

## GENERAL NOTICES

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### NOTICE 914 OF 2011

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS

#### EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2011

The Minister of Water and Environmental Affairs intends introducing the National Environmental Management Laws Amendment Bill, 2011 in Parliament during February 2012. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly and Rule 186 (10) (b) of the Rules of the National Council of Provinces.

Copies of the draft Bill can be obtained from Mr Sibusiso Shabalala, Department of Environmental Affairs, 315 Pretorius Street, Corner Pretorius and Van Der Walt Streets, Fedsure Forum Building, 7<sup>th</sup> Floor, North Tower, Pretoria, Tel: (012) 310 3449. The draft Bill is also available on the Department of Environmental Affairs website: [www.environment.gov.za](http://www.environment.gov.za)

**BOMO EDITH EDNA MOLEWA**

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2011**

### **1. PURPOSE OF THE BILL**

The purpose of the National Environmental Management Laws Amendment Bill, 2011 amends certain provisions under National Environmental Management Act, 1998 (Act No. 107 of 1998), the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), the National Environment Management Laws Amendment Act, 2009 (Act No. 14 of 2009) and the National Environment Management Laws Amendment Act, 2009 (Act No. 15 of 2009).

### **2. BACKGROUND**

- 2.1 The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) is environmental framework legislation which provides for environmental management. Other specific environmental management Acts were promulgated to deal with specific mediums of the environment, namely the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEM: PAA), the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM: BA), the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (NEM: AQA), the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEM: ICM) and the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEM: WA).
- 2.2 The National Environmental Management Laws Amendment Bill, 2011 proposes amendments to certain provisions under NEMA, the NEM: BA and the NEM: AQA. Most of the amendments were identified through the implementation of the legislation and some originated from the Department of Cooperative Governance process of identifying legislation that hampers service delivery.

### **3. OBJECTS OF THE BILL**

#### **3.1. *National Environmental Management Act, 1998***

##### **Clause 1: Amendment of section 1**

This amendment seeks to revise certain definitions to provide clarity.

##### **Clause 2: Amendment of section 11**

The current provisions of section 11 are not aligned with the term of office of the new government. The misalignment does not afford the elected government with a legal mandate to implement its priorities.

This amendment will change the timeframes for the preparation of environmental implementation plans and environmental management plans from 4 years to 5 years.

##### **Clause 3: Insertion of section 16A**

This amendment inserts a new section requiring national department responsible for environmental affairs, provincial departments responsible for environmental affairs and all metropolitan and district municipalities to prepare and publish environment outlook reports, within 4 years of coming into operation of the Bill and at intervals of not more than 4 years thereafter. Not all provinces and municipalities are currently producing the environment outlook reports. This section will ensure uniformity. The environment outlook reports prepared by the provinces and municipalities will be prepared and published before a year before the environmental implementation plans and environmental management plans in order to ensure that they feed into the national state of environment reports as well as environmental implementation plans and environmental management plans. The amendment further requires the Minister responsible environmental affairs to publish in the *Gazette* the procedure to compile the report, the format of the report and content of the report. These reports provide information that could and should be used in planning and decision-making processes.

**Clause 4: Amendment of section 24**

The amendment will change the heading to section 24.

The current provisions of section 24 do not allow the Minister to conserve and manage those areas of the environment requiring further protection. As a result, the amendment will also insert a new subsection which empowers the Minister to restrict or prohibit certain developments in certain geographical areas for a certain period of time on certain conditions.

In addition, this section does not allow the Minister or MEC to develop norms or standards for non-listed activities. This amendment will further provide the Minister or MEC, with the concurrence of the Minister, to develop norms or standards for non listed activities, sectors or geographical areas.

**Clause 5: Amendment of section 24C**

There are differing views on the type of environmental impact assessment applications that must be submitted to and processed by the National Department. In addition, the Department has also received requests on clarity regarding on whether a particular applications should be submitted to the Province or National Department. In addition, the current provisions seem not to clearly indicate the type of applications that must be submitted to and processed by the National Department. This amendment will provide legal clarity on the environmental impact assessment applications that must be considered by the National Department.

Furthermore, the Minister receives complaints or requests for interventions from developers regarding delays in the processing of environmental impact assessment applications. In most cases, the Minister does not have the legal mandate to deal with such matters. A new subsection has also been inserted which provides that in instances where the MEC responsible for environmental affairs fails to take a decision within the prescribed

timeframes, an applicant for an environmental authorization may approach the Minister to take the decision, after the relevant MEC has been consulted.

