

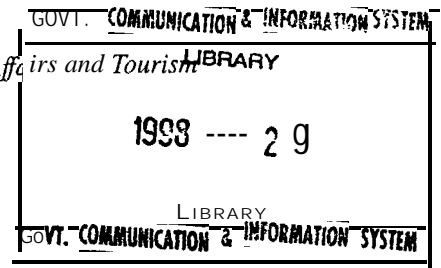
REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
NATIONAL ENVIRONMENTAL
MANAGEMENT BILL**

[B 101-98]

(As agreed to by the Portfolio Committee on Environmental Affairs and Tourism
(National Assembly))

[B 101A-98]



REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP**

**WETSONTWERP OP NASIONALE
OMGEWINGSBESTUUR**

[W 101-98]

(Soos goedgekeur deur die Portefeuljekomitee oor Omgewingsake en Toerisme
(Nasionale Vergadering))

[W 101A-98]

ISBN 0621285552

AMENDMENTS AGREED TO

NATIONAL ENVIRONMENTAL MANAGEMENT BILL [B 101-98]

CLAUSE 1

1. On page 8, after line 4, to insert the following definition:

(ii) “Agenda 21“ means the document by that name adopted at the United Nations Conference of Environment and Development held in Rio de Janeiro, Brazil in June 1992; (i)

2. On page 8, from line 24, to omit the definition of “environment” and to substitute the following definition:

~~-----~~(x) “environment” means the surroundings within which humans ~~exist~~ and that are made ^{UP} of—

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;
- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being; (xviii)

3. On page 8, after line 50, to insert the following definition:

(xxiii) “pollution” means any change in the environment caused by—

- (i) substances;
- (ii) radioactive or other waves; or
- (iii) noise, odours, dust or heat, emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future; (iii)

4. In the Afrikaans text, on page 11, in line 4, to omit “Hetsy” and to substitute “Nog”.
5. In the Afrikaans text, on page 11, in line 6, to omit “hetsy” and to substitute “nóg”.

CLAUSE 2

1. In the Afrikaans text, on page 11, in line 27, to omit “bemiddelaar” and to substitute “versoener”.
2. On page 10, after line 28, to insert:

(2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.

3. On page 10, from line 29, to omit subsection (2) and to substitute:

(2) Development must be socially, environmentally and economically sustainable.

4. On page 10, in line 34, to omit "it" and to substitute "they".

5. On page 10, in line 35, to omit "it" and to substitute "they".

6. On page 10, from line 37, to omit subparagraph (iii) and to substitute:

(iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;

7. On page 10, in line 52, to omit "it" and to substitute "they".

8. On page 10, in line 53, to omit "be" and to substitute "are".

9. On page 10, in line 55, to omit "affects" and to substitute "effects".

10. On page 12, after line 42, to add the following paragraphs:

(q) The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.

(r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

CLAUSE 3

1. On page 12, from line 48, to omit subsection (2) and to substitute:

(2) The object of the Forum is to—

(a) inform the Minister of the views of stakeholders regarding the application of the principles set out in section 2; and

(b) advise the Minister on—

(i) any matter concerning environmental management and governance and specifically the setting and achievement of objectives and priorities for environmental governance; and

(ii) appropriate methods of monitoring compliance with the principles set out in section 2.

CLAUSE 4

1. On page 14, in line 2, to omit “five” and to substitute “12”.
2. On page 14, in line 2, to omit “12” and to substitute “ 15”.
3. On page 14, in line 6, after “appointing” to insert “women, youth and”.
4. On page 14, in line 14, to omit “and”.
5. On page 14, in line 14, after “newspapers,” to insert:

appropriate local newspapers and on the radio
6. On page 14, in line 18, to omit “the MECS” and to substitute:
 - (i) the MECs; and
 - (ii) the Committees of the National Assembly and the National Council of Provinces that scrutinise environmental affairs.
7. On page 14, in line 20, after “designates” to insert:

with the concurrence of the Minister and the organisation or person who nominated him or her.

CLAUSE 6

1. On page 14, in line 46, to omit “may” and to substitute “must”.
2. On page 14, in 47, to omit “by regulaion published in the *Gazette*”.
3. On page 14, in line 49, to omit subparagraph (i) and to substitute:

by publication in the *Gazette*, a constitution for the Forum which may contain provisions relating to—

 - (aa) advice on matters related to Chapter 6;
 - (bb) participation in meetings relating to international environmental matters;
 - (cc) subcommittees and working groups of the Forum;
4. In the Afrikaans text, on page 17, in line 5, after “staan” to insert “en”,
5. On page 16, after line 11, to add:

(4) The meetings of the Forum must be open to the public and all documents considered or produced by the Forum must be available for inspection by the public.

