

DEPARTMENT OF SCIENCE AND TECHNOLOGY**NOTICE 199 OF 2016****NOTICE OF INTRODUCTION OF A BILL INTO PARLIAMENT**

The Minister of Science and Technology intends introducing the following Bill into Parliament during 2016 calendar year:

**PROTECTION, PROMOTION, DEVELOPMENT AND MANAGEMENT OF INDIGENOUS
KNOWLEDGE SYSTEMS BILL, 2015**

To provide for the protection, promotion, development and management of indigenous knowledge systems; to provide for the establishment and functions of the National Indigenous Knowledge Systems Office; to provide for the management of rights of indigenous knowledge holders; to provide for the establishment and functions of the Advisory Panel on indigenous knowledge systems; to provide for access and conditions of access to knowledge of indigenous and local communities; to provide for the registration, accreditation and certification of indigenous knowledge practitioners; to provide for the facilitation and coordination of indigenous knowledge systems-based innovation; and to provide for matters incidental thereto.

Subsequent to the introduction of the Bill into Parliament, copies can be obtained from:

The Department of Science and Technology

Parliamentary Liaison Office

Contact person: Mr Luyanda Frans

E-mail: Luyanda.Frans@dst.gov.za

Telephone: 021 469 5010

Cellphone: 0718550416

REPUBLIC OF SOUTH AFRICA

**PROTECTION, PROMOTION, DEVELOPMENT AND MANAGEMENT OF INDIGENOUS
KNOWLEDGE SYSTEMS BILL, 2015**

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. 39910 of 8 April 2016) (The English text is the official text of the Bill)

(MINISTER OF SCIENCE AND TECHNOLOGY)

[B-2015]

141015ce

BILL

To provide for the protection, promotion, development and management of indigenous knowledge systems; to provide for the establishment and functions of the National Indigenous Knowledge Systems Office; to provide for the management of rights of indigenous knowledge holders; to provide for the establishment and functions of the Advisory Panel on indigenous knowledge systems; to provide for access and conditions of access to knowledge of indigenous and local communities; to provide for the registration, accreditation and certification of indigenous knowledge practitioners; to provide for the facilitation and coordination of indigenous knowledge systems-based innovation; and to provide for matters incidental thereto.

PREAMBLE

RECOGNISING that the liberation of South Africa and its people from centuries of racially discriminatory colonial rule and domination and the establishment of a constitutional democracy was, is and will remain a historic achievement of all our people;

EMPHASISING that the Constitution of the Republic of South Africa, 1996, enshrines the founding values of human dignity, the achievement of equality, non-racism and non-sexism as well as the Bill of Rights that entrenches inalienable rights and freedoms to or of human dignity, equality, education, culture, religion, language, research, creativity, environment and property, among others;

NOTING that the Republic of South Africa as a sovereign democratic state has taken its rightful place in the family of sovereign states and is committed and obliged to observe international treaties, covenants as well as international law;

REALISING that the Government of the Republic of South Africa is committed to the economic, cultural and social upliftment and well-being of its people, free of discrimination;

TAKING into account that in the exercise of its sovereignty, South Africa has enacted and continues to enact legislation that underpins the protection, promotion and development of indigenous knowledge systems and indigenous knowledge;

RECOGNISING that indigenous knowledge is a national asset and it is therefore in the national interest to protect and promote Indigenous Knowledge Systems through law, policy and both public and private sector programmes;

WISHING to encourage the use of indigenous knowledge in the development of novel, socially and economically applicable products and services;

ACCEPTING that indigenous innovation is a unique approach to social innovation that informs and underpins the work of indigenous communities;

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

ARRANGMENT OF SECTIONS

CHAPTER1

DEFINITIONS

1. Definitions

CHAPTER2

APPLICATION AND OBJECTIVES OF ACT

2. Application of Act
3. Objectives of Act

CHAPTER3

NATIONAL INDIGENOUS KNOWLEDGE SYSTEMS OFFICE

4. Establishment of the National Indigenous Knowledge Systems Office
5. Functions of NIKSO
6. Administration of NIKSO
7. Establishment of the Advisory Panel
8. Role of Advisory Panel

CHAPTER 4

PROTECTION OF INDIGENOUS KNOWLEDGE SYSTEMS

9. Subject matter of protection
10. Term of protection
11. Eligibility criteria for protection
12. Vesting rights in indigenous knowledge
13. Rights conferred