**Clause 6: Amendment of section 24E**

This section deals with the minimum conditions that must be attached to the environmental authorisations. The current provisions only allow for the transfer of rights and obligations with respect to the environmental authorisation when there is a change of ownership in the property where the proposed development will be undertaken. Several requests have been submitted to the Department for the transfer of rights and obligations to each owner of the property with respect to the environmental authorisation without changing the ownership in the property.

This amendment will ensure that an environmental authorisation provides for the transfer of rights and obligations even when there is no change in ownership in the property.

**Clause 7: Amendment of section 24F**

Section 24(10) allows for the development of norms or standards for listed and non-listed activities. However, the current provisions do not make it an offence for any person contravening any of these norms or standards.

This amendment will make an offence for any person who fails to comply with any applicable norm or standard developed in terms of section 24(10). This offence will also include non-compliance with a norm or standard developed for non listed activities, sectors or geographical areas.

**Clause 8: Amendment of section 24G**

The Department has received requests regarding the applicability of section 24G to the unlawful commencement of the waste management activity under the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008). This amendment will provide legal clarity on the applicability of section 24G to the unlawful commencement of the waste management activity under the National Environmental Management: Waste Act, 2008.

In addition, the Department has also observed the trends of companies budgeting for the section 24G administrative fine and then commence with an activity without the environmental authorisation. The amendment will also increase the section 24G administrative fine from R1 Million Rand to R5 Million Rand.

Furthermore, the Department of Cooperative Affairs requested the Department to provide for the exemption from the payment of the section 24G administrative fine for those persons undertaking a listed activity in emergency response situations. The current provisions do not allow the competent authority to consider a section 24G application before the payment of the administrative fine. This amendment will provide for an exemption from section 24G administrative fine for a person undertaking a listed activity without an environmental authorisation in emergency response situation.

#### **Clause 9: Amendment of section 24M**

There seems to be confusion amongst the regulated community that they can always apply for an exemption from undertaking the environmental impact assessment on certain developments. This amendment will insert a new subsection reaffirming that no exemptions may be granted from the requirements to obtain an environmental authorisation when intending to undertake a listed activity in terms of section 24 of NEMA.

#### **Clause 10: Amendment of section 24O**

The Department from time to time develops and adopts guidelines and environmental management instruments with respect to environmental impact management. Thereafter, the adopted environmental management instruments are relied upon when decisions are made with respect to an application for an environmental authorisation. This amendment will allow the competent authority to take into account any adopted environmental management instruments when considering an application for an environmental authorisation.

**Clause 11: Amendment of section 28**

The environmental management inspectors are currently experiencing challenges when issuing the section 28 Directive. These challenges are due to the difficulty in implementing the duty of care requirement before the issuing of the Directive.

The amendment will de-link the duty of care requirement that the Directive must comply with before being issued. This amendment will allow for easier implementation of the section 28 directive by the Director-General of environmental affairs, provincial head of Department responsible for environmental affairs as well as an administrative head of any relevant state department.

**Clause 12: Insertion of section 28A**

The amendment will make an offence for any person who does not comply with a section 28 Directive and will also increase the fine imposed against such non-compliance from R1 million to R5 million for first time offenders and R10 million for second and subsequent offenders. This amendment will further ensure that a person causing detriment or degradation to the environment is criminally liable for his or her actions and can be fined up to R5 million for first time offenders and R10 million for second and subsequent offenders.

This amendment will separate the criminal liability from the section 28 Directive administrative requirements. The increase in penalties will ensure that the penalties are in line with the penalties imposed in terms of other specific environmental management Act.

**Clause 13: Amendment of section 30**

There seems to be confusion amongst the members of the public on whether it is an offence for any person not to comply with a Directive issued in terms of section 30(6) of NEMA. This amendment will clarify that it is an offence for any person that does not comply with a Directive issued in terms of section

30(6) of NEMA. The amendment will also increase the fine imposed against non-compliance with a section 30(6) directive from R1 million to R5 million for first time offenders and R10 million for second and subsequent offenders. The increase in penalties will ensure that the penalties are in line with the penalties imposed in terms of other specific environmental management Act.

