while such person is in possession of the wild animal or carcass to which it relates, whichever is the longer period.

Miscellaneous offences in relation to wild animals other than endangered wild animals

40. (1) Subject to provisions of this Act, no person may without a permit -
- (a) import into, export from or transport in or through the Province any live wild animal; export from the Province the carcass of any protected wild animal;
 - (c) sell, buy, donate or receive as a donation the carcass of any elephant or hippopotamus, or anything manufactured from the tusk thereof;
 - (d) sell, buy, donate, receive as a donation or be in possession of any live protected wild animal, or
 - (e) remove, willfully disturb, interfere with, destroy, sell, offer for sale or purchase the egg of any protected wild animal, or willfully damage or interfere with the nest of any protected wild animal.

(2) The provisions of subsection (1)(a) do not apply to the export from or the transport in or through the Province, without a permit, of any bird that is not a protected wild animal, or if the carcass of any wild animal is accompanied by the necessary proof of legal requirement in such a province of origin.

(3) A person to whom a permit has been issued in terms of subsection (1)(a) to transport a live protected or unprotected wild animal, or in terms of section 21 to capture a protected wild animal must, while carrying out such transport or capture, comply with the requirements of the South African Bureau of Standards.

Sale and purchase of wild animal biltong and biltong sausage

41. No person may sell or buy any biltong or biltong sausage made from the meat of a wild animal unless such meat is of a wild animal hunted in accordance with the provisions of this Act or any corresponding law in operation in another province or State.

Buying and selling of carcasses of wild animals

42. (1) No carcass of any wild animal may be sold by any person other than

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- (a) the owner of the land on which the animal was hunted in accordance with the provisions of this Act;
- (b) a market master at a public or municipal market; or
- (c) a person authorized by a permit issued under this Act or any other applicable act. to sell such carcass; or
- (d) A person authorized by the landowner, on who's land the animal was legally hunted, to sell such carcass

(2) No person may buy a carcass of any wild animal from any person other than a person mentioned in subsection (1)(a), (b) or (c).

Hunting of certain wild animals in urban areas

43. (1) If, on application in the prescribed manner by an owner of land situated within an urban area under the jurisdiction of a local authority, such authority is satisfied that damage is being done to crops or other property of the applicant by any baboon, vervet monkey, cattle egret or rock dossier, may, notwithstanding anything to the contrary in this Act contained, issue a permit in the prescribed form authorizing such owner, or a person nominated by him or her, to hunt such animal on the land of such owner at the place where such damage is being done.

(2) A permit issued in terms of subsection (1) is valid for the period specified therein but not exceeding 30 days from the date of issue thereof.

PART II: PROFESSIONAL HUNTERS, HUNTING OUTFITTERS AND PROFESSIONAL HUNTING SCHOOLS

Authorization of professional hunters, hunting outfitters and Directors of professional hunting schools

44. (1) Subject to the provisions of this Act, and any regulations made under this section, no person may act as -

- (a) a professional hunter;
- (b) a hunting outfitter; or
- (c) a director of a professional hunting school,

unless he or she is the holder of a permit that authorizes him or her to do so.

(2) The requirements for the issue of a permit under subsection (1) are as the Head of Department may from time to time determine.

(3) The Head of Department may exempt any person from the provisions of subsection (1).

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Duties of professional hunters, hunting outfitters and their clients

45. (1) A client must not hunt any wild animal unless-
- (a) The hunt is organized, or conducted by a hunting outfitter who holds a permit issued under section 44; and
 - (b) he or she is escorted by a professional hunter who holds a permit issued under section 44.
- (2) A professional hunter must ensure that his or her client does not contravene any provision of this Act while hunting a wild animal, and may give any lawful instruction to the client to ensure his or her compliance with such provision.
- (3) A client must obey an instruction given in terms of subsection (2).
- (4) A professional hunter may, notwithstanding any other provision of this Act, kill a wild animal while accompanying a client if this is necessary in defence of life or property or to prevent unnecessary suffering of such animal.
- (5) A client, may not hunt any wild animal on any land, with the aid of an artificial light, or during the period between one hour after sunset on any day and one hour before sunrise on the following day, without a permit allowing him so.

Hunting outfitters to have landowner's permission to hunt

46. Subject to the provisions of this Act, a hunting outfitter shall not promote, organize, or conduct the hunting of any wild animal by a client, unless such outfitter is the holder of the written permission of the owner of the land on which the hunting takes place.

Organising or conducting hunting by a client under false pretenses an offence

47. Any person who falsely pretends that the promoting, organizing or conducting of a hunt in terms of this Part of this Chapter will be, is being or has been carried out in accordance with the provisions of this Act, shall be guilty of an offence.

Recognition of South African Professional Hunting Committee

48. The Head of Department may request written advice from a representative of the South African Professional Hunting Committee (SAPHCOC) relating to the carrying out of any provision of this Part of this Chapter or regulation made in respect thereof, and must inform such representative in writing of any action taken or not taken in consequence of such advice together with, in the latter case, the reasons therefor.

PART 111: PROBLEM ANIMAL CONTROL**Prohibited Actions**

49. Subject to the provisions of this Act, no person may -

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- (a) possess, purchase, sell, obtain or use a coyote getter to hunt a problem wild animal;
- (b) use any poison to hunt a problem wild animal;
- (c) hunt a problem wild animal with a toxic collar;
- (d) hang a problem wild animal on a fence, or use any other method to display such animal to the public;
- (e) possess, sell, purchase, donate, receive as a donation a problem wild animal or import into the Province, export, transport or release a problem wild animal,

unless he or she is the holder of a permit to do so.

General powers in relation to problem animal control

50. The MEC may -

- (a) authorize a person in writing to conduct research required on a problem wild animal;
- (b) authorize a qualified person to provide training and extension on the control of problem animals;
- (c) on certain conditions as may be deemed necessary, may provide financial aid to a person or an association of persons who are actively involved with the control of problem wild animals;
- (d) may provide problem wild animal control devices to the public at a prescribed price, provided that the buyer is the holder of competency certificate; and
- (e) authorize an accredited instructor to provide problem wild animal control training.

CHAPTER 6

PROTECTION OF FISH IN INLAND WATERS

Pollution of inland waters

51. No person may deposit or cause or allow to be deposited -

- (a) in any inland waters; or
- (b) in any place from where it is likely to percolate into or in any other manner enter any inland waters,

anything, whether solid, liquid or gaseous, that is or is likely to be injurious to any fish or fish food or which, if it were so deposited in large quantities or numbers, would be so injurious.

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Obstruction of fish in inland waters

52. No person may place or cause or allow to be placed in any inland waters any article or thing, other than a net of which the use in inland waters is authorized by a provision of this Act, that is likely to prevent the free passage of fish in such waters.

Placing of fish or aquatic plants in inland waters

53. No person may, unless authorized thereto by a permit, place in or in any manner introduce into or cause or allow to be placed or introduced into any inland waters any live fish or any aquatic growth: Provided that the provisions of this section do not apply in respect of a live fish replaced into inland waters immediately after it has been caught from such waters.

Killing of fish

54. Subject to the provisions of section 63, no person may by any means whatsoever kill or injure fish or willfully disturb or destroy the spawn of any fish in any inland waters: Provided that the provisions of this section shall not apply in respect of any fish killed or injured while being caught in and taken from such waters in accordance with the provisions of this Act.

Prohibition on catching certain species of fish and catching fish during closed season

55. No person may, unless authorized thereto by a permit -

- (a) catch any fish that is an endangered wild animal or have in his or her possession any such fish or the carcass or the spawn thereof; or
- (b) subject to the provisions of section 63, at any time during the closed season that the MEC may determine for a species of fish by notice in the *Gazette*, catch such a fish in any inland waters.

Angling licence

56. Subject to the provisions of sections 55 and 63, no person may angle in any inland waters without a licence issued by the Department, or any person authorized to do so by the Head of Department in the prescribed form on payment of the prescribed fee.

Netting permit

57. No person may for any purpose whatsoever use any fyke-net, staked net or trek-net in any inland waters without a permit, in the prescribed form, issued to him or her by the Head of Department.

Prohibition on catching fish in excess of bag limit and of undersized fish

58. (1) No person may unless authorized thereto by a permit at any time in any inland waters -

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- (a) catch a greater number of any species of fish than the daily bag limit determined in respect of such species by the MEC by notice in the *Gazette*; or
- (b) catch any fish that is of a size or mass less than the size or mass prescribed in respect of such species of fish by the MEC by notice in the *Gazette*.

(2) Despite anything to the contrary contained in this Act, the Head of Department may for the purposes of this section authorize in writing any person, to whom a permit has been issued for the purposes of subsection (1), to use any net in any inland waters.

Prohibited method of catching fish

59. No person may in any inland waters catch fish -

- (a) by snatching or spearing;
- (b) by means of a staked net, trek-net or fyke-net that, in each case, extends over a distance of more than one-half the width of such inland waters at the place where such net is used;
- (c) by means of a fyke-net if any device used to guide fish to an opening in such net is more than six metres in length;
- (d) by placing a staked net or fyke-net or by using a trek-net within a distance of thirty metres from the extremities of any other such net being used in such waters, and for the purposes of this paragraph the extremities of a fyke-net shall be deemed to be the devices, if any, used to guide fish to an opening in such net;
- (e) by angling by means of -
 - (i) more than two lines;
 - (ii) more than two single hooks attached to a line; or
 - (iii) a set-line with more than two hooks attached thereto.

Sale of certain species of fish

60. No person may, unless authorized thereto by a permit -

- (a) sell or buy any fish that is an endangered wild animal or the carcass or spawn of such fish;
- (b) sell, buy or transport any live carp, bluegill sunfish, trout, black bass, banded tilapia, exotic freshwater fish or any fish in respect of which control measures have been prescribed under any other applicable legislation; or
- (c) sell or buy any fish of which the catching is prohibited by section 58.

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Import into, export from and transport of certain species of fish

61. No person may, unless authorized thereto by a permit -

- (a) import any live indigenous fish or the spawn of any fish into the Province; or
- (b) import into or export from or transport within the Province any fish that is an endangered wild animal or a protected wild animal or the carcass of any such fish.

Noxious aquatic growths

62. No person may cultivate, possess, transport, sell, donate, buy or otherwise acquire or import into the Province any noxious aquatic growth without a permit authorizing him or her to do so.

Private inland waters

63. The provisions of sections 68, 69(b), 70, 71 and 72, in respect of any private inland waters, do not apply to -

- (a) the owner of such waters;
- (b) any relative of such owner; or
- (c) any full-time employee of such owner or other person acting with the permission of such owner:

Provided that such owner, relative or employee may not kill, catch or injure or attempt to kill, catch or injure fish with the use of any explosive, fire-arm, poison or other noxious substance

CHAPTER 7**PROTECTION OF FLORA****Miscellaneous provisions relating to Endangered flora**

64. (1) Subject to the provisions of this Act, no person may without a permit -

- (a) keep, control or be in possession of any endangered flora;
- (b) sell, buy, donate or receive any endangered flora;
- (c) pick, uproot, damage or destroy any endangered flora;
- (d) import into, export from, or transport in or through the Province any endangered flora; or
- (e) pick, uproot or destroy any endangered flora on land of which he or she is not the owner, without the permission of the owner of such land or of any person authorized by such owner to give such permission.

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- (2) Subsection (1) must not be construed as prohibiting -
- (a) the possession without a permit by any owner of private land of endangered flora growing in the natural state on such land; or
 - (b) the export of endangered flora by a person in possession of the written and dated document contemplated in section 65 in respect of such endangered flora.

Selling of endangered flora

65. (1) Any person desiring to sell endangered flora that he or she has cultivated in terms of this section on any fixed premises must apply to the Head of Department in the prescribed form for -

- (a) registration as a grower of endangered flora; and
- (b) a permit to sell endangered flora that has been cultivated by the applicant,

and must furnish the prescribed information and such further information as the Head of the Department may require.

(2) Upon receipt of such an application, the Head of Department may cause such inspection of the premises concerned, as he or she may deem necessary to be made, and if he or she is satisfied that the granting of such application will further the objectives of this Chapter, he or she may, subject to the conditions which he or she deems fit, in the prescribed form, issue to the applicant a certificate of registration as a grower of endangered flora and a permit to sell endangered flora which has been cultivated.

(3) The holder of a permit issued under subsection (2) must comply with the provisions of any other applicable legislation.

- (4) A certificate and a permit issued under subsection (2) is valid -
- (a) in respect of the certificate, until it is canceled by the Head of the Department; and
 - (b) in respect of the permit, for a period of twelve months from the date of issue thereof.

(5) The holder of a permit issued under subsection (2) must not sell or donate any endangered flora to any person unless, when he or she sells or donates such flora to such person, he or she furnishes such person with a written document signed and dated by the permit holder and containing -

- (a) his or her full name, identity number and address;
- (b) the number and date of issue in terms of subsection (2) of his or her permit;
- (c) the full name, identity number and address of the person to whom the document is furnished; and
- (d) the name of each species and the number of plants of each species of such flora that has or have been sold or donated.