CLAUSE 7

1. On page 16, in line 17, after “plans” to insert “and environmental management plans”.

2. In the Afrikaans text, on page 17, in line 49, after “omgewings-implementeringsplanne” to insert “en”.
3. On page 16, after line 46, to add:
 - (h) endeavoring to ensure compliance with the principle set out in section 2(2) by making appropriate recommendations, requiring reports from its members and advising government on law reform.

CLAUSE 8

1. On page 18, after line 4, to insert:
 - (h) the Director-General: Health;
 - (i) the Director-General: Labour;
 - (j) the Director-General: Arts, Culture, Science and Technology;
2. On page 18, after line 6, to insert:
 - (l) a representative of the national organisation recognised in terms of section 2 of the Organised Local Government Act (Act No. 52 of 1997), appointed by the Minister with the concurrence of that organisation; and
3. In the Afrikaans text, on page 9, in line 10, to omit “in die Komitee”,
4. On page 18, in line 13, to omit “by” and to substitute “of”.
5. On page 18, in line 13, to omit “sphere of local” and to substitute “local sphere of”.

CLAUSE 9

1. On page 18, after line 33, to add:
 - (6) Every subcommittee established in terms of subsection (4) must report at each meeting of the Committee on its own activities as well as those of any working groups established in terms of subsection (5) to assist the subcommittee.

CLAUSE 10

1. On page 18, after line 43, to insert:
 - (e) law reform undertaken and proposed by organs of state represented on the Committee;
 - (f) compliance with environmental implementation and management plans by municipalities; and
2. On page 18, in line 46, to omit “Upon” and to substitute “At”,
3. On page 18, after line 47, to add:
 - (3) The Minister must present an annual report to Parliament on the work of the Committee, including the matters listed in subsection (1).

CLAUSE 11

1. On page 18, in line 51, to omit “that exercises” and to insert “as exercising”.
2. On page 20, in line 4, to omit “that exercises” and to insert “as exercising”.

CLAUSE 14

1. In the Afrikaans text, on page 23, in line 30, to omit “magtiging” and to substitute “delegering”.

CLAUSE 15

1. On page 24, after line 11, to add the following subsection:
 - (6) The exercise of functions by organs of state may not be delayed or postponed on account of—
 - (a) the failure of any organ of state to submit an environmental implementation plan;
 - (b) the scrutiny of any environmental implementation plan by the Committee;
 - (c) the amendment of any environmental implementation plan following scrutiny of the plan by the Committee;
 - (d) any difference or disagreement regarding any environmental implementation plan and the resolution of that difference or disagreement; or
 - (e) the failure of any organ of state to adopt and publish its environmental implementation or management plan.

CLAUSE 16

1. In the Afrikaans text, on page 25, in lines 55, 57 and 58, to omit “bemiddeling” and to substitute “versoening”.
2. On page 26, in line 7, after “Constitution” to insert:

: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41(2) of the Constitution once promulgated
3. On page 26, in line 23, to omit “15(1)” and to substitute “(1)(b)”.

CLAUSE 17

1. On page 26, in line 37, after “conditions” to insert “, including time-limits,”
2. In the Afrikaans text, on page 27, from line 50, to omit “partye wat geraak word” and to substitute “geaffekteerde party e”.
3. On page 26, in line 51, after “tasks” to insert “, including time-limits”.
4. In the Afrikaans text, on page 27, in line 58, to omit “bemiddeling” and to substitute “versoening”.

CLAUSE 18

1. On page 28, in line 3, after “conditions” to insert “, including time-limits,”.
2. In the Afrikaans text, on page 29, in line 9, to omit “meet” and to substitute “kan”.
3. On page 28, in line 20, to omit “(5)” and to substitute “(6)”.
4. On page 28, in line 23, to omit “(6)” and to substitute “(5)”.
5. On page 28, in line 24, to omit “and the conciliator’s report”
6. On page 28. after line 32, to insert:
 - (d) The report and any agreement reached as a result of the conciliation must be available for inspection by the public and any member of the public may obtain a copy thereof upon payment of a fee as approved by Treasury.