**Clause 14: Amendment of section 31J**

The current provisions of section 31J do not provide an environmental management inspector with a legal mandate to seize, without a warrant, any items used in the commissioning of an offence under NEMA or other specific environmental management Act. This amendment will allow an environmental management inspector to seize, without a warrant, a vehicle, vessel, aircraft or any other transport mechanism which may afford evidence of the commission or suspected commission of an offence. The amendment is also in line with section 20 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

**Clause 15: Amendment of section 44**

This amendment is not entirely new but was repealed when certain sections of the Environment Conservation Act, 1989 were repealed. The asbestos and plastic bags regulations were developed in terms of similar provisions under the Environment Conservation Act, 1989. From time to time certain products are introduced and used in the market but often their impact on the environment is not always regulated. This amendment will provide the Minister with a legal mandate to develop regulations to control products that may have a detrimental effect on the environment. The amendment will further require the Minister to publish such regulations after consultation with the Minister responsible for trade and industry.

**Clause 16: Amendment of section 47**

This amendment will require the Department to table instead of submitting the Environmental Impact Assessment Regulations at Parliament before final



publication in the Gazette for information. The amendment is merely to clarify the interpretation of subsection (3).

**Clause 17: Amendment of section 47D**

The current provisions of section 47D only caters for two methods of delivering documents, namely, hand delivery or registered mail. As a result, the section is not in line with current developments of business interactions. This amendment will allow for the use of other mechanisms of delivering documents under the NEMA or other specific environmental management Act, namely, by fax, e-mail or ordinary mail.

**Clause 18: Amendment of section 48**

There seems to be confusion amongst members of the public whether the NEMA is applicable to the State. This amendment will reiterate that the NEMA is applicable to the State without any exceptions.

**Clause 19: General amendment**

This is a general amendment necessitated by the name changes in the Ministries of Water Affairs and Forestry and Minerals and Energy. This amendment will update the Ministries name change wherever it appears in the NEMA.

**3.2. *National Environmental Management: Biodiversity Act, 2004***

**Clause 20: Amendment of section 1 of Act 10 of 2004**

Trade and export is integral to the process of bioprospecting. However, the bio-trading industry always contests that they are not regulated by NEM: BA because the biosprospecting activity of trade is not explicitly mentioned. The revision of the definition of "bio-prospecting", "commercialization" as well as the inclusion of the definition of "commercial exploitation" will close a regulatory gap in regulating the bio-trading industry.

In addition, the revision of the definition of "genetic resources" will give national effect to the obligations of the Nagoya Protocol on Access to

Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity.

**Clause 21: Amendment of section 51**

One of the objectives of NEM: BA is to provide for the use of indigenous biological resources in a sustainable manner, and the purpose of Chapter 4 is to make provision for, among others, the protection of species listed as threatened or protected and to “ensure that the utilisation of biodiversity is managed in an ecologically sustainable way.” However, the current provisions of section 51 appear not to clearly set out such intentions.

This amendment will clarify that the intention of Chapter 4 is also to ensure that the threatened or protected species (TOPS) are sustainably utilised. The inclusion of the proposed amendment in the purpose of the Chapter 4 will clarify such intention.

**Clause 22: Amendment of section 56**

Species listed as protected do not face the threat of extinction in the wild due to utilization. However, many species that are commercially utilised (i.e. on game farms) are not of “national importance” or “high conservation value”, but the hunting of the species needs to be regulated to prevent over-utilisation; or translocation of the species also needs to be regulated to prevent hybridisation. In addition, species may be listed within the same category, because they have the same conservation status, but have attained that status for different reasons. Therefore, it is important to also regulate those species that are not of high conservation value in order to prevent the inclusion of such species in one of the threatened categories in future.

This amendment will provide the Minister with a legal mandate to regulate those species that are not of high conservation value in order to ensure that their utilization in the ecosystem is sustainable.

**Clause 23: Amendment of section 57**

The current provisions of section 57 do not require a permit for species to which an international agreement regulating international trade applies. This amendment will ensure that permits are required for species to which an international agreement regulating international trade applies.

In addition, the current provisions of section 57(3) do not require that in transit shipments through the Republic of listed threatened or protected species to be accompanied by the necessary documentation in line with the State party obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This amendment will also ensure that specimens in transit through the Republic are always accompanied by the necessary documentation.