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(6) Despite the provisions of this section, no permit is required for the purchase, receipt as a donation, transport, export or possession of any endangered flora which has been sold or donated by the holder of a permit issued under subsection (2) and in which such flora is specified: Provided that any person who has bought, or received as a donation, or is in possession of such flora, is in possession of the document contemplated in subsection (5).

Prohibition on picking of certain flora

66. (1) No person may -

- (a) uproot the plant in the process of picking the flower of any indigenous flora;
- (b) without a permit -
 - (i) pick, uproot or destroy any protected flora, or
 - (ii) pick, uproot or destroy any indigenous flora on a public road or on the land on either side of such road within a distance of ninety metres from the centre of such road;
- (c) pick, uproot or destroy any protected flora or unprotected indigenous flora on land of which he or she is not the owner without the permission of the owner of such land or of any person authorized by such owner to give such permission.

(2) No permission granted in terms of subsection (1)(c) is valid unless it is reduced to writing and contains -

- (a) the full names and address and identity number of the owner of the land concerned or of the person authorized by him or her to grant such permission;
- (b) the full names and address and identity number of the person to whom permission is granted;
- (c) the number and species of flora and the date or dates on which such flora may be picked;
- (d) the situation of the land in respect of which permission is granted; and
- (e) the signature of the owner or person authorized by him or her and the date of issue.

(3) The provisions of subsection (1)(b) do not apply to the owner of any land or any person acting on the instructions or with the consent of such owner, in respect of any protected or unprotected indigenous flora on such land.

(4) The provisions of subsection (1)(b)(i) do not apply to -

- (a) any person authorized in writing by an owner of land to pick only the flowers or seed of protected flora on such land without uprooting the plant; or

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- (b) protected flora picked, uprooted or destroyed in or removed from a State forest in terms of a licence granted under section 15(1) of the National Forests Act, 1998 (Act No. 84 of 1998).

Buying and selling of protected flora

67. No person may -

- (a) buy any protected flora from a person who is not a licenced seller or a licenced grower or authorized in terms of section 72; or
- (b) sell any protected flora without a licence issued under section 69 or 70.

Licensing of protected flora sellers

68. (1) Any person desiring to be licenced as a protected flora seller must apply to the Head of Department in the prescribed manner and form and furnish the prescribed information and such further information as the Head of Department may require.

(2) Upon receipt of any such application, the Head of Department may, in his or her discretion, and subject to such conditions as he or she deems fit, in the prescribed form, issue to such applicant, on payment of the prescribed fee, a licence to sell the protected flora specified in such licence.

Registration and licensing of flora growers

69. (1) A person desiring to be registered and permitted in respect of any fixed premises as a protected flora grower, must apply to the Head of Department in the prescribed manner and form, for registration in terms of this section and furnish the prescribed information and such further information as the Head of Department may require.

(2) Upon receipt of any such application, the Head of Department, may cause such inspection of the premises concerned, as he or she may deem necessary to be made.

(3) If the Head of Department is satisfied that the granting of such application will not be contrary to the objectives of this Chapter, and, in the case of premises situated in the area of jurisdiction of a metropolitan or urban local authority, after consultation with such authority, and regard being had to any other information at his or her disposal, he or she may, in his or her discretion and subject to the conditions which he or she deems fit, in the prescribed form issue to such applicant in respect of the premises concerned -

- (a) a certificate of registration as a protected flora grower; and
- (b) a permit to grow the protected flora specified therein.

(4) The holder of a permit issued under subsection (2) must comply with the provisions of any other applicable legislation, relating to the sale of flora.

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(5) A certificate of registration as a protected flora grower is valid until it is canceled by the Head of Department, and a permit to grow protected flora is valid until the thirtieth day following its date of expiry if the Head of Department has not received a prior application from such grower for the renewal of the licence.

Sale of protected flora on the premises of registered flora growers and sellers

70. No person may sell any protected flora on the premises of -

- (a) a registered protected flora grower unless such flora was propagated or cultivated on such premises;
- (b) a registered protected flora seller unless such flora has been obtained from registered protected flora grower or another registered protected flora seller; or
- (c) a registered protected flora seller if such flora was propagated or cultivated on the premises of a registered protected flora seller who is not registered as a protected flora grower in respect of such premises.

Sale of protected flora for charitable and other approved purposes

71. Despite the provisions of this Act, the Head of Department may subject to such conditions and restrictions as he or she may deem necessary, issue a permit to any person, authorizing such person to sell protected flora for a charitable, or such other purpose as the Head of Department may approve, at a time and place specified in such permit.

Export and import of protected and unprotected indigenous flora

72. No person may without a permit -

- (a) export any protected flora or unprotected indigenous flora from the Province except such flora that has been cultivated by or purchased from a registered protected flora grower or licenced protected flora seller; or
- (b) import any protected flora into the Province.

Issuing of licences and permits and giving of permission subject to granting of licence under National Forests Act, 1998, in certain circumstances

73. Subject to the provisions of section 66, no licence or permit may be issued or permission given in terms of section 64, 65, 67, 68, 69, 71 or 72 in respect of any species of endangered or protected flora that is also declared to be a protected tree in terms of section 12(1)(d) of the National Forests Act, 1998 (Act No. 84 of 1998), unless a licence has first been granted under section 15(1) of that Act.

Pollination of Indigenous flora

74. No person may pollinate or cause to be pollinated any indigenous flora growing in its natural state without a permit.

Donation or possession of flora

75. (1) The provisions of sections 34 and 37 apply in respect of the donation of flora by one person to another person.

(2) The provisions of sections 35 and 36 in respect of any person found in possession of flora.

CHAPTER 8**CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)****Application of this Chapter**

76. This Chapter applies to –

- (a) the species of *fauna* and *flora* listed in –
 - (i) Appendix I to CITES as an endangered species;
 - (ii) Appendix II to CITES as a rare species; and
 - (iii) Appendix III to CITES as an indeterminate species; and
- (b) *fauna* and *flora* consisting of any readily recognizable part or derivative of any such listed species.

Prohibited acts

77. (1) No person may without a CITES permit –
- (a) import or bring into the Province from a foreign country *fauna* and *flora* to which this Chapter applies;
 - (b) export or remove from the Province to a foreign country *fauna* and *flora* to which this Chapter

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applies;

- (c) convey through the Province to another province or a foreign country *fauna* and *flora* to which this Chapter applies if that *fauna* and *flora* were imported from a foreign country; or
- (d) convey through the Province to a foreign country *fauna* and *flora* to which this Chapter applies if that *fauna* and *flora* were imported or brought from another province.

(2) Subsection (1) does not apply to the importation or exportation between provinces of *fauna* and *flora* to which this Chapter applies.

CHAPTER 9

PRESERVATION OF CAVES AND CAVE-FORMATIONS

Prohibited acts

78. (1) No person may without a permit –
- (a) enter or inhabit a cave; or
 - (b) remove from a cave, be in possession of, dispose of by way of a sale, exchange or gift, import or bring into, or export or remove from the Province, or convey –
 - (i) a cave-formation;
 - (ii) wild *fauna* and *flora* or any other natural matter found in a cave; or
 - (iii) any readily recognizable part or derivative

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of a cave-formation or such *fauna* and *flora* or other natural matter.

- (2) No person may –
- (a) deposit, dump or drain any refuse, waste, substance or thing, whether solid, liquid, gaseous or explosive, into a cave or near a cave or near a cave entrance, or cause or allow it to enter or percolate into a cave;
 - (b) disturb or alter the natural atmosphere of a cave in any manner, including by way of burning any matter which emits smoke or gas in the cave;
 - (c) leave any container, rope, clothing, battery, candle, wax, food or any other object in a cave;
 - (d) take an aerosol container or other container containing poison, paint, dye or other colouring agent into a cave;
 - (e) break open, break, remove or in any other manner tamper with an obstruction or structure erected to prevent unauthorised entry into a cave or any part thereof; or
 - (f) break, break-off, crack or in any other manner destroy, damage, mutilate or spoil a cave-formation in a cave or engrave, paint, write or in any other manner make a mark therein or thereon.

Entry or admission to caves

79. (1) The MEC may by notice in the *Gazette* –

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- (a) allow the commercialization or development of a cave specified in the notice for tourism purposes;
- (b) limit the entry or admission of visitors to a cave specified in the notice; or
- (c) close a cave specified in the notice entirely or partially to visitors or any category of persons specified in the notice.

(2) Before publishing any notice in terms of subsection (1), the MEC must publish the draft notice in the *Gazette* for public comment.

General Powers of MEC

80. The MEC may—

- (a) take steps to develop and control any cave in collaboration with any other public or private body;
- (b) take steps necessary or expedient for research with regard to caves and cave-formations and the preservation of caves and cave-formations;
- (c) conduct any survey or investigation in connection with any cave or cave-formation; or
- (d) collect and publish statistics and information regarding caves and cave-formations.

Regulations

81. (1) The MEC may make regulations for the purposes of this Chapter relating to —

- (a) the activities in caves and the taking, disturbing or collection of cave-formations;

- (b) the sale of or trading in cave-formations;
- (c) the possession or keeping, or the conveyance in or through, the import into or the export or removal from, the Province of cave-formations;
- (d) the research in connection with caves and cave-formations; or
- (e) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

CHAPTER 10

MOUNTAIN CATCHMENT AREAS

Declaration

82. The MEC may by notice in the *Gazette* –

- (a) declare an area specified in the notice a mountain catchment area; or
- (b) amend or withdraw a notice issued in terms of paragraph (a).

Beacons

83. (1) In order to physically identify an area declared or to be declared a mountain catchment area, the MEC may erect beacons at places designated by the MEC along the border of the area.

(2) A certificate purporting to be signed by an Environmental Officer and stating that a Beacon which has been erected in terms of subsection (1), complies with regulations made in terms of this Act, and has been erected at a place designated by the MEC, may on its mere

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production in any civil or criminal proceedings be taken into account as evidence that the beacon complies with the regulations and has been erected at the designated place.

Fire protection plans

84. The MEC may by notice in the *Gazette* –

- (a) establish a fire protection plan for a mountain catchment area or any part of such area; or
- (b) amend or withdraw a notice issued in terms of paragraph (a).

Contents of fire protection plans

85. A fire protection plan must –

- (a) specify the area to which it applies;
- (b) state the scope, objectives and commencement of the plan;
- (c) establish a fire protection committee for the area to implement the fire protection plan;
- (d) determine the functions, powers and duties of the fire protection committee; and
- (e) contain provisions aimed at controlling veld and forest fires in the area, including–
 - (i) the regulation or prohibition of veld burning; and
 - (ii) the prevention and extinguishing of veld and forest fires.

Notice to be given of all fire protection plans

86. (1) Before a fire protection plan is established for an area, or a

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fire protection plan is amended or withdrawn, the MEC must –

- (a) give notice in the *Gazette* and in at least one newspaper distributed in the area, of the intention to establish, amend or withdraw a fire protection plan; and
- (b) send a copy of the notice by registered post to the last known postal address of every owner whose land will directly be affected by the establishment, amendment or withdrawal.

(2) The notice must –

- (a) invite members of the public to submit to the MEC written representations on or objections to the proposed establishment, amendment or withdrawal of the fire protection plan within 30 days from the date of publication of the notice; and
- (b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected.

(3) The MEC must give due consideration to all representations or objections received.

Legal status of fire protection plans

87. A fire protection plan binds all owners of land within the area in which the plan applies.

Rendering of financial aid

88. The MEC may, with the concurrence of the MEC responsible for

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finance in the Province, from moneys appropriated by the Provincial Legislature, render financial aid by way of grants or otherwise –

- (a) to any fire protection committee; or
- (b) to the owner of land in respect of expenses incurred by the owner in compliance with any provision of a fire protection plan.

General powers of MEC

89. The MEC may –

- (a) implement any provision of a fire protection plan;
- (b) perform a prescribed act within a mountain catchment area in connection with the conservation, use and management of land within the area, which may include steps aimed at –
 - (i) the prevention of soil erosion;
 - (ii) the protection and treatment of the natural vegetation; or
 - (iii) the destruction of intruding vegetation; or
- (c) perform a prescribed act outside a mountain catchment area but within a distance of five kilometres from the boundary of the area, aimed at the destruction of intruding vegetation.

Regulations

90. The MEC may make regulations for the purposes of this Chapter relating to –

- (a) the form and dimensions of beacons and the manner of their construction, erection, marking for identification,

- maintenance and repair;
- (b) the conditions subject to which and the rates at which financial aid by way of grants or otherwise may be rendered;
 - (c) the conservation, use and management of land within a mountain catchment area, which may include provisions aimed at –
 - (i) the prevention of soil erosion;
 - (ii) the protection and treatment of the natural vegetation; or
 - (iii) the destruction of intruding vegetation;
 - (d) the destruction of intruding vegetation outside a mountain catchment area but within a distance of five kilometres from the boundary of the area; or
 - (e) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

CHAPTER 11
ENVIRONMENTAL POLLUTION
Part 1: Littering

Prohibition of littering

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

Duties of persons in charge of public places

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92. Every person or authority in charge of or responsible for the maintenance of a place to which the public has access must –

- (a) ensure that adequate and suitable containers or facilities for the discarding of litter by the public, are provided at all times; and
- (b) within a reasonable time after litter has been discarded, dumped or left behind at that place, including the pavement adjacent to, or land situated between that place and a street, road or site used by the public to get access to such place, remove the litter.