CHAPTER 5

ACCREDITATION AND CERTIFICATION

14. Accreditation of indigenous knowledge practitioner
15. Certification of agents to accredit indigenous knowledge practitioners

CHAPTER 6

REGISTRATION OF INDIGENOUS KNOWLEDGE

16. Registration Office for Indigenous Knowledge
17. Registrar of indigenous knowledge
18. Register of Indigenous Knowledge practitioners and agents
19. Register of Indigenous Knowledge
20. Registration of indigenous knowledge
21. Inspection of Register

- 22. Certificates of Registrar to be prima facie evidence
- 23. Register to be constructive notice
- 24. Rectification of Register

CHAPTER 7

COMMERCIAL UTILISATION OF INDIGENOUS KNOWLEDGE AND ENFORCEMENTS OF RIGHTS

- 25. Product development, commercialisation, services and processes
- 26. Access to indigenous knowledge
- 27. Dispute Resolution Committee

CHAPTER 8

GENERAL PROVISIONS

- 28. Offences and penalties
- 29. Transborder / transnational arrangements
- 30. Co-ownership of indigenous knowledge
- 31. Regulations
- 32. Effects on other law
- 33. Transitional arrangements
- 34. Short title and commencement

CHAPTER 1

DEFINITIONS

Definitions

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

"access" includes the acquisition of indigenous knowledge by non-holders as authorised by NIKSO in terms of this Act;

"accreditation" means a formal quality assurance process by which NIKSO grants or delegates authority to qualifying agents for the purpose of overseeing the assessment of learners and accreditation of indigenous knowledge practitioner mentors or instructors within a discipline of practice according to applicable, pre-determined standards having regard to that person's possession of indigenous knowledge, expertise and skills;

"agent" means a qualifying agent appointed by NIKSO for the purpose of overseeing the assessment and accreditation of indigenous knowledge practitioner within a discipline of practice according to applicable, pre-determined standards having regard to that person's possession of indigenous knowledge, expertise and skills;

"benefit sharing" means the fair and equitable sharing of benefits in terms of a benefit sharing agreement between NIKSO and the licence holder, including monetary payments, that accrue from access to, or use of, indigenous knowledge, and may comprise participation in scientific research, fair and equitable sharing of research and development results and commercial and other benefits derived from indigenous knowledge, access to, and use of, and transfer of technology, priority access to results and benefits accruing from such access;

"certification" means the formal procedure by which NIKSO grants or delegates authority to an agent to assess and verify the qualification of indigenous knowledge practitioners in accordance with pre-determined requirements;

"commercial use" means the exploitation of indigenous knowledge for financial gain;

"Constitution" means the Constitution of the Republic of South Africa;

"cultural and social identity" means the particular and distinctive identity or characteristics of a certain group or culture or of an individual as far as he or she is influenced by belonging to a certain group or culture;

"Department" means the Department of Science and Technology;

"discipline of practice" means a group of people who share the same understanding and methodology on a given practice, craft or a profession, which evolves spontaneously or is created based on people's engagement in a process of collective learning in a shared domain of human endeavour;

"holder" in relation to indigenous knowledge, means the indigenous community from which indigenous knowledge originates;

"indigenous community" means any recognisable community of people developing from, or historically settled in, a geographic area or areas located within the borders of the Republic characterised by social, cultural and economic conditions which distinguish them from other sections of the national community, and who identify themselves and are recognised by other groups as a distinct collective;

"indigenous cultural expressions" means expressions having cultural content developed within indigenous communities, and assimilated into their cultural make up or essential character, including but not limited to—

- (a) phonetic or verbal expressions;
- (b) musical or sound expressions;

- (c) expressions by action; and
- (d) action tangible expressions;

"indigenous knowledge" means knowledge which has been developed within an indigenous community and has been assimilated into the cultural make up or essential character of that community, and includes—

- (a) knowledge of a scientific or technical nature;
- (b) knowledge of natural resources; and
- (c) indigenous cultural expressions;

"indigenous knowledge practitioner" means a person who renders a service utilising indigenous knowledge;

"licence holder" means any person who applies and is granted a licence by NIKSO to use indigenous knowledge;

"Minister" means the Minister responsible for science and technology;