Furthermore, the current provisions of section 57 do not allow the Minister to determine the conditions under which a person may be exempted from permit requirements with respect to the listed threatened or protected species restricted activities. This amendment will allow the Minister to exempt any person from the permit requirements subject to certain conditions. The amendment will also provide the Minister with a legal mandate to categorise, in respect of the threatened or protected species, when publishing notices in terms of sections 57(2) or 57(4).

**Clause 24: Amendment of section 58**

The amendment will correct the incorrect cross-reference to section 56(2) instead of section 57(2). This amendment will provide the Minister with a legal mandate to amend the notices published in terms of section 56(1), 57(2) or 57(4) of NEM: BA.

**Clause 25: Amendment of section 59**

The NEM: BA does not contain any provisions requiring the registration of professional hunters, outfitters and trainers. This challenge manifest itself in the abuse of the permit process in that ruthless poachers poses as legal

professional hunters and outfitters. This amendment will provide the Minister with a legal mandate to prescribe a system for the registration of the professional hunters, outfitters and trainers in the hunting industry. This system can be utilised to monitor compliance of the professional hunters and outfitters through the professional bodies. The amendment is meant to address some of the regulatory gaps within the permitting system.

#### **Clause 26 Amendment of section 60**

The CITES require the country's Scientific Authority to confirm that international trade in species, listed in the Appendices, will not be detrimental for the survival of the species in the wild. This international obligation had to be given effect through national legislation, of which the Threatened or Protected Species Regulations, 2007 (TOPS Regulations) were the first to be developed and implemented under NEM: BA. Although, the composition of the country's Scientific Authority is prescribed in the TOPS Regulations, the original intention with the establishment of the country Scientific Authority was to assist the Department in international trade of CITES-listed species.

This amendment will provide the scientific authority with a legal mandate in assisting the Department on the scientific work regarding the regulation of species to which an international agreement on international trade is applicable.

#### **Clause 27: Amendment of section 61**

The issuance of permits under NEM: BA may be refused based on non-detriment findings. These decisions may affect the existing rights of persons. Therefore, it is important that the non-detriment findings should be subjected to the public participation process in order for the members of the public to be informed about the issue that might affect them. The power to publish a notice in the *Gazette* is vested in the Minister and therefore it is important for the non-detriment findings to be submitted to the Minister for processing.

This amendment will provide clarify that the legal mandate of the scientific authority is to make recommendations to the Minister on non-detrimental findings.

**Clause 28: Amendment of section 62**

The issuance of permits under NEM: BA may be refused based on non-detriment findings. These decisions may affect the existing rights of persons. Therefore, it is important that the non-detriment findings should be subjected to the public participation process in order for the members of the public to be informed about the issue that might affect them. The power to publish a notice in the *Gazette* is vested in the Minister and therefore it is important for the non-detriment findings to be submitted to the Minister for processing.

This amendment will provide the Minister with a legal mandate to publish the non-detrimental findings in the *Gazette* on recommendations from the scientific authority. The amendment will also broaden the scope of the non-detrimental findings to international agreement regulating international trade.

**Clause 29: Insertion of section 62A**

This is a new section. The amendment will provide the Minister with a legal mandate to amend or repeal a notice published in terms of section 62(1) of NEM: BA.

**Clause 30: Amendment of section 63**

This amendment is meant to ensure alignment with the proposed amendments to section 57 by requiring a public participation process. The amendment will require the Minister to follow a public participation process when amending or repealing an exemption notice in terms of section 57(4).

**Clause 31: Amendment of section 66**

In some situations, it may be necessary for the Minister to exempt a person from the requirement of a permit or risk assessment with respect to alien species. These types of exemptions depend on the each case presented to

the Department. However, the current provisions of section 66 do not allow the Minister to deal with such exemptions.

This amendment will allow the Minister to exempt any person from the permit or risk assessment requirements with respect to alien species (section 65(1) and (2)). The amendment will also provide the Minister with a legal mandate to categorise according to persons, areas or species when publishing the exemption notice in the *Gazette*. This amendment will prevent the repeated carrying out of risk assessments for the same species for the same activity.

#### **Clause 32: Amendment of section 70**

The current provisions do not allow the Minister to categorise within the list of invasive species notice published in terms of section 70(1). The categorization is important when it comes to implementation.

The amendment will provide the Minister or MEC for environmental affairs in a province with a legal mandate to categorise according to areas, persons or species when publishing the national or provincial list of invasive species.