Regulations

93. The MEC may regulations relating to –

- (a) the nature, design, number, provision and placing of containers for the dumping of litter;
- (b) the nature, design, number, contents and placing of notices in respect of the dumping of litter;
- (c) the 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 programs for the clearing away of litter;
- (e) the powers and duties of municipalities or government institutions to control and prevent the dumping of litter;
or
- (f) any other matter that may be necessary to facilitate the effective implementation of this Part.

Part 2: Waste management**Regulations**

- 94.** The MEC may make regulations relating to –
- (a) the submission of statistics on the quantity and types of waste produced;
 - (b) the classification of different types of waste and the handling, storage, transport and disposal of waste;
 - (c) the location, planning and design of waste disposal sites;
 - (d) control over the management of waste disposal sites, installations and equipment;
 - (e) the administration arrangements for the effective disposal of waste;
 - (f) the dissemination of information to the public on effective waste disposal; or
 - (g) any other matter that may be necessary or expedient for the effective disposal of waste for the protection of the environment.

Part 3: Noise, vibration and shock**Regulations**

- 95.** The MEC may make regulations relating to –

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- (a) the definition of noise, vibration and shock;
- (b) the prevention, reduction or elimination of noise, vibration and shock;
- (c) the levels of noise, vibrations and shock which may not be exceeded, either in general or by specified apparatus or machinery or in specified instances or places;
- (d) the type of measuring instrument to be used for the determination of the levels of noise, vibration and shock, and the utilization and calibration thereof;
- (e) the powers and duties of provincial departments and municipalities to control noise, vibrations and shock; or
- (f) any other matter that may be necessary or expedient for the effective control and combating of noise, vibration and shock.

CHAPTER 12

SEA-SHORE AND COASTAL MANAGEMENT AREAS

Administration of sea-shore and control over alienation

96. Subject to the provisions of this Act -

- (a) the ownership of the sea-shore vests in the Premier;
- (b) the sea-shore, or any portion thereof, shall not be let or alienated except as hereinafter in this Act provided; and
- (c) the sea-shore shall not be subject to any claim based on prescription.

Letting of sea-shore

97. (1) Subject to the provisions of section 96 and this section, the MEC may, on such conditions as he or she may determine and on payment of such rental or other consideration as he or she may fix with the concurrence of the MEC responsible for finance, let any portion of the sea-shore for any one or more of the following purposes:

- (a) The construction of wharves, piers, jetties, landing stages or boathouses;

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- (b) the construction of breakwaters, sea walls, embankments, buildings or other structures;
 - (c) the construction of bathing pools and enclosures;
 - (d) the erection of beach shelters, bathing boxes and places of amusement or recreation; or
 - (e) for any other purpose or the carrying out of any other work of public utility or which would otherwise serve a necessary or useful purpose.
- (2) The MEC may not exercise any power under subsection (1) unless -
- (a) not less than one month before any lease is entered into or permit granted under the said subsection, the proposed lessor or the applicant for a permit has caused to be published in the *Gazette* and in a newspaper circulating in the area concerned a notice setting forth his or her intentions and stating that objections thereto may be lodged with the Head of Department before a specified date not later than 21 days after the date of publication of the notice; and
 - (b) he or she has considered every objection lodged in response to the notice and any reply that the person who gave such notice might wish to make.

(3) This section must not be construed as prohibiting or preventing the MEC, acting as provided in subsection (1), from authorizing the use of any portion of the sea-shore for Provincial purposes.

Alienation of land on the sea-shore

98. (1) Any alienation of any portion of the sea-shore, and any lease or permission in relation thereto not authorized by section 97 is subject to the approval by resolution of the Legislature.

(2) Not less than one month before submitting to the Legislature a proposal for any alienation or permission in terms of subsection (1), the MEC must at the expense of the person in whose favour the alienation, lease or permission is proposed, cause a notice setting forth such particulars to be published in the *Gazette* and in a newspaper circulating in the area concerned, and every objection or other representation received in response to such notice must, if and when the proposal is submitted to the Legislature, be laid upon the Table of the Legislature by the MEC.

Coastal conservation areas

99. (1) The coastal conservation areas established by section 39(1) of the Environmental Conservation Decree, 1992 (Decree No. 9 of 1992), of the former Republic of Transkei, and section 42(1) of the Nature Conservation Act, 1987 (Act No. 10 of 1987), of the former Republic of Ciskei, continue to exist in the districts of Bizana, Lusikisiki, Port St Johns, Ngqeleni, Mqanduli, Elliotdale, Willowvale, Kentani, Mdantsane and Peddie despite the repeal of the said Decree and the said Act by section 121.

(2) Despite the provisions of this Act or any condition of title, no person (including any organ of State) may within a coastal conservation area, save under

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the authority of a permit issued by the Department in accordance with the plan for the control of coastal development approved by the MEC-

- (a) clear any land or remove any sand, soil, stone or vegetation;
- (b) develop any picnic area, caravan park or like amenity;
- (c) erect any building;
- (d) construct any railway, landing strip, slipway, landing stage or jetty;
- (e) build any dam, canal, reservoir, water purification plant, septic tank, or sewerage works;
- (f) lay any pipeline or erect any power-line or fencing;
- (g) establish any waste disposal site or dump any refuse;
- (h) construct any public or private road or any bridle-path or footpath; or
- (i) carry on any other activity that disturbs the natural state of the vegetation, land or waters or any other similar thing which may be prescribed by the MEC.

Prohibition on use of motor vehicles on sea-shore or in coastal conservation areas

100. (1) Subject to the provisions of subsection (2), no person may, unless authorized thereto by a permit, drive or use a motor vehicle on or along the sea-shore or on any State land in a coastal conservation area other than on a public road.

(2) The permit contemplated in subsection (1) must be issued or refused in accordance with the General Policy in terms of the Environmental Conservation Act, 1989 (Act No. 73 of 1989): Control of Vehicles in the Coastal Zone, as determined under Government Notice No. 858 dated 29 April 1994.

(3) The provisions of subsection (1) do not apply -

- (a) in respect of a State vehicle in the course of being used for official purposes in the administration of the provisions of a law; or
- (b) in respect of any motor vehicle in the course of being used for sea rescue or life saving purposes or in any other emergency.

CHAPTER 13

PROVINCIAL ENVIRONMENTAL MANAGEMENT FUND

Provincial Environmental Management Fund

101. (1) The Provincial Nature Reserve Land Acquisition Fund established by section 6A of the Nature and Environmental Conservation Ordinance, 1974

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(Ordinance No. 19 of 1974), must continue to exist as the Provincial Environmental Conservation Fund (hereinafter referred to as the Fund), despite the repeal of the said Ordinance by section 121.

(2) Into the Fund must be paid, subject to the provisions of the Public Finance Management Act, 1999(Act No. of 1999) -

- (a) money paid in respect of fines, penalties and interest for any offence committed in terms of this Act and including any proceeds from the sale of any vessel, vehicle, aircraft, article, fauna or flora forfeited or seized in terms of this Act;
- (b) all fees and interest collected in terms of this Act;
- (c) money received by the Department by way of contribution, donation or bequest for the carrying out of any provision of this Act;
- (d) money received from any levy imposed and collected in terms of this Act; and
- (e) money appropriated by the Provincial Council:
 - (i) For the purposes of the Fund; and
 - (ii) in respect of the amount of interest received on the investment of money of the Fund which is not immediately required for the purposes of the Fund.

Imposition of levy

102. The MEC may, by notice in the *Gazette*, impose on any resource or operation covered by this Act and specified in the notice a levy at such rate as he may deem fit and may in any such notice -

- (a) differentiate between resources or operations or different persons or classes of persons in regard to the rate of the levy and prescribe the circumstances in which any person or class of person is liable for payment of such levy;
- (b) prescribe the manner in which the levy shall be determined and calculated;
- (c) prescribe -
 - (i) the person who shall collect the levy;
 - (ii) the times for payment;
 - (iii) the manner in which it shall be paid; and
 - (iv) the manner of payment by the collectors into the Fund.

Furnishing of particulars and returns

103. The MEC may, by notice in the *Gazette* -

- (a) direct any person or category of persons who are liable for the payment of the levy to furnish the Head of Department within

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a period specified in such notice with their names, addresses and specified particulars concerning their operations; and

- (b) require any person or category of persons who are liable for the payment of the levy to render returns to the Head of Department and prescribe the form in which and times when the returns must be rendered, the particulars they must contain and the statements which must accompany them.

Recovery of levy

104. (1) A levy payable under section 102 is a debt due to the Fund and may be recovered by the Head of Department in any competent court and if any person fails to pay such levy or interest thereon for which he or she is liable under this Act, the Head of Department may file with the clerk or registrar of such court a statement, certified by him or her as correct, setting forth the amount of such levy or interest owing by such person and such statement must have all the effects of, and any proceeding may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Head of Department for a liquid debt of the amount specified in the statement.

(2)(a) If any levy remains unpaid one month after the due date, the person liable for such levy must pay interest thereon, calculated from the day following the expiration of the said period of one month, at the rate of ten percent for each month for which the levy remains unpaid: Provided that such interest must not exceed three hundred rand in the aggregate.

(b) For the purposes of calculating interest due in terms of paragraph (a), part of a month is deemed to be a month.

CHAPTER 14

ENVIRONMENTAL MANAGEMENT AND PROTECTION MEASURES

Litter control

105. (1) No person may discard, dump, bury or leave any litter on or in any land or water surface, street, road or site to which the public has access except in a container or other receptacle specifically provided therefor or at a site which has been specially indicated, provided or set aside for that purpose.

(2) Every person or institution in control or responsible for the maintenance of any place to which the public has access must at all times ensure that the containers, other receptacles or sites so provided or indicated are adequate and suitable for the purposes of the discarding of litter by the public.

Prohibition on the disposal or processing of waste originating from outside the Province

106. No person, juristic or otherwise, or organ of State may under any circumstance without the approval by resolution of the Legislature dispose of or process or authorize the disposal or processing of hazardous waste originating from outside the Province.

CHAPTER 15

REGULATORY AND OTHER POWERS OF THE MEC

Regulations in respect of Chapter 5: Provincial Hiking Trails

107. The MEC may, by notice in the *Gazette*, make regulations governing hiking and hiking trails generally and may prescribe tariffs, fees or charges in connection therewith.

Regulations in respect of Chapter 9: sea-shore and coastal management areas

108. (1) The MEC may, by notice in the *Gazette*, make regulations or authorize a local authority, in regard to any portion of the sea-shore situated within or adjoining the area of jurisdiction of such local authority, with his or her approval to make regulations, not inconsistent with this Act -

- (a) concerning the use of the sea-shore;
- (b) concerning the removal of any material from the sea-shore, subject to the provisions of section 38 of the Sea Fisheries Act, 1988 (Act No. 12 of 1988);
- (c) for the prevention or regulation of the depositing or discharging upon the sea-shore of offal, litter or anything liable to be a nuisance or danger to health;
- (d) concerning the control, generally, of the sea-shore and the coastal conservation areas; or
- (e) prescribing fees for the doing of any act upon or in relation to the sea-shore and the coastal conservation area.

(2)(a) Despite the provisions of any other law, any regulation may be declared to be applicable to the whole of the sea-shore or to any defined portion thereof.

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(b) The MEC may declare any regulation to be applicable to any land belonging to the Province adjoining or situated near the sea-shore and, for the purposes of the application of any such regulation, any land belonging to the Province to which such regulation has been declared to be applicable is deemed to be a portion of the sea-shore.

(c) When any regulation applies to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority adjoining such portion of the sea-shore, the MEC may, by notice in the *Gazette* and in not less than one newspaper circulating in the area of jurisdiction of such local authority, confer powers or impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers.

(d) Not less than thirty days before any regulation is made under this section, the MEC, or where a local authority desires to make a regulation that local authority, must cause a copy of the proposed regulation to be published in the *Gazette* and in not less than one newspaper circulating in the area where the regulation will apply.

(e) Before the MEC declares any regulation to be applicable to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority, the MEC must consult the local authority concerned and submit to it a copy of the regulation.

(3) Despite the provisions of section 102, when a local authority is responsible for the administration of any regulation made under this section, such regulation or any other regulation made under this section may provide that all fees and fines recovered under that regulation accrue to that local authority.

(4) The provisions of this section or in any regulation made hereunder does not affect any by-law lawfully made by a local authority under any law.

(5) A local authority in which the ownership of the sea-shore is vested may, with the approval of the MEC, make regulations for the control of that portion of the sea-shore adjoining that portion, for any of the purposes mentioned in subsection (1).

(6) Any regulation made under subsection (1) or (5) may differentiate between different kinds of users of the sea-shore, may prescribe different fees or conditions in respect of different kinds of the said users and may prescribe that any local authority responsible for the administration of any such regulation may grant any consent under such regulation on such terms or conditions as it may deem fit.

MEC's powers to amend Schedules

109. The MEC may from time to time, by notice in the *Gazette*, amend -

- (a) Schedule 1, 2 or 3 by including therein or removing therefrom any wild animal;
- (b) Schedule 4, 5 or 6 by including therein or removing therefrom any flora;
- (d) establish any new Schedules.