"natural resources" means any materials and components that can be found within the environment and may exist as a separate entity such as genetic resources, fresh water, air, and mineral deposits with actual or potential use or value;

"NIKSO" means the National Indigenous Knowledge Systems Office established by section 4;

"prescribed" means prescribed by regulations;

"prior informed consent" means the consent in respect of indigenous knowledge granted by an indigenous community trustee which has been obtained free from any manipulation, interference, coercion and after full disclosure of the intent and scope of the activity, in a language and process understandable to the community;

"Register" means the Register of indigenous knowledge provided for in section 19, and includes any official documents, compilations or records, including databases, reflecting information in respect of indigenous knowledge kept by NIKSO;

"Register of Designations" means a register of names, levels of competencies and accreditations of indigenous knowledge practitioners;

"regulations" means regulations made in terms of this Act;

"this Act" includes the regulations; and

"trustee" means a natural or juristic person that is duly delegated in terms of the practices of an indigenous community to represent an indigenous community in matters pertaining to indigenous knowledge, for and on behalf of that indigenous community and to act in that capacity.

CHAPTER 2

APPLICATION AND OBJECTS OF ACT

Application of Act

2. (1) This Act applies to all persons in the Republic, including the State.
- (2) This Act applies to all indigenous knowledge registered under

this Act.

Objectives of Act

3. (1) The objectives of this Act are to—

- (a) protect the indigenous knowledge of indigenous communities from unauthorised use and misappropriation;
- (b) promote public awareness and understanding of indigenous knowledge for the wider application and development thereof;
- (c) develop and enhance the potential of indigenous communities to protect their indigenous knowledge;
- (d) regulate the equitable distribution of the benefits of the use of indigenous knowledge;
- (e) promote the commercial use of indigenous knowledge in the development of new products, services and processes;
- (f) provide for registration, cataloguing, documentation and recording of indigenous knowledge held by indigenous communities;
- (g) establish mechanisms for the accreditation of indigenous knowledge practitioners;
and
- (h) recognise indigenous knowledge as prior art in the determination of, and eligibility for, protection of subject matter under intellectual property laws.

CHAPTER 3

NATIONAL INDIGENOUS KNOWLEDGE SYSTEM OFFICE

Establishment of NIKSO

4. The National Indigenous Knowledge Systems Office (NIKSO) is hereby established within the Department.

Functions and powers of NIKSO

5. (1) The functions and powers of NIKSO include—
- (a) the implementation of the Act;
 - (b) protecting and recognising indigenous knowledge as property owned by indigenous communities;
 - (c) facilitating the redress of rights and benefits to indigenous communities which have previously been deprived of such rights and benefits;
 - (d) facilitating and coordinating the development of indigenous knowledge;
 - (e) establishing and managing the registration of indigenous knowledge and the registration and accreditation of indigenous knowledge practitioners;
 - (f) empowering indigenous communities through education and awareness campaigns to enable them to recognise and utilise indigenous knowledge for cultural and economic benefit;
 - (g) determine the criteria for issuing licences in respect of the use of indigenous knowledge;

- (h) assist indigenous communities in the negotiation of benefit sharing agreements for use of indigenous knowledge; and
- (i) carry out any functions that are consistent with the objectives of the Act.

Administration of NIKSO

6. (1) The Minister must appoint a suitably skilled and qualified person as the Head of NIKSO in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(2) The Head of NIKSO is responsible for the administration and general management of NIKSO, subject to the directions and instructions issued by the Director-General or the Minister.

(3) The Head of NIKSO must report to the Director-General on all matters relating to the management of NIKSO.

(4) The staff of NIKSO consists of such number of employees as may be appointed by the Minister, in accordance with the Public Service Act, 1994, or received on secondment from any organ of state, as are necessary to enable NIKSO to perform its functions.

Establishment of Advisory Panel

7. (1) The Minister may establish an Advisory Panel consisting of not more than 10 members on specific matter relating to the objects of this Act.

(2) The Advisory Panel shall be broadly representative of the different organs of state, indigenous knowledge practitioners and specialists in the discipline of practice.

(3) The Advisory Panel may be convened by the Head of NIKSO, as and when the need arises.

(4) The members of the Advisory Panel must only be remunerated for time spent on the business of NIKSO, in accordance with the rates determined by the Minister, with the concurrence of the Minister of Finance.

(5) A member of the Advisory Panel holds office for a period of three years and may be reappointed, upon the expiry of that period, for a further period of three years.