CLAUSE 19

1. On page 28, in line 41, to omit “22” and to substitute “21”.

CLAUSE 22

1. On page 30, in line 17, after “considerations” to insert “, report and designated officer”.
2. On page 30, in line 24, to omit “parties” and to substitute “persons”.
3. On page 30, after line 25, to insert the following paragraphs:
 - (c) the desirability of improving the quality of decision-making by giving interested and affected persons the opportunity to bring relevant information to the decision-making process;
 - (d) any representations made by persons interested in the matter; and
4. On page 30, after line 26, to add the following subsection:
 - (2)(a) The Director-General shall keep a record and prepare an annual report on environmental conflict management for submission to the Committee and the Forum, for the purpose of evaluating compliance and conflict management measures in respect of environmental laws.
 - (b) The record and report referred to in paragraph (a) may include the following:
 - (i) Proceedings under this chapter, including reports of conciliators and agreements reached;
 - (ii) proceedings under Chapter 7, including complaints, charges and judgments;
 - (iii) proceedings under other laws listed in Schedule 3;

(iv) proceedings by the Human Rights Commission and the Public Protector.

(c) The Director-General shall designate an officer to provide information to the public on appropriate dispute resolution mechanisms for referral of disputes and complaints.

(d) The reports, records and agreements referred to in this subsection must be available for inspection by the public.

CLAUSE 23

1. On page 30, from line 37, to omit “biophysical, social and other relevant environmental effects” and to substitute:

impact on the environment, socio-economic conditions and cultural heritage
2. On page 30, in line 40, to omit “on the environment”.
3. On page 30, in line 43, to omit “on the environment of activities” and to substitute:

of activities on the environment
4. On page 30, in line 50, to omit “ensure” and to substitute “ensuring”.
5. On page 32, in line 2, to omit “to co-operate”.
6. On page 32, in line 2, after “assist” to insert “them”.
7. In the Afrikaans text, on page 33, in line 2, to omit ‘tom saam te werk en hulp te verleen’ and to substitute “en verleen aan hulle hulp”.

CLAUSE 24

1. On page 32, in line 7, to omit “environmental”
2. In the Afrikaans text, on page 33, from line 7, to omit “omgewingsinwerking” and to substitute “inwerking”.
3. On page 32, in line 7, after “impact” to insert:

on—
 (a) the environment;
 (b) socio-economic conditions; and
 (c) the cultural heritage,
4. On page 32, in line 23, to omit “environmental”.
5. On page 32, in line 33, to omit subsection (3) and to substitute:

(3) (a) The investigation, assessment and communication of the potential impact of activities contemplated in subsection (1) must take place in accordance with procedures complying with subsection (7).

(b) Every Minister and MEC responsible for an organ of state that is charged by law with authorising, permitting, or otherwise allowing an activity contemplated in subsection (1) may prescribe regulations laying down the procedures to be followed and the report to be prepared for the purpose of compliance with paragraph (a).

(c) Any regulations made in terms of this subsection or any other law that contemplates the assessment of the potential environmental impact of activities must, notwithstanding any other law, comply with subsection (7).

(d) This section does not affect the validity of any law contemplated in paragraph (c) that is in force at the commencement of this Act, including the provisions and regulations referred to in section 50(2): Provided that paragraph (a) must nevertheless be complied with.

6. On page 32, in line 37, to omit “subsection (2)(c) or subsection (3)” and to substitute “this section”.
7. On page 32, in line 44, to omit “environmental effects” and to substitute “impacts”.
8. On page 34, in line 5, after “regulations” to insert:

in accordance with subsections (3) and (4)
9. On page 34, in line 5, after “and” to insert “the”.
10. On page 34, in line 6, to omit “environmental” and to substitute “potential”.
11. On page 34, from line 14, to omit “The regulations referred to in this subsection must provide, as a minimum, procedures for—” and to substitute:

Procedures for the investigation, assessment and communication of the potential impact of activities must, as a minimum, ensure the following:
12. On page 34, from line 18, to omit paragraph (b) and to substitute:

(b) investigation of the potential impact, including cumulative effects, of the activity and its alternatives on the environment, socio-economic conditions and cultural heritage, and assessment of the significance of that potential impact;
13. On page 34, in line 22, to omit “environmental”,
14. In the Afrikaans text, on page 35, from line 23, to omit “omgewings-inwerkings” and to substitute “inwerkings”.
15. On page 34, from line 23, to omit “policy, programme, plan or project” and to substitute “activity”.
16. On page 34, from line 25, to omit paragraph (d) and to substitute:

(d) public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts;