MEC's general regulatory powers

110. The MEC may from time to time by notice in the *Gazette* make regulations prescribing the forms of licences, permits and other documents required for the administration of this Act, the conditions subject to which they may or must be issued or renewed, the periods for which they are valid and the fees or other charges that must be paid in connection therewith.

Offences in terms of regulations

111. Any regulation made in terms of this Act may, unless otherwise provided –

- (a) provide that any contravention thereof or failure to comply therewith shall constitute an offence;
- (b) impose a penalty for any such offence, of a fine or in default of payment imprisonment for a period not exceeding six months or both such fine and such imprisonment.

Miscellaneous powers of MEC

112. The MEC may by notice in the *Gazette*, in respect of the Province or any area specified in such notice and either indefinitely or for a specified period –

- (a) determine the number of any species of protected wild animal mentioned in such proclamation and which may subject to the provisions of this Act be hunted –
 - (i) in the case of a protected wild animal other than a fish, during the period commencing one hour before sunrise and ending one hour after sunset, and
 - (ii) in the case of fish, during the period of twenty-four hours commencing at midnight, on any one day;
- (b) if in his or her opinion it is necessary or desirable in the interests of environmental conservation and subject to such conditions as he or she may deem fit, suspend the operation of any provision of this Act in so far as such provision relates to any fauna or flora specified in such notice;
- (c) despite the provisions of this Act, prohibit, control or restrict the hunting of a wild animal;
- (d) suspend the operation of any provision of this Act in respect of a problem wild animal in any area specified in such notice;
- (e) prohibit, restrict or regulate the capture, injuring, destruction, export, sale or acquisition in any manner of any invertebrate wild animal specified in such notice;
- (f) prohibit, restrict or regulate the transport of any wild animal specified in such notice;
- (g) prohibit or regulate either generally or specially the use –

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- (i) on any inland waters, of any vessel designed or intended for propulsion by any means other than human power, or
- (ii) on the sea-shore, of any motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (h) despite the provisions of this Act prohibit or regulate the use of any implement for the catching of fish in any inland waters; and
- (j) prohibit, control or regulate the picking, uprooting or destruction of indigenous flora or any species of such flora in any manner or by any means specified in such notice.

CHAPTER 16

OFFENCES, PENALTIES, PRESUMPTIONS AND MISCELLANEOUS

Offences

113. Any person who -

- (a) contravenes or fails to comply with any provision of this Act;
- (b) alters or fabricates or forges any permit, licence or other authorization required for the lawful performance of any activity in terms of this Act;
- (c) passes, uses, utters or has in his possession any altered, fabricated or forged permit, licence or other authorization or permission;
- (d) under a false name obtains any of the documents contemplated in paragraph (b);
- (e) fails to comply with or contravenes any term, condition or restriction of any permit, licence or other authorization, or any term, condition or restriction subject to which it was issued to him or her under this Act, or fails or refuses to comply with any lawful requirement, demand, direction or order of an environmental conservation officer or ranger;
- (f) falsely holds himself or herself out to be an environmental conservation officer or ranger or honorary environmental conservation officer;
- (g) resists or assaults or hinders, obstructs or interferes, refuses or fails to comply with an order of an environmental conservation officer or ranger referred to in paragraph (e) or any other officer or employee of the Department in the exercise of his powers or the performance of his functions under this Act or without good cause refuses or fails on

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demand to furnish such officer, ranger or employee with his name and address or with any information or document required by such officer, ranger or employee for the purposes of this Act, or furnishes him or her with a false name and address or with false information, as the case may be;

- (h) while in possession of a weapon or any trap, net, snare, birdlime, cage or other contrivance or substance which could be used for the hunting of any wild animal, trespasses on land on which there is, or is likely to be any wild animal;
- (i) is or who has recently been in possession of any wild animal including a fish or the carcass thereof and is unable to give a satisfactory account of such possession;
- (j) willfully damages, alters, moves, or in any way interferes with or destroys any beacon, notice, notice board, sign or mark referred to in this Act or contravenes or fails to comply with the requirements, conditions or terms of any such notice;
- (k) knowingly makes a false statement in any application made or in any other document furnished by him or her in terms of any provision of this Act;
- (l) obtains or applies for any authorization or permit well knowing that he or she is lawfully debarred from obtaining such authorization or permit; or
- (m) any person who coerces any other person or persons or allows any persons to commit an act or omission of an act in contravention of this Act,

shall be guilty of an offence.

Penalties

114. (1) Any person convicted of an offence under this Act is, subject to the provisions of subsection (2), be liable, in the case of a –

- (a) contravention of sections 19, 47, 51 64, 78, 94 and 99 involving endangered wild animals, prohibited methods of hunting, hunting under false pretences, pollution of inland waters, endangered flora, disposal of waste and illegal development in coastal conservation areas, to a fine not exceeding two hundred thousand rands or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered wild animal or the carcasses thereof or any endangered flora in respect of which the offence was committed;
- (b) contravention of 40 involving an African elephant or a hippopotamus, to a fine not exceeding one hundred thousand

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rands or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any African elephant or the carcass thereof in respect of which the offence was committed;

- (c) contravention of sections 21 and 66 involving a protected wild animal or wild animal of the order *Artiodactyla* that is not a protected wild animal (but not including an African elephant or a hippopotamus) or protected or unprotected indigenous flora, to a fine not exceeding fifty thousand rands or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any such protected wild animal or the carcasses thereof or any such flora in respect of which the offence was committed, and
- (d) any other offence in terms of this Act or any contravention of any other provision of this Act in respect of which no specific penalty is prescribed, to a fine not exceeding twenty thousand rands or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any wild animal or the carcasses thereof or any flora in respect of which the offence was committed.

(2) Where a penalty is specifically prescribed by regulation for a contravention of or failure to comply with any regulation, a person convicted of such contravention or failure is liable only to the penalty so prescribed.

(3) The court convicting any person of an offence under this Act may, in addition to any penalty imposed under any provision thereof -

- (a) issue an order that any permit, written authority or exemption issued to such person in terms of this Act, be cancelled if in the opinion of the court, the rights conferred by such permit, written authorization or exemption were abused by such person in the commission of the offence;
- (b) issue an order disqualifying such person from obtaining for a specific period not exceeding 3(three) years, any specific permit, written authority or exemption under this Act;
- (c) in the case of a second or subsequent conviction of an offence under the same chapter of this Act -
 - (I) cancel any licence or permit or other authority issued to such person in terms of this act and shall declare him or her to be ineligible for obtaining from any conservation authority any similar or other licence or permit or other authority under this act for a period not less than two years and not exceeding five years, and
 - (II) cause all relevant competent authorities to be notified of such cancellation and declaration.
- (d) declare to be forfeited to the Department -

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- (i) any vehicle, vessel, boat, craft, float, aircraft or other conveyance, any container, lamp, weapon, ammunition, implement, trap, net or other article that was used for the purposes of or in connection with the commission of the offence;
- (ii) any fauna or flora in respect of which the offence was committed.

(4) The Head of Department may deal as he or she deems fit with anything declared to be forfeited to the Department under this section: Provided that anything so declared to be forfeited (other than a perishable thing) must not be destroyed or otherwise disposed of while any appeal against the declaration, or the conviction which gave rise to such declaration, is pending or until a period of three months has elapsed from the date of such declaration, whichever is the later: Provided further that the MEC may, on application made to him or her and if he or she is satisfied that the convicted person at the time of the commission of the offence was not the owner of the thing declared to be forfeited or, if he or she was the owner, that he or she was unable to prevent the use of such thing by the convicted person, direct that such thing be returned to its lawful owner or, if it has been sold, that the proceeds of such sale after deduction of any expenses incurred by the Provincial Government be paid to such owner.

(5) Whenever any order of forfeiture is made under this section the registrar or clerk of the court in question must advise the Head of Department accordingly and must call upon the Department to uplift anything that falls to be dealt with by the MEC under subsection (3).

(6) Whenever any person is convicted of an offence in terms of this Act, the court must summarily enquire into and determine the monetary value of any advantage that he or she may have gained in consequence of that offence, and may, in addition to any other punishment that may be imposed in respect of that offence, impose a fine equal to three times the amount so determined and, in default of payment thereof, imprisonment for a period not exceeding one year.

Award to informant of part of fine recovered

115. A court which imposes a fine for an offence in terms of this Act may order that a sum not exceeding one half of the fine imposed be paid to any person, not being an officer in the service of the State, upon whose information the conviction for that offence was obtained or who assisted materially in bringing the offender to justice.

Presumptions

116. (1) When any fire-arm, live wild animal, carcass of a wild animal including a fish or flora is found or is proved to have been in or on any vehicle, vessel, boat, craft, float, aircraft or other conveyance, it is deemed, until the contrary is proved, to have been in the possession of the person in charge of such vehicle, vessel, boat, craft, float, aircraft or other conveyance.

(2) When any person is found, or is proved to have been, in possession of any endangered flora, protected flora or unprotected indigenous flora he or she must, unless the contrary is proved, be deemed to have picked such flora.

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(3) When any person is found or is proved to have been in possession of any live wild animal he or she must, until the contrary is proved, be presumed to have been keeping such animal in captivity at the relevant time.

(4) When any person is found removing or is proved to have removed any wild animal or the carcass of a wild animal from a trap, snare, pitfall, net, birdlime or any other like device or substance he or she must be presumed, until the contrary is proved, to have laid or prepared such trap, snare, pitfall, net, birdlime or other like device or substance and to have captured the animal concerned.

(5) Whenever -

(a) a vehicle, vessel, boat, craft, float, aircraft or other conveyance is being or has been used for the purpose of or in connection with the commission of an offence under this Act;

(b)(i) any wild animal or the carcass of a wild animal including a fish in respect of which an offence has been committed under this Act; or

(ii) any weapon, implement, line, poison or any other object that could be used for the hunting or catching of any wild animal including a fish and that is being or was used or formed an element in the commission of an offence under this Act, is found or has been in or on any vehicle, vessel, boat, craft, float, aircraft or other conveyance,

the owner of such a vehicle, vessel, boat, craft, float, aircraft or other conveyance as well as every person thereon or therein at the time of the commission of the offence or at the time when the wild animal, carcass or other object contemplated in paragraphs (a) and (b) is found or was in such vehicle, vessel, boat, craft, float, aircraft or other conveyance, must be presumed to have committed the offence concerned and be liable to conviction and sentence in respect thereof unless he or she proves that he or she did not commit such offence and did not take part in and could not prevent the commission of the offence.

(6) Whenever any person is found to have in his or her possession on any public road any fire-arm (other than a pistol or revolver) that is loaded or is not enclosed in such a way that the barrel and the trigger are completely covered, he or she must be deemed to be hunting a wild animal on or from such road, until the contrary is proved.

(7) Whenever in any prosecution under this Act it is alleged that an offence has been committed in connection with or in respect of any fauna or flora of the species stated in the charge, it must be presumed that such fauna or flora is of that species, until the contrary is proved.

(8) If in any prosecution it is alleged in the charge that an act that constitutes an offence under this Act, was committed within the boundaries of a Provincial nature reserve or wilderness area, local nature reserve, private nature reserve, conservancy, hiking trail, coastal conservation area, protected natural environment or limited development area, that act must be presumed to have been committed within the boundaries of that Provincial nature reserve or wilderness area, local nature reserve, private nature reserve, conservancy, hiking

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trail or coastal conservation area, protected natural environment or limited development area, until the contrary is proved.

(9) Whenever in any prosecution under this Act it is alleged that any fauna or flora that forms an element in the commission of an offence is of a specific dimension or mass, it must be presumed that such fauna or flora is of that dimension or mass, until the contrary is proved.

(10) Whenever a person is found shining a spotlight and carrying a firearm he or she must be presumed to be hunting with the aid of artificial light.

(11) A wild animal or indigenous plant in or on which an electronic transponder has been fixed must be presumed to have originated from the locality in which it was so fixed as recorded in the register kept for the purpose by the Department.

Jurisdiction as to punishment

117. A magistrate's court has jurisdiction to impose any punishment provided for in this Act and also has jurisdiction to impose any additional penalty provided for in section 114.

Limitation of liability

118. (1) The Provincial Government, the MEC, the Department or any person in the service of the Provincial Government, is not liable by virtue of anything done in good faith under the provisions of this Act.

(2) The Provincial Government, the MEC, the Department or any person in the service of the Provincial Government, is not liable (except in the case of any willful act or omission on the part of such person) to any person who in the performance of a duty or function under this Act or any other law -

- (a) makes use of any vehicle, boat or other vessel or aircraft that is the property of the Provincial Government, or the Department;
- (b) is present in any Provincial nature reserve or wilderness area; or
- (c) leaves any boat or other vessel or other property in a Provincial nature reserve or wilderness area or makes use of the facilities of a Provincial nature reserve or wilderness area,

or to the spouse or a dependant of any such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to any property caused by or arising out of or in any manner connected with the use of any vehicle, boat or other vessel or aircraft contemplated in paragraph (a), the presence contemplated in paragraph (b) or the presence of any property or the use of any facilities contemplated in paragraph (c).

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Inquiries by MEC

119. (1) The MEC may order an inquiry into any matter provided for in this Act.