(6) For the sake of continuity, at least five members of the Advisory Panel may be reappointed.

(7) The Minister may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the Advisory Panel for—

- (a) non-performance;
- (b) serious misconduct;
- (c) conduct that undermines the integrity or objective of the Advisory Panel; or
- (d) being convicted of an offence and sentenced to imprisonment without the option of a fine.

(8) NIKSO must provide the administrative and secretarial support to the Advisory Panel.

Role of Advisory Panel

8. The Advisory Panel must—

- (a) provide expert and strategic advice to NIKSO in relation to the protection, promotion, development and management of indigenous knowledge systems;
- (b) assist with the mobilisation of indigenous communities for purposes of pursuing specific activities conducted by NIKSO; and

- (c) advise NIKSO in regard to any specific issue referred to it and execute any task that NIKSO may entrust to it in terms of this Act.

CHAPTER 4

PROTECTION OF INDIGENOUS KNOWLEDGE

Subject matter of protection

9. (1) The Act protects indigenous knowledge, whether it is cultural or functional in nature, or both, including medical, agricultural and scientific practices, in the manner and to the extent provided for in section 11.

(2) Such indigenous knowledge shall constitute property within the meaning of this term as used in section 25 of the Constitution.

Term of Protection

10. (1) The protection of indigenous knowledge continues for as long as the indigenous knowledge meets the criteria of eligibility for protection in terms of section 11.

(2) In the event that indigenous knowledge ceases to meet the criteria set out in terms of section 11, it shall fall into the public domain with effect from the date on which it no longer meets the criteria set out in terms of section 11.

Eligibility criteria for protection

11. The protection of indigenous knowledge contemplated in section 9 apply to indigenous knowledge which—

- (a) has been passed on from generation to generation within an indigenous community;
- (b) has been developed within an indigenous community; and
- (c) is associated with the cultural make up and social identity of that indigenous community.

Vesting of rights in indigenous knowledge

12. (1) The ownership of indigenous knowledge eligible for protection with respect to an indigenous community in terms of section 9 vests in that indigenous community.

(2) The trustee of the indigenous community holds the indigenous knowledge in trust on behalf of the indigenous community.

(3) The trustee shall be responsible to the community for the protection of their rights in the indigenous knowledge.

(4) In the event that, and for as long as, the holder of indigenous property cannot be identified and designated, NIKSO must act as a custodian of that indigenous knowledge, and the ownership of it shall be deemed to vest in NIKSO, which shall have the rights and obligations of a trustee in respect of that indigenous knowledge.

Rights conferred

13. (1) Subject to subsection (3), the holder of indigenous knowledge has the exclusive right in respect of that indigenous knowledge to—

- (a) the benefits arising from its commercial use;
- (b) be acknowledged as its source; and
- (c) restrain any unauthorised use of the indigenous knowledge.

(2) Subject to sub-section (4), a person wishing to acquire the right to use indigenous knowledge shall apply to NIKSO for a licence in accordance with section 26(1).

(3) The application must indicate—

- (a) the identity of the indigenous knowledge holder;
- (b) the place of origin of the indigenous knowledge; and
- (c) evidence that the prior informed consent of the indigenous knowledge holder has been obtained and that a benefit sharing arrangement has been entered into with that indigenous knowledge holder.

(4) The holder of indigenous knowledge may authorise the use of that indigenous knowledge by an individual member of the community in a manner and subject to such terms and conditions as it may deem fit.

(5) A person who uses indigenous knowledge in a manner which is inconsistent with the licence for that indigenous knowledge shall be guilty of an offence.

CHAPTER 5

ACCREDITATION AND CERTIFICATION OF INDIGENOUS KNOWLEDGE PRACTITIONERS

Accreditation of indigenous knowledge practitioner

14. (1) Any person who wishes to practice as an indigenous knowledge practitioner must apply, in the prescribed manner, to NIKSO to be accredited and certified as an indigenous knowledge practitioner and recorded in the Register of Designations.

(2) NIKSO may refer the application to an agent who has competence in the particular discipline in which that persons wishes to practice, for assessment and recommendation.

(3) In assessing the eligibility of the applicant the agent must apply the prescribed norms and standards for accreditation of indigenous knowledge practitioners.