17. In the Afrikaans text, on page 35, in line 32, to omit “omgewings-inwerkings” and to substitute “inwerkings”.
18. On page 34, in line 31, to omit “environmental”.
19. On page 34, in line 36, to omit “ensuring”.
20. On page 34, in line 41, to omit “ensuring”.
21. On page 34, in line 42, to omit “environmental”.
22. In the Afrikaans text, on page 35, in line 37, to omit “die versekering”.
23. In the Afrikaans text, on page 35, in line 43, to omit “die versekering”.
24. In the Afrikaans text, on page 35, in line 44, to omit “omgewingsinligting” and to substitute “inligting”.
25. On page 34, in line 43, to omit “in relation to negative environmental impacts”.

CLAUSE 25

1. On page 34, in line 47, to omit “a party to” and to substitute “yet bound by”.
2. In the Afrikaans text, on page 35, in line 52, to omit “dokument” and to substitute “aanbeveling”.
3. On page 36, in line 9, before “publish” to insert “may”.
4. On page 36, after line 29, to add the following subsection:

(4) The Minister may prior to a recommendation referred to in subsection (1), publish a notice in the *Gazette*, stating his or her intention to make such recommendation and inviting written comments.

CLAUSE 26

1. On page 36, in line 30, to omit “report” and to substitute “reports”.
2. On page 36, after line 43, to add the following subsection:
 - (2)(a) The Minister must initiate an Annual Performance Report on Sustainable Development to meet the government’s commitment to Agenda 21.
 - (b) (i) The Annual Performance Report must cover all relevant activities of all national departments and spheres of government.
 - (ii) All relevant organs of state must provide information to the Minister by a date to be determined by the Minister for the purposes

of the report referred to in paragraph (a) and this may consist of an assembly of information compiled for other purposes.

(c) The Minister may appoint persons as he or she considers necessary to act as a Secretariat to ensure preparation of the report.

(d) The purpose of the report shall be to-

- (i) provide an audit and a report of the government's performance in respect of Agenda 21;
- (ii) review procedures for co-ordinating policies and budgets to meet the objectives of Agenda 21; and
- (iii) review progress on a public educational programme to support the objectives of Agenda 21.

CLAUSE 27

1. On page 36, in line 48, to omit "the provisions set out in".

CLAUSE 28

1. On page 38, from line 6, to omit "such harm to the environment" and to substitute "this".
2. On page 38, from line 7, to omit "harm to the environment" and to substitute "pollution or degradation".
3. On page 38, in line 9, to omit "any such harm to" and to substitute "such pollution or degradation of".
4. On page 38, in line 15, to omit "which causes, has caused' or is likely to cause".
5. On page 38, in line 16, before "significant" to insert:

which causes, has caused or is likely to cause
6. On page 38, after line 18, to insert:

(b) inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
7. On page 38, in line 21, before "causant" to insert "the".
8. On page 38, in line 44, to omit "custodianship role to ensure that the environment is held" and to substitute:

role as custodian holding the environment
9. On page 40, in line 10, after the first "pollution" to insert "or degradation".
10. In the Afrikaans text, on page 41, in line 30, to omit "betrokke persone na verhouding aanspreeklik wees" and to substitute:

aanspreeklikheid na verhouding verdeel word onder die betrokke persone

11. On page 40, in line 37, to omit “may recover the cost of such proceedings” and to substitute:

the provisions of section 32(2) and (3) shall apply to such proceedings with the necessary changes

CLAUSE 29

1. On page 40, in line 45, to omit “that is not authorised by law”.
2. On page 40, from line 46, to omit subsection (2) and to substitute:

(2) An employee who has refused to perform work in terms of subsection (1) must as soon thereafter as is reasonably practicable notify the employer either personally or through a representative that he or she has refused to perform work and give the reason for the refusal.

CLAUSE 30

1. On page 42, in line 5, after “serious” to insert “pollution of or”.
2. On page 42, in line 20, to omit “must” and to substitute “may”.
3. In the Afrikaans text, on page 43, from line 18, to omit “Word sodanige stappe slegs gedoen” and to substitute:

kan sodanige stappe slegs gedoen word

4. In the Afrikaans text, on page 43, in line 25, to omit “persone” and to substitute “persoon”.
5. On page 42, in line 43, after “person” to insert:

or, where the incident occurred in the course of that person’s employment, his or her employer,

6. On page 42, in line 52, after “person” to insert:

or, where the incident occurred in the course of that person’s employment, his or her employer,