(2) For the purposes of an inquiry contemplated in subsection (1), the MEC may appoint one or more persons, including a chairperson, as a committee to conduct the inquiry.

(3) A committee appointed under subsection (2) may -

(a) order any person who in its opinion may be able to give information of material importance concerning the subject of the inquiry, or who is believed to have in his or her possession or custody or control, any register, book, document or thing which may have a bearing on that subject, to appear before the committee, together with such register, book, document or thing if that be the case;

(b) call upon and administer an oath to, or accept an affirmation from any person present at the inquiry, if he or she has been or could have been ordered in terms of paragraph (a);

(c) question or require any person who has been called upon in terms of paragraph (b) to produce a register, book, document or thing referred to in paragraph (a).

(4) An order for the attendance before the committee must be in the form determined by that committee and must be signed by the chairperson.

(5) The law relating to privilege as applicable to a person giving evidence or producing a register, book, document or thing before a court of law, is applicable in respect of the questioning of, or production of a register, book, document or thing by, a person referred to in subsection (3).

Scientific research and investigation

120. The MEC may, subject to the provisions of this Act, permit or initiate any scientific research or investigation into any matter provided for in this Act.

Repeal of laws and savings

121. (1) The laws specified in Schedule 7 are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any proclamation, regulation, by-law, rule, notice, approval, authority, return, certificate, document, direction, declaration or appointment lawfully proclaimed, made, issued, promulgated, given, declared or granted, and any other act done under any provision of any law repealed by this Act is, subject to the provisions of subsection (3), deemed to have been proclaimed, made, issued, promulgated, given, granted, declared or done under the corresponding provisions of this Act.

(3) Despite the repeal of any law by subsection (1), criminal proceedings that have under such law at the date of commencement of this Act been

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commenced in any superior court, regional court or magistrate's court and in which evidence has at such date been led in respect of the relevant charge, must, if such proceedings have at that date not been concluded, be continued and concluded under such law as if it had not been repealed.

Short title

122. This Act is called the Eastern Cape Environmental Conservation Act, 2002.

SCHEDULE 1**ENDANGERED WILD ANIMALS**

Scientific name	common name (where known)	volksnaam (waar bekend)	igama elaziwayo (xa lisaziwa)
(Z) = Zulu			
MAMMALIA	mammals	soogdlere	izidalwa ezanyisayo
<i>Acinonyx jubatus</i>	cheetah	jagluiperd	ingwenkala, ihlozi
<i>Bunolagus monticularis</i>	riverine rabbit	riwierkonym	
<i>Ceratotherium simum</i>	square-lipped rhinoceros	witrenoster	umkhombe (Z)
<i>Diceros bicornis</i>	black rhinoceros	swartrenoster	umkhombe, ubhejane (Z)
<i>Equus zebra zebra</i>	Cape mountain zebra	Kaapse bergkwagga	idawuwa
<i>Manis temmincki</i>	African scaly anteater	ietermagog	uhalakavuma
<i>Ourebia ourebi</i>	oribi	oorbietjie	iula
AVES	birds	voëls	lintaka
<i>Anthropoides paradiseus</i>	blue crane	bloukraanvoël	indwe
<i>Bucorvus leadbeateri</i>	ground hornbill	bromvoël	intsikizi, intsingizi
<i>Bucconas abyssinicus</i>	wattled crane	ielkraanvoël	iqaqolo, igwampi
<i>Geronticus calvus</i>	bald ibis	wildekalkoen	umcwangele
<i>Gypaetus barbatus</i>	bearded vulture	lammergeier	Inqo emdaka
<i>Poicephalus robustus</i>	Cape parrot	grootpapegaaï	isikhwenene
<i>Sterna dougallii</i>	roseate tern	rooiborsseeswaël	
<i>Tumix hottentota</i>	blackrumped button quail	Kaapse kwarteltjie	isigwaca (Z)
REPTILIA	reptiles	reptiele	izilwanyana ezinegazi
			Elibandayo
<i>Bitis albanica</i>	Albany adder	Albany adder	
<i>Bradypodion taenia-bronchum</i>	Smith's dwarf chameleon	Smith se dwerg-verkleurmannetjie	
AMPHIBIA	amphibians	amfibië	izilwanyana eziphila
ANURA	frogs & toads	paddas	emhlabeni nasemanzini
			amasele

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<i>Anhydrophryne rattrayi</i>	Hogsback frog	Hogsback padda
<i>Bufo amatolica</i>	Amatola toad	Amatola-skurwepadda
<i>Heleophryne hewitti</i>	Hewitt's ghost frog	Hewitt se spookpadda

PISCES

Austroglanis sclateri
Barbus pallidus
Barbus trevelyani
Galaxias zebratus
Pseudobarbus afer
Pseudobarbus amatolicus
Pseudobarbus asper
Redigobius dewaali
Sandelia bainsii

fishes
 Rock catfish
 goldie barb
 Border barb
 Cape galaxias
 Eastern Cape redfin
 Amatola barb
 smallscale redfin
 checked goby
 Eastern province rocky

visse
 klipbarber
 goudghiellemientjie
 Grens ghiellemientjie
 Kaapse galaxias
 Oos-Kaapse rooivlerkie
 Amatola rooivlerkie
 kleinskub rooivlerkie
 Oosterlike provinsie
 kurper
 Kaapse kurper

Iintlanzi

Sandelia capensis

Cape kurper

INSECTA

Aloeides clarki
Bavea concolor
Chrysoritis lyncurium
Circellium bacchus

Insects
 Clark's copper butterfly
 forest croaking cicada
 Tsomo opal butterfly
 flightless dung beetle

Insekte
 vlugtelose miskruier

Izinambuzane

inkubabulongo engabha-bhiyo

Colophon, all spp.
Deloneura immaculata
Stagira ecca
Tettigomyia vespiformis

stag beetles, all spp.
 Mbashe buff butterfly
 Ecca Pass ticking cicada
 bumblebee croaking

grootkaakkewer, alle spp.

cicada

Xosopsaltria barettae

short-winged croaking

cicada

ONYCHOPHORA

Onychophora spp.
Opisthopatus spp.
Peripatopsis spp.

peripatus
 peripatus
 Peripatus

SCHEDULE 2

PROTECTED WILD ANIMALS

Scientific name	common name (where known)	volksnaam (waar bekend)	igama elaziwayo (xa lisaziwa)
(Z) = Zulu			
MAMMALIA	mammals	soogdiere	izidalwa ezanyisayo
Soricidae	shrews	skeerbekmuise	oocwethe
all spp.	all spp.	alle spp.	zonke iintlobo
Erinaceidae	hedgehogs	krimpvarkies	Iintloni
<i>Atelerix frontalis</i>	hedgehog	krimpvarkie	intloni
Chrysochloridae	golden moles	gouemol	Iintuku
<i>Amblysomus iris</i>	Zulu golden mole	Zoeloe gouemol	intuku yakwaZulu
<i>Chrysofalax trevelyani</i>	giant golden mole	reuse gouemol	intuku-yehiathi
<i>Chrysofalax villosus</i>	rough-haired golden mole		
Macroscelididae	elephant shrews	kiasneus	
all spp.	all spp.	alle spp.	
CHIROPTERA	bats	viemuise	amalulwane
all spp.	all spp.	alle spp.	zonke iintlobo
Cercopithecidae	monkeys	ape	Iintsimango
<i>Cercopithecus mitis</i>	samango monkey	samango-aap	intsimango
Hyaenidae	aardwolf, hyaenas	wolve	Iingcuka, Iingci
<i>Hyaena brunnea</i>	brown hyaena	strandwolf	ingcuka
<i>Proteles cristatus</i>	aardwolf	maanhaarjakkals	ingci, iyongci
Felidae	cats	katte	Iingada
<i>Felis nigripes</i>	small-spotted (black-footed) cat	miershooptier	ingweyездull, ingada
<i>Felis serval</i>	serval cat	tierboskat	enani, qina amnyama
<i>Panthera leo</i>	lion	leeu	ihlozi
<i>Panthera pardus</i>	leopard	luiperd	ingonyama
Canidae	foxes, jackals	jakkalse	
<i>Otocyon megalotis</i>	bat-eared fox	bakoorkakkals	udyakalashе okhazimla
<i>Vulpes chama</i>	Cape fox	silwerjakkals	okwesilvere

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Mustelidae <i>Aonyx capensis</i> <i>Lutra maculicollis</i> <i>Mellivora capensis</i> <i>Poecigale albinucha</i>	otters, weasels, honey badger Cape clawless otter spotted-necked otter honey badger striped weasel, snake mongoose	otters, ratel, muishonde groot otter klein otter ratel slangmuishond	lintini, linyengelezi, ichelesi intini intini ichelesi inyengelezi
Pinnipedia	seals, sea lions all spp.	robbe, seeleus all spp. alle spp.	lintini zolwandle, izinja zolwandle zonke iintlobo
Orycteropodidae <i>Orycteropus afer</i>	antbear antbear	erdvark erdvark	lhodi lhodi, ibhenxa
Elephantidae <i>Loxodonta africana</i>	elephants African elephant	olifante Afrika olifant	lindlovu indlovu yase Afrika
Procavidae <i>Dendrohyrax arboreus</i>	hyraxes tree hyrax	dassies boomdassie	umqha
Equidae <i>Equus quagga burchelli</i>	zebras plains (Burchell's) zebra	kwaggas bontkwagga	iqhwarha, inqanqarhu
Suidae <i>Phacochoerus aethiopicus</i>	pigs warthog	varke vlakvark	iingulube inxagu, ihagu
Hippopotamidae <i>Hippopotamus amphibius</i>	hippopotami hippopotamus	seekoel seekoel	ilmvubu imvubu
Giraffidae <i>Giraffa camelopardalis</i>	giraffe giraffe	kameelperd kameelperd	indlulamthi icowa, umcheya, indlulamthi
Bovidae <i>Alcelaphus buselaphus</i> <i>Antidorcas marsupialis</i> <i>Connochaetes taurinus</i> <i>Damaliscus dorcas dorcas</i> <i>Damaliscus dorcas phillipsi</i> <i>Oreotragus oreotragus</i> <i>Oryx gazella</i> <i>Pelea capreolus</i> <i>Philantomba monticola</i> <i>Raphicerus campestris</i> <i>Raphicerus melanotis</i> <i>Redunca arundinum</i> <i>Redunca fulvorufula</i> <i>Sylvicapra grimmia</i> <i>Syncerus caffer</i> <i>Taurotragus oryx</i> <i>Tragelaphus scriptus</i>	antelopes, buffalo red hartebeest springbuck black wildebeest bontebok blesbuck klipspringer gemsbuck grey rhebuck blue duiker steenbuck grysbuck southern reedbuck mountain reedbuck common duiker African buffalo eland bushbuck	bokke, buffels rooihartbees springbok swartwildebees bontebok blesbok klipspringer gemsbok vaalribbok bloubokkie steenbok grysbok rietbok rooiribbok duiker buffel eland bosbok	linyamakazi ixhama ibhadi inqu iinqa iinqa igogo inkukhama iliza iphuthi itshabanqa ingxungxu, inxunxu intlangu inxala impunzi inyathi impofu imbabala (ungece, unkonka) iqudu
<i>Tragelaphus strepsiceros</i>	kudu	koedoe	
AVES all spp., but not including any mentioned in Schedule 1 and the following -	birds all spp., but not including any mentioned in Schedule 1 and the following -	voëls alle spp., maar nie insluitend dië in Bylae 1 bepaal en die volgende nie -	lntaka zonke iintaka zikhuselwe ngumthetho ngapandle kwezilandilayo -
Columbidae <i>Columba livea</i> <i>Columba guinea</i>	pigeons, doves feral pigeon rock pigeon	duiwe tuinduif kransduif	amahobe ihobe ivukuthu
Coliidae , all spp.	mousebirds, all spp.	muisvoëls, alle spp.	lindlazi, zonke iintlobo