(4) Upon completion of the assessment, the agent must recommend to NIKSO to issue a certificate of competency to an applicant who meets all the prescribed requirements.

(5) NIKSO must issue the certificate of competency to the applicant and record the applicant as an accredited indigenous knowledge practitioner in the Register of Designations.

(6) Upon certification, a practitioner may commence practising as an accredited indigenous knowledge practitioner.

(7) NIKSO may, in the prescribed manner, cancel the certification of an indigenous knowledge practitioner if such practitioner has—

- (a) made a false declaration or statement, committed fraud or any act or misrepresentation for the purpose of obtaining accreditation;
- (b) failed to comply with or has contravened any of the conditions set out in the certificate of accreditation;
- (c) committed any other act or omission that is contrary to the interests of the discipline of practice which has certified the practitioner;
- (d) been convicted of a criminal offence without the option of a fine; or
- (e) voluntarily relinquished practice as a traditional knowledge practitioner.

(8) NIKSO must—

- (a) make recommendations to the Minister regarding norms and standards for accreditation of indigenous knowledge practitioners;
- (b) ensure that the Register of Designations is established, maintained and made available to the public upon request; and

(c) seek recognition of accreditation systems for indigenous knowledge practitioners regionally and internationally.

(9) No person shall practice as an indigenous knowledge practitioner for gain unless he or she has been accredited in terms of this section.

Certification of agents to accredit indigenous knowledge practitioners

15. (1) An agent may apply to NIKSO in the prescribed manner for recognition, certification and registration as an agent.

(2) NIKSO must evaluate each application in accordance with the prescribed procedures and requirements and may issue a certificate to act as an agent if it is satisfied that the applicant meets the prescribed criteria.

(3) NIKSO may impose any conditions on such certification.

(4) Minister must prescribe accreditation procedures to be followed by agents.

(5) NIKSO may, in the prescribed manner, cancel the registration of the agent if such agent—

- (a) fails or refuses to comply with the prescribed accreditation procedures;
- (b) has intentionally submitted a fraudulent application to NIKSO;
- (c) accepts unlawful compensation, in respect of the application for accreditation;
- (d) charges excessive or unreasonable fees concerning the application for the accreditation of an indigenous knowledge practitioner;
- (e) is found guilty of a criminal offence without the option of a fine; or
- (f) commits any other unlawful act.

CHAPTER 6

REGISTRATION OF INDIGENOUS KNOWLEDGE

Registration Office for Indigenous Knowledge

16. (1) NIKSO shall establish a Registration Office for Indigenous Knowledge (Registration Office).

(2) There shall be prescribed a seal of the Registration Office and the impression of the seal shall be judicially noticed.

Registrar of indigenous knowledge

17. (1) The Minister must appoint a suitably skilled and qualified person as the Registrar of indigenous knowledge (Registrar) in accordance with the Public Service Act, 1994.

(2) The Registrar is responsible for the control of the Registration Office, subject to the directions and instructions issued by the Director-General or the Minister.

(3) The Registrar may delegate any of the powers and entrust any of the duties assigned to him or her by this Act, to any officer within NIKSO.

(4) The Registrar must permit the agent to act on behalf of the person for whom he or she is an agent, in connection with registration under this Act or any proceeding relating thereto.

Register of indigenous knowledge practitioners and agents

18. (1) NIKSO shall keep a register of indigenous knowledge practitioners and accredited agents in the prescribed manner.

(2) NIKSO shall ensure the security of any register falling within its remit, and shall maintain a list of all such registers.

(3) Where information may be accessed by persons outside an indigenous community, NIKSO shall facilitate such access on payment of the prescribed fee.

Register of Indigenous Knowledge

19. (1) NIKSO must keep a Register of Indigenous Knowledge in the prescribed manner.

(2) The Register shall record in respect of each item of indigenous knowledge—

- (a) particulars of the indigenous community from which the indigenous knowledge originates;
- (b) whether the indigenous knowledge is functional indigenous knowledge or an indigenous cultural expression;
- (c) whether the information provided may only be shared with persons outside the indigenous community with its consent;
- (d) whether any licenses have been entered into between an outside party and the indigenous community;
- (e) whether the indigenous knowledge is closely related to indigenous knowledge registered by another indigenous community, and if so, details of that indigenous knowledge; and

(f) such other particulars as may be prescribed.