7. On page 44, from line 14, to omit “custodianship role to ensure that the environment is held” and to substitute:

role as custodian holding the environment

CLAUSE 31

1. On page 44, in line 50, after “waste” to insert “and substances”.

2. In the Afrikaans text, on page 49, in line 1, to omit “kan” and to substitute “nog”.

CLAUSE 32

1. On page 48, in line 23, after “or” to insert “in”.
2. On page 48, in line 23, to omit “the protection of” and to substitute “protecting”.
3. In the Afrikaans text, on page 49, in line 20, to omit “verseker” and to substitute “verkry”.
4. On page 48, in line 24, to omit “that no other means had been” and to substitute:

had made due efforts to use other means

5. In the Afrikaans text, on page 49, in line 29, to omit “verseker” and to substitute “verkry”.
6. In the Afrikaans text, on page 49, from line 32, to omit paragraph (a) and to substitute:

(a) koste bereken op ‘n gepaste skaal aan enige persoon of persone wat geregtig is om as advokaat of prokureur in die Republiek te praktiseer en wat gratis regshulp of verteenwoordiging vir sodanige persoon of groep persone in die voorbereiding vir of veer van die verrigtinge verskaf bet; en ‘

CLAUSE 33

1. On page 48, in line 54, to omit “for”.
2. On page 50, in line 16, to omit “must be” and to substitute “is”.

CLAUSE 34

1. On page 50, in line 29, to omit “must” and to substitute “shall”.
2. On page 52, in line 24, to omit “and Part (c)”.

CLAUSE 35

1. In the Afrikaans text, on page 53, in line 35, to omit “by ooreenkoms” and to substitute “met die instemming van”.
2. In the Afrikaans text, on page 55, in line 1, to omit “bepaling van belonings vir” and to substitute “verskaffing van belonings aan”.

CLAUSE 42

1. In the Afrikaans text, on page 57, in line 23, to omit “sekere”.

CLAUSE 43

1. In the Afrikaans text, on page 57, in line 30, to omit “uitgeoefen of”.
2. On page 56, from line 28, to omit “or section 238 of the Constitution”.

CLAUSE 47

1. On page 58, in line 31, after “Assembly” to insert:

and the National Council of Provinces
2. On page 58, from line 35, to omit subsections (3) and (4) and to substitute:
 - (3) In considering regulations—
 - (a) tabled in the National Assembly, a committee of the National Assembly must consider and report to the National Assembly;
 - (b) tabled in the National Council of Provinces, a committee of the National Council of Provinces must consider and report to the National Council of Provinces; and
 - (c) tabled in a provincial legislature, a committee of that provincial legislature must consider and report to the provincial legislature,
 whether the regulations—
 - (i) are consistent with the purposes of this Act;
 - (ii) are within the powers conferred by this Act;
 - (iii) are consistent with the Constitution; and
 - (iv) create offences and prescribe penalties for such offences that are appropriate and acceptable.
 - (4) The National Council of Provinces may by resolution reject the regulations within 30 days after they have been tabled in the , National Council of Provinces, and such rejection must be referred to the National Assembly for consideration.
 - (5) (a) The National Assembly, after considering any rejection of a regulation by the National Council of Provinces; and
 - (b) the relevant provincial legislature,
 may by resolution within 60 days after they have been tabled disapprove of the regulations, and may suspend its disapproval for any period and on any conditions to allow the Minister or MEC to correct a defect.

SCHEDULE 1

1. On page 62, after “Section 11(1)” to insert:

National departments exercising functions that may affect the environment

SCHEDULE 2

1. On page 64, after “Section 11(2)” to insert:

National departments exercising functions that involve the management of the environment

SCHEDULE 3

1. On page 66, in the third line, before “National Legislation” to insert “Part (a):”.
2. On page 66, in the 20th line, after “Section” to insert “6 and”.
3. On page 66, in the 26th line, before “58(2)” to insert “section”.
4. On page 68, in the first line, before “Provincial Legislation” to insert “Part (b):”.
5. On page 68, in the ninth line, to omit “sections” and to substitute “section”.
6. On page 68, in the ninth line, before “49” to insert “section”.
7. In the Afrikaans text, on page 69, in line 10, to omit “**artikels** 37(1) tot 49” and to substitute “**artikel** 37(1), op **artikel** 49”.
8. In the Afrikaans text, on page 69, in line 15, to omit “tot” and to substitute “op”.
9. In the Afrikaans text, on page 69, in line 16, to omit “tot” and to substitute ‘Lop’.