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Corvidae, all spp.	crows, ravens, all spp	kraaie, alle spp.	ihlungulu, igwangwa & unomyayi, zonke iintlobo
Pycnonotidae <i>Pycnonotus barbatus</i> <i>Pycnonotus capensis</i> <i>Pycnonotus nigricans</i>	bulbuls black-eyed bulbul Cape bulbul red-eyed bulbul	tiptols swartoogtiptol Kaapse tiptol rooioogtiptol	lkhwebula lkhwebula
Sturnidae <i>Acridotheres tristis</i> <i>Onychognathus morio</i> <i>Stumus vulgaris</i>	starlings Indian myna red-winged starling European starling	spreuus Indiese spreeu rooivlerkspreeu Europese spreeu	isomi
Ploceidae <i>Euplectes capensis</i> <i>Euplectes orix</i> <i>Passer domesticus</i> <i>Passer melanurus</i> <i>Ploceus capensis</i> <i>Ploceus velatus</i> <i>Quelea quelea</i>	sparrows, weavers yellowrumped widow red bishop house sparrow Cape sparrow Cape weaver masked weaver red-billed quelea	mossies, vinke Kaapse flap rooivink huismossie Kaapse mossie Kaapse wever swartkeelvink rooibekkwelea	isahamba umcumse, umillo umnondwane, undlunkulu ihobohobo lrheza
REPTILIA	reptiles	reptiele	lzilwanyana ezinegazi elibandayo
CHELONII All spp.	tortoises, terrapins & turtles all spp.	skilpaale, waterskil-paaie alle spp.	oofudo, lmfudo zolwandle zonke iintlobo
SERPENTES <i>Bitis inornata</i> <i>Dabypeltis</i> , all spp. <i>Duberria</i> , all spp. <i>Lamprophis</i> , all spp. <i>Lycodonomorphus</i> , all spp. <i>Lycophidion</i> , all spp. <i>Mehelya</i> , all spp. <i>Philothamnus</i> , all spp. <i>Prosymna</i> , all spp. <i>Pseudaspis</i> , all spp. <i>Python sebae</i>	snakes plain mountain adder egg-eaters, all spp. slug-eaters, all spp. house snakes, all spp. water snakes, all spp. wolf snakes, all spp. file snakes, all spp. green & bush snakes, all spp. shovel-snout snakes, all spp. mole snakes, all spp. African rock python	slange ongemerkte bergadder .eiervreters, alle spp. slakvreters, alle spp. huisslange, alle spp. .waterslange, alle spp. wolfslange, alle spp. vyislange, alle spp. groen- & bosslange, alle spp. graafneusslange, alle spp. molslange, alle spp. Afrika rotsluislang	linyoka
LACERTILIA	lizards, chamaeleons	akkedissee, verkleur-mannetjies	inamba
all spp., but not including any mentioned in Schedule 1	all spp. but not including any mentioned in Schedule 1	alle spp. maar nie insluitend dié in Bylae 1 bepaal nie	amanwabu, amacillikshe, oorhoqotyeni ezinye iintlobo zazo ezingakhankanywanga kwisiHomelo 1
CROCODYLIA <i>Crocodylus niloticus</i>	crocodiles Nile crocodile	krokodille Nyl krokodil	lingwenya ingwenya
ANURA all spp. but not including mentioned in Schedule 1	frogs & toads all spp. but not including any mentioned in Schedule 1	paddas alle spp. maar nie insluitend dié in Bylae 1 bepaal nie	amasele ezinye iintlobo zazo any ezingakhankanywanga kwisiHomelo 1
LEPIDOPTERA <i>Abantes bicolor</i> <i>Aslauga australis</i> <i>Charaxes pondoensis</i>	butterflies bicoured skipper southern purple Pondo charaxes	skoelappers	amabhabhathane

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<i>Chrysothrix penningtoni</i>	Pennington's opal
<i>Chrysothrix phosphor</i>	scarce scarlet
<i>Chrysothrix pyrois</i>	sand-dune opal
<i>Iolais aphaeiodes</i>	yellow-banded sapphire
<i>Lepidochrysops bacchus</i>	wineland blue
<i>Lepidochrysops victori</i>	Victor's blue
<i>Metisella syrix</i>	mountain bamboo sylph

SCHEDULE 3

PROBLEM WILD ANIMALS

Scientific name	common name (where known)	volksnaam (waar bekend)	igama elaziwayo (xa lisaziwa)
MAMMALIA	mammals	soogdiere	izidalwa ezanyisayo
<i>Canis mesomelas</i>	black-backed jackal	swartrug jakkal	impungutye, udyakalasho
<i>Felis caracal</i>	caracal, lynx	rooi-kat	ingqawa
Vagrant Dog			

SCHEDULE 4

ENDANGERED FLORA

Note: a species marked * is protected in terms of section 12(1)(d) of the National Forests Act, 1998.

Scientific name	common name (where known)	volksnaam (waar bekend)	igama elaziwayo (xa lisaziwa)
<i>Acharia tragodes</i>			
<i>Alepidea galpinii</i>			
<i>Aloe bowiea</i>			
<i>Aloe longistyla</i>			
<i>Aloe reynoldsii</i>	Mbashe aloe		
<i>Anthospermum streyi</i>			
<i>Aristea platycaulis</i>			
<i>Aspidoglossum uncinatum</i>			
<i>Bowiea volubilis</i>			
<i>Brachystelma kerzneri</i>			
<i>Brachystelma tenellum</i>			
<i>Catha abbottii</i>	Pondo khat		
* <i>Colubrina nicholsonii</i>			
<i>Crassula planifolia</i>			
<i>Cyclopia filiformis</i>			
<i>Cyclopia longifolia</i>			
<i>Cyclopia pubescens</i>			
* <i>Dahlgrenodendron natalense</i>	Natal quince	Natakweper	
* <i>Encephalartos</i> , all spp., but not including a cultivated seedling	cycads, all spp., but not including a cultivated seedling	broodbome, alle spp., maar nie insluitend 'n gekweekde saailing nie	umphanga, mguza, zonke iintlobo ngaphandle kwezilinyi-weyo ngembewu
<i>Englerodaphane subcordata</i>			
<i>Erica abbottii</i>			
<i>Erica cubica</i>			
<i>Eugenia simii</i>			
* <i>Eugenia umtamvunensis</i>			
<i>Euphorbia jansenvillensis</i>			
<i>Euphorbia meloformis</i>		eselskos, pol	intsele
<i>Euphorbia obesa</i>			
<i>Euphorbia symmetrica</i>			
<i>Euphorbia valida</i>			
<i>Ezoscadium capense</i>			
<i>Guthria capensis</i>			
<i>Gymnosporia bachmannii</i>			
<i>Gymnosporia elliptica</i>			
<i>Herschelianthe lugens</i> var. <i>nigrescens</i>			
<i>Herschelianthe venusta</i>			
<i>Holothrix longicornu</i>			
<i>Indigofera 'braamtonyi' ms</i>			
<i>Indigofera 'gogosa' ms</i>			
<i>Indigofera 'herrstreyi' ms</i>			
<i>Isoetes wormaldii</i>			
<i>Jamesbrittenia albanensis</i>			
* <i>Jubaeopsis caffra</i>	Pondo coconut	Pondokokospalm	inkhomba
<i>Lauridia reticulata</i>			
<i>Leucadendron pondoense</i>			
<i>Leucadendron spissifolium</i>	Oribi spear-leaved cone-		

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<i>subspecies oribinum</i>	bush		
<i>Leucospermum innovans</i>	Pondoland pincushion		
* <i>Manilkara nicholsonii</i>	south coast milkberry	suidkusmelkbessie	
* <i>Maytenus abbottii</i>	rock silky bark	klipsybas	
<i>Maytenus vanwykii</i>			
<i>Metarungia galpinii</i>			
<i>Nerine masoniorum</i>			
<i>Ochna natalitia</i>			
<i>Orbea speciosa</i>			
<i>Phyllica natalensis</i>	Natal hard-leaf	Natalhardeblaar	
<i>Plectranthus hilliardii</i>			
<i>Plectranthus malvinus</i>			
<i>Plectranthus praetermissus</i>			
<i>Plectranthus pentheri</i>			
<i>Plectranthus reflexus</i>			
* <i>Pseudosalacia streyi</i>	rock lemon	kliplemoen	
<i>Psoralea abbottii</i>	Pondo fountain bush	Pondofonteinbos	
<i>Rapanea gilliana</i>			
* <i>Raspalia trigyna</i>			
* <i>Rhynchochalyx lawsonioides</i>	Natal privet	Natalliguster	
* <i>Rinorea domatiosa</i>	bearded white violet bush	bebaarde witvlootjebos	
<i>Schizoglossum amatolicum</i>			
<i>Streptocarpus formosus</i>			
<i>Streptocarpus kentaniensis</i>			
<i>Streptocarpus johannis</i>			
<i>Streptocarpus liliputana ms</i>			
<i>Streptocarpus modestus</i>			
<i>Streptocarpus porphyrostachys</i>			
* <i>Syzygium pondoense</i>	Pondo waterwood	Pondowaterhout	
<i>Tephrosia bachmannii</i>			
* <i>Tricalysia africana</i>	Pondo coffee	Pondokoffie	isiceza
<i>Turraea pulchella</i>	Pondo honeysuckle tree		
<i>Turraea streyi</i>	Strey's honeysuckle tree		
<i>Utricularia sandersonii</i>	bladderwort	blaaskruid	

SCHEDULE 5

PROTECTED FLORA

Note: A species marked * is protected in terms of section 12(1)(d) of the National Forests Act, 1998.

Scientific name	common name (where known)	volksnaam (waar bekend)	igama elaziwayo (xa lisaziwa)
(Z) = Zulu			
* <i>Acridocarpus natalitius</i> <i>Adiantum</i> , all spp.	moth-fruit maidenhair ferns, all spp.	vrouehaar, alle spp.	umabhope umsolo womlambo, zonke lintlobo umabophe
* <i>Alberta magna</i> <i>Alepidea amatymbica</i> <i>Alepidea stellata</i> * <i>Allophylus natalensis</i>	Natal flame bush dune false currant	breekhout duinebastertaaibos	 umgqalagquzu, uzingathi amakhala, zonke intlobo, ngaphandle kuka nomaweni ezo
<i>Aloe</i> , all spp., but not including <i>A. arborescens</i> , <i>A. ferox</i> and any mentioned in Schedule 4	aloes, all spp. but not including krantz aloe, bitter aloe and any	aalwyne, alle spp. Maar nie insluitend kransaal- wyn, bitteraalwyn en dié	amakhala, zonke intlobo, ngaphandle kuka nomaweni ezo
	mentioned in Schedule 4	in Bylae 4 bepaal nie	zikhankhanywe kwisiHlomele 4
AMARYLLIDACEAE			
all spp. <i>Anacampteros</i> , all spp. <i>Anemone caffra</i> <i>Anemone tenuifolia</i> <i>Apodytes abbottii</i> * <i>Apodytes dimidiata</i> subsp. <i>dimidiata</i>	love-plants, all spp. anemone Pondo white pear white pear	hasieskos, alle spp. anemoon Pondowitpeer witpeer	 umdakane
ASCLEPIADACEAE			
all spp. <i>Aspalathus gerrardii</i> <i>Asplenium simii</i> * <i>Atalaya capensis</i> <i>Atalaya natalensis</i> * <i>Avicennia marina</i>	Cape krantz ash Natal krantz ash white mangrove	Kaapse kransesseboom Natalese kransesseboom witseebasboom	umhlambila (Z) isikhungathi
<i>Barberetta aurea</i> <i>Bauhinia bowkeri</i> umdlanlovu * <i>Bauhinia natalensis</i> <i>Begonia dregei</i> <i>Brachystelma australe</i> * <i>Bridelia micrantha</i> * <i>Brugulera gymnorhiza</i> * <i>Buddleja saligna</i> <i>Bulbine inae</i> sp. nov.	Kei neat's foot Natal bauhinia mitseeri black mangrove false olive	Keibeeklou Natalesebeeklou mitserie swartwortelboom witolienhout	 mhlahlamakhwaba isikhungathi umnceba, umgqeba
BRUNIACEAE			
all spp. but not including any mentioned in Schedule 4 <i>Buxus macowanii</i> * <i>Caesalpinia bonduc</i> <i>Calopsis paniculata</i> * <i>Canthium vanwykii</i>	Cape box bonduc Pondo rock alder	Kaapse buksboom Pondoklipels	umgalagala