(3) The registration of an item of indigenous knowledge in the Register shall be designated by the Registrar as being in respect of functional indigenous knowledge or indigenous cultural expressions, or as falling into both these categories.

(4) The Register shall be prima facie evidence of any matters directed or authorised by this Act to be inserted in the Register.

Registration of indigenous knowledge

20. (1) The indigenous knowledge holder may apply to the Registrar in the prescribed manner for registration of the indigenous knowledge.

(2) Subject to the provisions of this Act, the Registrar may—

- (a) approve the application;
- (b) approve the application subject to any conditions or limitations, and register the indigenous knowledge; or
- (c) refuse the application if it does not meet the criteria set out in section 11.

(3) The Registrar shall, within 30 days after the registration of the indigenous knowledge—

- (a) issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of Registration Office; and
- (b) cause to be published in the Indigenous Knowledge Bulletin or any appropriate publication, in the prescribed form, a notice of such registration.

Inspection of Register

21. (1) Subject to the provisions of this Act, the Registrar must make the Register available for inspection during working hours by the public, upon payment of the prescribed fee.

(2) Documents relating to registration of indigenous knowledge shall not be available for inspection by the public unless the person seeking such additional documents enters into a non-disclosure agreement as prescribed.

(3) The Registrar shall, at the request of any person, and on payment of the prescribed fee, furnish a copy of an extract of the Register, or a copy of a certificate of registration, in the prescribed manner.

Certificates of Registrar to be prima facie evidence

22. (1) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that is authorised by this Act to be made or done, shall be prima facie evidence of the entry having been made and of the contents thereof.

(2) Printed or written copies or extracts purporting to be copies of or extracts from the Register, or any document relating to indigenous knowledge kept in the Registration Office, and certified by the Registrar and sealed with the seal of Registration Office, shall be admitted as evidence in all courts and proceedings without further proof or production of the original.

Register to be constructive notice

24. In any proceedings with regard to the rights in respect of registered indigenous knowledge, it shall be presumed—

- (a) that every party to those proceedings had knowledge of the particulars entered in the Register from the date of the advertisement of that registration in the Indigenous Knowledge Bulletin; and
- (b) that any person using the indigenous knowledge did so in the knowledge that it was registered and that it was a pre-condition of such use that such person should have entered into a benefit sharing agreement prior to commencing such use.

Rectification of Register

24. (1) The Registrar may direct the Register to be rectified by making an amendment or deletion of any entry in the Register upon application by an interested person in the prescribed manner.

(2) The Registrar may not rectify the Register unless the holder has had an opportunity to make representations on the proposed rectification.

(3) The Registrar shall rectify an entry in the Register in accordance with any finding or judgment of the court in respect of that entry.

CHAPTER 7

COMMERCIAL UTILISATION OF INDIGENOUS KNOWLEDGE AND ENFORCEMENT OF RIGHTS

Product development, commercialisation, services and processes

25. (1) NIKSO may, at the request of an indigenous community, provide assistance or facilitate the commercial use of its indigenous knowledge.

(2) NIKSO must, in relation to the commercial use of indigenous knowledge, promote partnerships for innovation and product development, coordinate funding, develop market strategies and promote commercial use of products, services, process and the use of technology.

(3) In order to exercise any right in respect of indigenous knowledge under this Act, the holder shall register the indigenous knowledge in terms of chapter 6.

Access to and use of indigenous knowledge

26. (1) Any person who intends to use indigenous knowledge for commercial purpose shall—

(a) apply in the prescribed manner to NIKSO for a licence authorising the use of that indigenous knowledge; and

(b) enter into a non-exclusive Standard Benefit Sharing Agreement with NIKSO, acting on behalf of the holder, for that indigenous knowledge.

(2) NIKSO shall consult with the trustee on the terms of the Standard Benefit Sharing Agreement for the intended use and benefits payable by the licence holder.

(3) In the event that the indigenous knowledge which is the subject of the Standard Benefit Sharing Agreement is—

- (a) of a scientific or technical in nature, any obligation on the part of the licence holder to pay a royalty shall expire 20 years after the date of agreement; and
- (b) an indigenous cultural expression, any obligation on the part of the user to pay a royalty shall expire 50 years after the date of agreement.

(4) No prior informed consent for the use of indigenous knowledge is required for any of the following:

- (a) Face-to-face teaching;
- (b) criticism or academic review;
- (c) reporting news or current events;
- (d) judicial proceedings;
- (e) academic purposes;
- (f) any use that is incidental to the above purposes; and
- (g) in circumstances of national emergencies or natural disasters: Provided that holders are compensated for the use of their indigenous knowledge.

(5) A user of the indigenous knowledge must, in the circumstances contemplated in subsection (1), make acknowledgement of the indigenous knowledge holders by mentioning them or the geographical place from which the indigenous knowledge is originated.

(6) Any person who is aggrieved by NIKSO's decision or the conditions pertaining to such access, must, within 60 working days of such decision declare a dispute and refer it for resolution in terms of section 27.

Dispute Resolution Committee

27. (1) The Minister must, subject to such terms and conditions as the Minister may determine, appoint members of the Dispute Resolution Committee to resolve any dispute arising from this Act.

(2) In resolving a dispute, the Dispute Resolution Committee shall consider customary laws which may have a bearing on the subject matter of the dispute.

(3) Any party to a matter referred to the Dispute Resolution Committee may take the matter for review to the High Court.

(4) The Dispute Resolution Committee shall have the power to impose any of the following sanctions:

- (a) A written warning to the licence holder;
- (b) issue a notice prohibiting the unauthorised use of indigenous knowledge by any person; and
- (c) cancelling, suspending or revoking the licence of a licence holder.

CHAPTER 8

GENERAL PROVISIONS

Offences and penalties

28. (1) Any person who uses indigenous knowledge in a manner which is inconsistent with the licence issued for that indigenous knowledge shall be guilty of an offence and liable to any sanction determined by the Dispute Resolution Committee.

(2) Any person who uses indigenous knowledge without authorisation shall be guilty of an offence and liable on conviction to imprisonment not exceeding 3 years or R30 000 fine or both;

(3) Any person who falsely professes to be a certified indigenous knowledge practitioner shall be guilty of an offence and liable on conviction to imprisonment not exceeding 3 years or R30 000 fine or both;

(4) Any person who hinders or interferes with the management of an official in the performance of their official duties in terms of this Act shall be guilty of an offence and liable on conviction to imprisonment not exceeding 3 years or R30 000 fine or both.

Transborder / transnational arrangements

29. (1) Indigenous knowledge originating in a foreign jurisdiction must be given the same protection given to indigenous knowledge originating in the Republic: Provided that the laws of that foreign jurisdiction provide reciprocal protection to indigenous knowledge originating in the Republic.

(2) In instances where indigenous knowledge originates in one or more indigenous communities in foreign jurisdictions and in the Republic, NIKSO must assist the relevant foreign authorities and the indigenous community of the Republic to conclude an arrangement to share the ownership of that indigenous knowledge.

Co-ownership of indigenous knowledge

30. (1) In the event where there is multiple ownership of indigenous knowledge, any remuneration payable under a benefit sharing agreement shall be apportioned equally amongst the co-holders.

(2) Where an existing benefit sharing agreement does not include all the co holders of the indigenous knowledge, the agreement shall be amended accordingly.

Regulations

31. The Minister may make regulations regarding any matter pertaining to—

- (a) the protection, promotion, development and management of indigenous knowledge;
- (b) procedures for securing registration in the Register and obtaining licences to use indigenous knowledge from NIKSO;
- (c) matters which may or must be prescribed in terms of this Act; and
- (d) in general, any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Effect on other laws

32. (1) This Act does not alter or detract from any right in respect of intellectual property conferred by any statute or the common law.

(2) Compliance with any procedures or requirements laid down in this Act shall not constitute compliance with any procedures or requirements imposed in any other Act;

(3) Without detracting from the generality of subsections (1) or (2), this Act does not amend or detract from the provisions of the National Environmental Management: Biodiversity Act (Act No. 10 of 2004), the Designs Act (Act No. 195 of 1963), the Copyright Act (Act No. 98 of 1978), the Trade Marks Act (Act No. 194 of 1993) and the Performers Protection Act (Act No. 11 of 1967), as amended.

Transitional arrangements

33. The indigenous knowledge holder wishing to register indigenous knowledge which existed prior to the commencement of this Act must register such indigenous knowledge in terms of this Act within 12 months from the date of commencement of this Act.

Short title and commencement

34. This Act is called the Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act, 2015, and shall come into operation on a date determined by the President by proclamation in the *Gazette*.