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<i>*Carissa wylei</i>	forest num-num	bos noemnoem	
<i>Cassipourea flanaganii</i>	Cape onionwood	Kaapse uiehout	
<i>*Cassipourea gerrardii</i>	common onionwood	gewone uiehout	umqonga, umemezi, umkhatane
<i>*Cassine aethiopica</i>	kooboo-berry	koeboebessie	umgxube, umbovane
<i>Cassytha pondoensis</i>			
<i>*Celtis durandii</i>	false white stinkwood	basterwitstinkhout	umvumvu
<i>Centella graminifolia</i>			
<i>Cephalanthus natalensis</i>	strawberry bush	witaarbeibos	umfimfi (Z)
<i>*Chionanthus foveolatus</i>	common pock ironwood	gewone pokysterhout	umdlebe, umnqumaswili
subsp. <i>foveolatus</i>			
<i>*Chionanthus peglerae</i>	giant pock ironwood	reusepokysterhout	
<i>Chironia, all spp.</i>			
<i>Chondropetalum microcarpum</i>			
<i>*Combretum caffrum</i>	Cape bushwillow	Kaapse vaderlandswilg	umdubu
<i>*Combretum erythrophyllum</i>	river bushwillow	riviervaderlandswilg	umdubu
<i>*Cordia caffra</i>	septe tree	septeboom	umlovulovu
<i>Crassula perfoliata</i>			
<i>Crassula streyi</i>	Pondoland crassula		
<i>Craterostigma nanum</i>	mole's spectacles		
<i>Cryptocarya myrtifolia</i>	myrtle quince	mirtkweper	isithungwa
<i>*Cyathea, all spp.</i>	tree ferns, all spp.	boomvarings, alle spp.	izihhi, zonke
<i>iintlobo</i>			
<i>*Cunonia capensis</i>	red alder	rooi-els	umqwashube
<i>*Curtisia dentata</i>	assegai	assegaai	usirhayi, umgxina
<i>*Cussonia gamtoosensis</i>			
<i>Diascia, all spp.</i>			
<i>Dioscorea elephantipes</i>	elephant's foot	olifantsvoet	
<i>Dioscorea sylvatica</i>	elephant's foot	skilpadknol	ingwevu (Z)
<i>Drimia hyacinthoides</i>			
<i>*Drypetes arguta</i>	water ironplum	waterysterpruim	umnqungqute
<i>Ecbolium flanaganii</i>			
<i>Echlostachys spicatus</i>			
<i>Elaphoglossum angustatum</i>			
<i>*Encephalartos all spp.,</i>	cycads, all spp.,	broodboome, alle spp.	umphanga, umguza,
cultivated seedling only	cultivated seedling only	gekweekde saailing alleen	zonke iintlobo, kwezilinyiweyo ngembewu
ERICACEAE,	ericas	helde	onontlango
all sp, but not including any mentioned in Schedule 4	all spp. but not including any mentioned in Sche- dule 4	alle spp., maar nie insl- uitend dié in Bylae 4 bepaal nie	zonke iintlobo, zazo ezingakhankanywanga kwisihlomelo 4
<i>Eriosema dregei</i>			
<i>Eriosema latifolium</i>			
<i>Eriosema luteopetalum</i>			
<i>Eriosema umtamvunense</i>			
<i>Eriosemopsis subanisophylla</i>			
<i>Erythrina acanthocarpa</i>	tamboekie thorn	tamboekie thorn	
<i>Erythrina humeana</i>	dwarf coral tree	kleinkoraalboom	umsintsana
<i>*Euclea natalensis</i>	Natal guarri	Natalghwarrie	umtshekisani, umkhaza
subsp. <i>natalensis</i>			
<i>*Euclea racemosa</i>	sea guarri	seeghwarrie	
<i>Eucomis, all spp.</i>	pineapple flowers, all spp.	pynappelblomme, alle spp.	umathunga (Z), mbola (Z), zonke iintlobo
<i>*Eugenia capensis</i>	dune myrtle	duinemirt	umbelwana, umpofana
<i>Eugenia erythrophylla</i>	large-leaved myrtle	grootblaarmirt	
<i>Eugenia verdoorniae</i>	small-leaved myrtle	fynblaarmirt	

<i>Eugenia</i> sp. nov. C			
<i>Euphorbia astrophora</i>			
<i>Euphorbia bupleurifolia</i>			
<i>Euphorbia decepta</i>		melkbol	intsele
<i>Euphorbia ericoides</i>			inkamamasane
<i>Euphorbia globosa</i>			
<i>Euphorbia horrida</i>			
<i>Euphorbia stellata</i>			
<i>Euryops leiocarpus</i>			
<i>Faurea macnaughtonii</i>	terblanz beech	terblans	isafu, umkhubane
<i>Ficus bizanae</i>	Pondo fig	Pondovy	umthombe
<i>Ficus sur</i>	broom cluster fig	besemtrosvy	umkhiwane
<i>Gasteria</i> , all spp.	gasterias, all spp.	bosaalwyne, alle spp.	limpundu, zonke Iintlobo
<i>Geranium subglabrum</i>			
<i>Gloriosa superba</i>	flame lily		inyibiba yodumo,
<i>Gnidia singularis</i>			
<i>Gnidia triplinervis</i>			
* <i>Grewia pondoensis</i>	Pondo raisin	Pondorosyntjie	
<i>Greyia flanaganii</i>	Kei bottlebrush	Keibaakhout	usinya
<i>Harveya</i> , all spp.	harveyas, all spp.		
<i>Haworthia</i> , all spp.	haworthias, window plants, all spp.		
<i>Helichrysum glaciale</i>			
<i>Helichrysum pannosum</i>			
<i>Helichrysum populifolium</i>	poplar helichrysum		
<i>Helichrysum sessilioides</i>			
<i>Heliophylla subulata</i>			
<i>Hernia hystrix</i>			
<i>Hydnora africana</i>			
<i>Hypodematium crenatum</i>			
HYPOXIDACEAE	star flowers	sterblomme	ixahanxa, inongwe,
all spp.	all spp.	alle spp	inkomfe, zonke Iintlobo
* <i>Ilex mitis</i>	Cape holly	without	umduduma, umduma
<i>Impatiens flanaganii</i>			
<i>Indigofera 'pondoensis'</i> ms			
<i>Indigofera rubroglandulosa</i>			
IRIDACEAE			
all spp. but not including any mentioned in Schedule 4			
<i>Kalanchoe thyrsiflora</i>	white lady	geelplakkie	
<i>Kniphofia</i> , all spp.	redhot poker, all spp.	vuurpyl, alle spp.	ixonya, zonke Iintlobo
<i>Lachenalia</i> , all spp	lachenalias, all spp.		
LENTIBULARIACEAE	bladderworts, all spp.	blaaskruide alle spp.	zonke Iintlobo,
all spp. but not including any mentioned in Schedule 4	but not including any mentioned in Schedule 4	maar nie insluitend dié in Bylae 4 bepaal nie	ngaphandle zikhankanywe kwisiHlomelo 4
<i>Liparia genistoides</i>			
<i>Littonia modesta</i>	climbing bells	geelklokke	Iintsimbikhwelenca
<i>Lopholaena dregeana</i>			
<i>Lotononis bachmanniana</i>			
<i>Lotononis holosericea</i>			
<i>Lotononis viminea</i>	white lotononis		
<i>Lygodium kerstenii</i>			
<i>Lysimachia nutans</i>			
* <i>Macaranga capensis</i>	wild poplar	wildepopulier	umbengele
* <i>Margaritaria discoidea</i> var. <i>discoidea</i>	common pheasant-berry	gewone fisantebessie	umphanzitha, umhlulazembe
* <i>Maytenus bachmannii</i>	willow koko tree	wilgerkokoboorn	

DD2

<i>*Maytenus oleosa</i>				
<i>*Memecylon bachmannii</i>	Pondo rose-apple		Pondoroosappel	umbande
MESEMBRYANTHEMACEAE	mesembs		vygles	
all spp.	all spp.		alle spp.	
<i>Microsorium ensiforme</i>				
<i>*Milletia sutherlandii</i>	giant umzimbeet		reuseomsambeet	umqunye
<i>*Mimusops caffra</i>	coastal red milkwood		kusrooimelkhout	umthunzi
<i>Monsonia natalensis</i>				
<i>Mossia intervallaris</i>				
<i>Nectaropetalum capense</i>	Kei coca tree		Keikokaboom	iqande
<i>Nectaropetalum zuluense</i>	Natal coca tree		Natakokaboom	iqande
<i>Neopaterosonia uitenhagenis</i>				
<i>*Nuxia floribunda</i>	forest elder		bosvlier	ingqotha, isikhali
<i>Nymphaea capensis</i>	blue water lily		blou waterlelie, kaai- maanblom	inyibiba yasemanzini ezuba
<i>*Ocotea bullata</i>	stinkwood		stinkhout	umnukani
<i>*Ocotea kenyensis</i>	Transvaal stinkwood		Transvaalstinkhout	umnukani
<i>*Oldenburgia grandis</i>	Suurberg cushion bush		Suurbergse kussingbos	
<i>*Olea capensis</i>	ironwood		ysterhout	ugqwangxe
subsp. <i>macrocarpa</i>				
<i>*Olea europea</i> subsp. <i>africana</i>	wild olive		olienhout	umnquma
<i>*Olinia radiata</i>	Natal hard pear		Natalhardepeer	umbovana, umphanzi
<i>*Olinia ventosa</i>	hard pear		hardepeer	ingobamakhosi, umgenalahla, inqudu
<i>Orbea macloughlinii</i>	Macloughlin's orbea			
<i>Orbea speciosa</i>				
ORCHIDACEAE	orchids			
all spp.	all spp.			
<i>Ornithogalum</i> , all spp.	chinkirinchee, all spp.		tjenkerientjee, alle spp.	umabalaza (Z), zonke intlobo
<i>Osteospermum imbricatum</i>				
<i>*Pachypodium</i> , all spp.				
<i>*Pachystigma bowkeri</i>				
<i>*Pappea capensis</i>	jacket-plum		doppruim	ilitye, umgqalutye
<i>Pelargonium ochroleucum</i>				
<i>Peperomia</i> all spp.				
<i>Peucedanum natalense</i>				
<i>Phyllanthus tysoni</i>	Pondo hard-leaf		Pondohardeblaar	
<i>Phyllanthus cedrelifolius</i>	forest potato bush		bushbosartappelbos	
<i>*Platylophus trifolius</i>	white alder		witels	
<i>Plectranthus aliciae</i>				
<i>Plectranthus ernstii</i>				
<i>Plectranthus oertendahlii</i>				
<i>Plectranthus oribiensis</i>				
<i>Plectranthus saccatus</i>				
subsp. <i>pondoensis</i>				
<i>*Podocarpus falcatus</i>	Outeniqua yellowwood		Outeniekwageelhout	umkhoba
<i>*Podocarpus henkelii</i>	Henkel's yellowwood		Henkel-se-geelhout	umsonti (Z)
<i>*Podocarpus latifolius</i>	real yellowwood		opregtegeelhout	umcheya
<i>Podranea ricasoliana</i>	Port St Johns creeper			
<i>Polystichum</i> , all spp.	seven weeks fern, all spp.		seweeweeksvarrings, alle spp.	
PROTEACEAE	proteas		proteas	
all spp. but not including any mentioned in Schedule 4	all spp. but not including any mentioned in Schedule 4		alle spp. maar nie insluitend dié in Bylae 4 bepaal nie	
<i>*Prunus africana</i>	red stinkwood		rooistinkhout	umkakazi, inyazangoma
<i>*Pseudosclopia polyantha</i>	false red pear		valsrooipeer	
<i>Psilotum nudum</i>				
<i>*Pterocelastrus tricuspidatus</i>	candlewood		kershout	utywina, ugobandlovu

DD2

<i>*Putterlickia retrospinosa</i>	large-leaved bastard spike-thorn		
<i>*Rapanea melanophloeos</i>	Cape beech	boekenhout	isiqwane sehlathi
<i>Raphionacme lobulata</i>			
<i>*Rauvolfia caffra</i>	quinine tree	kinaboom	umthundisa, umjelo
<i>Rehania pungens</i> subsp. <i>angustifolia</i>			
<i>*Rhizophora mucronata</i>	red mangrove	rooiwortelboom	umhluma
<i>*Rhus acocksii</i>			
<i>Rhus albomarginata</i>			
<i>*Rinorea angustifolia</i>	white violet-bush	witviooltjwos	umzungulu
<i>Sandersonia aurantiaca</i>	Chinese lantern, christmas bell	geelklokkie	ihlamvu lasenhla (Z)
<i>Schizobasis intricata</i>			
<i>*Scolopia zeyheri</i>	thorn pear	doringpeer	iqumza elinameva
<i>Selago lepidoides</i>			
<i>Senecio austromontanus</i>			
<i>Senecio erubescens</i> var. <i>inclusus</i>			
<i>Senecio glanduloso-lanosus</i>			
<i>Senecio medley-woodii</i>			
<i>*Sideroxylon inerme</i>	white milkwood	witmelkhout	amasethole, umqwashu
<i>*Spirostachys africana</i>	tamboti	tambotie	umthombothi
<i>Stangeria eriopus</i>	stangeria	bobbejaankos,	/mfingwane,
<i>Stapelia, all spp.</i>			
<i>*Sterculia alexandri</i>	Cape star-chestnut	Kaapse sterkastaling	
<i>Strelitzia, all spp., excluding</i> <i>S. nicolae</i>	crane flowers, all spp. excluding Natal wild banana	kraanvoëlblomme, alle spp. uitsluitend Natalse wildepiesang	ikhamanga, zonke lintlobo ngaphandle ikhamane omkulu
<i>Streptocarpus, all spp. but not</i> including any mentioned in Schedule 4	Cape primrose, rexia, nodding bells, twin sisters, wild gloxinia, all spp. but not including any ment- ioned in Schedule 4		
<i>Struthiola pondoensis</i>			
<i>*Strychnos mitis</i>	yellow bitterberry	geelbitterbessie	ibholo, umnqonqodi
<i>Syncolostemon, all spp</i>	pink plume, all spp.		
<i>Syncarpa recurvata</i>			
<i>*Syzygium gerrardii</i>	forest water berry	boswaterhout	umjomi-wehlathi, umansane
<i>*Tephrosia pondoensis</i>	Pondo poison pea	Pondogifertjie	
<i>Tetradenia barberae</i>			
<i>Thamnocalamus tessellatus</i>	mountain bamboo	bergbamboes	
<i>*Trichilia dregeana</i>	forest mahogany	bosroolessenhout	umkhuflu
<i>Trichomanes reptans</i>			
<i>*Umtiza listeriana</i>	umtiza	omtisa	umthiza
<i>Urginea ciliata</i>			
<i>Veltheimia all spp</i>	forest lilies, all spp.	sanduse, alle spp	
<i>*Voacanga thouarsii</i>	wild frangipani	wildefrangipani	umthofu, umthomfi
<i>*Widdringtonia nodiflora</i>	mountain cypress	bergsipres	unwelelwentaba
<i>*Widdringtonia schwarzii</i>	Willowmore cedar	Baviaanskloofseder	
<i>*Xymalos monospora</i>	lemonwood	lemoenhout	uvethe
<i>Zaluzianskya angustifolia</i>			
<i>Zantedeschia elliotiana</i>			
<i>*Zanthoxylum davyi</i>	knobwood	perdepram	umlungumabele

DD2

SCHEDULE 6

NOXIOUS AQUATIC GROWTHS

Scientific name	common name (where known)	volksnaam (waar bekend)	igama elaziwayo (xa lisaziwa)
<i>Eichhornia</i> all spp.	water hyacinth, all spp.	waterhiasint, alle spp.	
<i>Myriophyllum</i> all spp.	parrot's feather all spp.	duisendblaar, alle spp.	
<i>Salvinia</i> all spp.	water fern, all spp.	watervaring, alle spp.	

(Schedule 7 on following page)

DD2

SCHEDULE 7
REPEAL OF LAWS
(Section 121)

Title, No. & Year of law	Extent of repeal
Sea-shore Act, 1935 (Act No. 21 of 1935)	The whole, in so far as it does not relate to the sea-shore and the sea within any port or harbour that in terms of any law falls under the control and management of the Company referred to in section 1 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), excluding sections 2, 6, 7(1)(b) and (2)(b), 8, 9, 11(2), 12 and 13(b) and (e).
Sea-shore Amendment Act, 1959 (Act No. 60 of 1959)	The whole
Sea-shore amondement Act, 1969 (Act No. 45 of 1969)	The whole
Sea-shore Amendment Act, 1972 (Act No. 38 of 1972)	The whole
Sea-shore Act, 1979 (Act No. 17 of 1979), Transkei	The whole
Nature and Environmental Conservation Ordinance, 1974 (Ordinance No. 19 of 1974), Cape Province	The whole
Nature Conservation Act, 1987 (Act No. 10 of 1987), Ciskei	The whole
Environmental Conservation Decree, 1992 (Decree No. 9 of 1992), Transkei	The whole
Nature Conservation Amendment Decree, 1992, Ciskei	The whole
Problem Animal Control Ordinance, 1957(No 26 of 1957)	The whole

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EXPLANATORY MEMORANDUM ON THE ENVIRONMENTAL CONSERVATION BILL, 2002

PART I

(General Principles)

BACKGROUND

This Bill is intended to consolidate Provincial legislation governing the administration of the environment. This forms part of the broad process to rationalise all old order legislation in the Province.

The national Department of Environmental Affairs and Tourism is currently engaged in rationalisation of environmental laws. Accordingly, that Department is amending the National Environmental Management Act, 1998(Act No. 107 of 1998)(hereinafter referred to as "NEMA", and has extracted from that Act provisions dealing with Biodiversity, Protected Areas, Waste Management, Coastal Management and Air Quality, and developed those chapters into separate pieces of legislation. NEMA serves as framework legislation dealing with the management of the environment.

For our purposes as a Province the Department of Economic Affairs, Environment and Tourism has developed a Bill, the Environmental Conservation Bill, 2002(Eastern Cape), which is intended to serve as framework legislation along the same lines as NEMA. The Environmental Conservation Bill for Provincial purposes includes all the areas provided for in NEMA, and only Protected Areas is extracted and developed into a separate piece of legislation. Biodiversity, Waste Management, Coastal Management and Air Quality are provided for in different chapters of the Bill.

POLICY OBJECTIVES

The purpose of the Bill is to provide for the administration, development and conservation of the environment in the Province. Consequently the Bill provides for the establishment of advisory bodies in respect of environmental conservation, to empower the MEC responsible for the environment to make certain declarations in relation to environmental conservation, to provide for the general powers of the MEC to ensure that environmental species are not endangered and exhausted, and that they are conserved for future generations.

PART II*(Clause by clause analysis)*

- | | | | |
|---------------|-----------|---|---|
| Clause | 1 | - | sets out definitions |
| Clause | 2 | - | sets out objectives and principles of the Act which include <i>inter alia</i> the need to utilize the environment and its living natural resources to achieve sustainable economic growth, human resource development, employment creation and a sound ecological balance consistent with the development objectives of the provincial government |
| Clause | 3 | - | provides for the MEC to determine general policy |
| Clause | 4 | - | provides for administration of the Act |
| Clause | 5 | - | sets out general powers of the department which include taking measures to protect, distribute fauna that are not exotic wild animals control problem wild animals and the control of fish and aquatic growth |
| Clause | 6 | - | provides for the designation of environmental conservation officers by the Head of Department |
| Clause | 7 | - | sets out powers and duties of environmental conservation officers which include conducting investigation to ascertain whether any provision of the Act is being complied with |
| Clause | 8 | - | provides for designation and appointment of honorary environment conservation officers |
| Clause | 9 | - | provides for designation of environmental conservation rangers |
| Clause | 10 | - | provides for the establishment of the Provincial Environment Advisory Council which must advise the MEC on any matter which he or she refers to it |
| Clause | 11 | - | sets out how the council is to be constituted |
| Clause | 12 | - | provides for the establishment of conservancies for purposes of conserving and managing fauna and flora found in a natural state on that land |

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- Clause 13** - sets out rights and duties of owners or occupiers of land in a conservancy
- Clause 14** - provides for continued existence of hiking trails that were established in terms of Transkeian and Ciskeian Conservation Acts
- Clause 15** - provides for construction, control and maintenance of provincial hiking trail
- Clause 16** - provides for agreements to be entered into with land owners if hiking trails traverse private land
- Clause 17** - prohibits certain activities on hiking trails
- Clause 18** - provides for application of Chapter 5
- Clause 19** - provides miscellaneous provisions relating to endangered wild animals
- Clause 20** - prohibits hunting of a wild animal that is in captivity except on the authority of a permit issued by the Department
- Clause 21** - provides for hunting of wild animals during certain seasons
- Clause 22** - provides for the MEC to determine by notice in the Gazette hunting seasons
- Clause 23** - prohibits killing of wild animals in excess of a daily bag limit determined by MEC by Notice in the Gazette
- Clause 24** - sets out which methods of hunting are prohibited
- Clause 25** - prohibits use of certain firearms for hunting certain wild animals
- Clause 26** - prohibits keeping of wild animals in captivity
- Clause 27** - prohibits release of exotic wild animal or bird in the Province
- Clause 28** - prohibits person from removing a fence causing wild animals to gain access to a such person's property
- Clause 29** - prohibits use of poison for hunting

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- Clause 30** - prohibits use of vessel, motor vehicle or aircraft for hunting of wild animals
- Clause 31** - provides for an owner of land on which any species of wild animal is found to apply to the Head of Department for a certificate of enclosure. The application must include full of land, size and vegetation thereon as well as the species of protected wild animals to which the application relates
- Clause 32** - sets out rights of owner of land to whom a certificate of adequate enclosure has been issued
- Clause 33** - provides that a certificate of adequate enclosure lapses upon transfer or lease of land in respect of which it was issued
- Clause 34** - provides for the Head of Department to authorize an owner of land to transfer to a person approved by him or her rights that such owner has under the Act
- Clause 35** - prohibits an owner of land from authorizing any other person to hunt or remove any wild animal or carcass thereof from his or her land unless that is done in accordance with the provisions of the Act
- Clause 36** - prohibits a person from hunting or removing any wild animal from land which does not belong to him or her unless he or she has been authorized by the owner of the land
- Clause 37** - sets out what has to be done when a person donates a wild animal or carcass to another person
- Clause 38** - creates an offence in respect of possession of a wild animal or carcass thereof
- Clause 39** - provides for the keeping of documents that relate to donation of wild animal or carcass thereof
- Clause 40** - sets out activities that are prohibited in respect of wild animals or carcasses thereof
- Clause 41** - prohibits sale of biltong of wild animal that has not been hunted in terms of the Act

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- Clause 42** - provides for persons who may sell carcasses of wild animals
- Clause 43** - provides for hunting of wild animals in land situated in an urban area
- Clause 44** - provides for issuing of licenses to professional hunters, hunting outfitters or durations of professional hunting schools
- Clause 45** - sets out duties of professional hunters, hunting outfitters and their clients
- Clause 46** - provides for hunting outfitters to have landowners permission to hunt
- Clause 47** - creates an offence in respect of organizing or conducting hunting by a person under false pretences
- Clause 48** - provides for recognition of South African Professional Hunting Committee
- Clause 49** - provides for prohibited actions
- Clause 50** - provides for general powers of the MEC in relation to problem animal control
- Clause 51** - prohibits pollution of inland waters
- Clause 52** - prohibits placing of articles that may prevent free passage of fish in inland waters
- Clause 53** - prohibits placing of live fish in any aquatic growth in inland waters without a permit
- Clause 54** - prohibits killing or injuring of fish in inland waters
- Clause 55** - prohibits catching certain species of fish and catching fish during a closed season
- Clause 56** - prohibits angling in inland waters without a permit
- Clause 57** - prohibits use of certain nets in inland waters without a permit
- Clause 58** - prohibits catching of fish in excess of bag limit

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- Clause 59** - prohibits certain methods of catching fish
- Clause 60** - prohibits sale of fish that is an endangered wild animal without a permit
- Clause 61** - prohibits importation or exportation and of indigenous fish into or out of the Province, respectively
- Clause 62** - prohibits cultivation, possession or donation of noxious aquatic growth without a permit
- Clause 63** - excludes application of certain sections of the Act to owners of inland waters
- Clause 64** - prohibits possession, donation or picking of endangered flora
- Clause 65** - provides for registration of endangered flora growers
- Clause 66** - prohibits picking of indigenous flora without a permit
- Clause 67** - prohibits purchasing of protected flora from a person who is not a licensed seller
- Clause 68** - provides for licensing of flora growers
- Clause 69** - provides for registration and licensing of protected flora growers
- Clause 70** - prohibits sale of protected flora on premises of registered flora on premises of registered flora growers and sellers if such flora was not cultivated in such premises
- Clause 71** - provides for the issuing of permit for sale of flora for charitable
- Clause 72** - prohibits importation or exportation of protected flora or unprotected indigenous flora
- Clause 73** - prohibits issuing of a license in respect endangered or protected flora that is declared to be protected in terms of Natural Forests Act, 1998
- Clause 74** - prohibits pollination of indigenous flora without a permit
- Clause 75** - prohibits certain activities in relation to donation of flora

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- Clause 76** - provides for application of Chapter 8
- Clause 77** - provides prohibited activities in relation to CITES
- Clause 78** - provides prohibited activities in relation to caves and Cave-formations
- Clause 79** - Provides for entry into caves
- Clause 80** - provides general powers of the MEC
- Clause 81** - provides for the MEC to make regulations in respect of caves
- Clause 82** - empowers the MEC to declare mountain catchment areas
- Clause 83** - provides for declaration of beacons
- Clause 84** - empowers the MEC to establish fire protection plans
- Clause 85** - sets out contents of fire protection plans
- Clause 86** - imposes a duty for notice to be give of fire protection plans
- Clause 87** - legal status of fire protection plans
- Clause 88** - provides for rendering of financial aid in respect of fire Protection plans
- Clause 89** - provides for general powers of the MEC
- Clause 90** - empowers the MEC to make regulations
- Clause 91** - prohibits littering on or in any land, water surface, street or road to which the public has access
- Clause 92** - sets out duties of persons in charge of public places
- Clause 93** - empowers the MEC to make regulations on Littering
- Clause 94** - empowers the MEC to make regulations in respect

- of waste management
- Clause 95** - empowers the MEC to make regulations in respect of noise, and shock
- Clause 96** - provides for the administration of the sea-shore and control over alienation
- Clause 97** - provides for the letting of the sea-shore
- Clause 98** - provides for alienation of land on the sea-shore
- Clause 99** - provides for coastal conservation areas
- Clause 100** - prohibits use of motor vehicles on sea-shore or in coastal Conservation areas
- Clause 101** - provides for the Provincial Environmental management Fund
- Clause 102** - provides for imposition of levy by the MEC
- Clause 103** - provides for furnishing of particulars and returns
- Clause 104** - provides for recovery of levy
- Clause 105** - provides for litter control
- Clause 106** - prohibits disposal or processing of waste originating from outside the Province
- Clause 107** - empowers the MEC to make regulation in respect of Provincial hiking trails
- Clause 108** - gives regulatory powers to the MEC in respect of the sea-shore
- Clause 109** - provides for the MEC to amend Schedules
- Clause 110** - provides for general regulatory powers of the MEC in respect of documents required for the administration of this Act
- Clause 111** - provides for offences in terms of the regulations

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- Clause 112 - provides for general powers of the MEC
- Clause 113 - provides for offences
- Clause 114 - provides for penalties
- Clause 115 - provides for a court to pay over part of a fine to an informant upon whose information a conviction was obtained
- Clause 116 - provides for presumptions
- Clause 117 - gives jurisdiction to a magistrates court to impose penalty under the Act
- Clause 118 - limits liability on the government and its employees in respect of acts done in good faith under the Act
- Clause 119 - provides for the MEC to conduct an inquiry into any matter under the Act
- Clause 120 - provides for the MEC to permit a scientific research or investigation
- Clause 121 - repeals certain laws
- Clause 122 - sets out the short title

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