#### **Clause 33: Amendment of section 71**

In some situations, it may be necessary for the Minister to exempt a person from the requirement of a permit or risk assessment with respect to listed invasive species. These types of exemptions depend on the each case presented to the Department. However, the current provisions of section 70 do not allow the Minister to deal with such exemptions.

This amendment will provide the Minister with a legal mandate to exempt a person subject to certain conditions from permit and risks assessment requirements (section 71(1) or (2)). This amendment will also allow the Minister to categorise according to areas, persons or species when publishing the exemption notice in the *Gazette*.

**Clause 34: Insertion of section 71A**

This is new section. The current provisions in NEM: BA does not allow the Minister to prevent the carrying out of certain restricted activities with respect to listed invasive species. The current challenge is that it is sometimes difficult to protect and conserve certain invasive species in certain areas of the country. This may be important for the survival of certain ecosystems.

This amendment will provide the Minister with a legal mandate to prohibit the carrying out of certain restricted activities involving certain listed invasive species. This amendment will also allow the Minister to categorise according to areas, persons or species when publishing the notice in the *Gazette*.

**Clause 35: Amendment of section 72**

The amendment is meant to ensure alignment with the proposed amendments to section 70, 71 and 71A by allowing the Minister and MEC to amend or repeal those notices. This amendment will provide the Minister with a legal mandate to amend or repeal any of the notices published in terms of sections 70(1)(a), 71(3), or 71A(1). The amendment will also provide the MEC with a legal mandate to amend or repeal the notice published in terms of section 70(1)(b). The amendment will ensure proper cross-referencing.

**Clause 36: Amendment of section 79**

The amendment is meant to ensure alignment with the proposed amendments to section 71 and 71A by requiring the Minister subject such notices to public participation process before implementation. This amendment will require notices to exempt or prohibit invasive species to be published for public comments before final publication in the *Gazette*.

**Clause 37: Amendment of section 80**

The current provisions of section 80 are not reflecting some of the country international obligations with respect to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising

from their Utilization to the Convention on Biological Diversity. The Protocol requires the country to protect genetic and biological resources including genetic information when utilised for bioprospecting. This amendment will provide the Department with the legal mandate to ensure proper regulation of bioprospecting involving indigenous genetic and/or biological resources. The amendment will ensure the application of the Chapter 6 to genetic resources.

In addition, the current provisions of Chapter 6 are not explicitly encouraging the sustainable use of indigenous plants, animals and associated traditional knowledge. The amendment will also support socio-economic development where indigenous plants, animals and associated traditional knowledge is accessed and utilised for bioprospecting.

**Clause 38: Amendment of section 85**

The current Biosprospecting Trust Fund is managed in accordance with the legal requirements of the Public Finance Management Act, 1999. Therefore, the intention is to change the current Bioprospecting Trust Fund to become a Bioprospecting Fund. A trust fund requires a trust deed, trustees and also has additional financial implications. The intention of the Bioprospecting Fund is to keep all moneys arising from bioprospecting agreements on behalf of communities. These moneys are paid to the communities after the finalisation of the bioprospecting agreements. This amendment will allow changing the current provisions to allow the Department to keep all moneys arising from bioprospecting agreements in a separate Bioprospecting Fund for the benefit of communities. The amendment will also allow communities with bank accounts to receive the moneys directly from the permit holder (bioprospector).

**Clause 39: Amendment of section 86**

The current provisions of section 86 do not allow the Minister to exempt a person using indigenous resources for domestic use or subsistence purposes. The implications are that traditional healers and traders of medicinal plants must obtain a bioprospecting permit before collecting, using or cultivating indigenous resources. This is against the purpose and intention



of NEM: BA of promoting sustainable utilisation of indigenous resources by communities. This amendment will provide the Minister with a legal mandate to exempt persons using indigenous biological resources for domestic use or subsistence purposes from the provisions of Chapter 6. The amendment will also provide the Minister with a legal mandate to exempt certain categories of commercial or industrial exploitation of indigenous biological resources from the provisions of sections 82 and 84 of NEM: BA (Benefit-sharing and Material transfer agreements).

**Clause 40: Amendment of section 57**

The amendment is meant to ensure alignment with the proposed amendments to section 57 by requiring that permits are required for species to which an international agreement regulating international trade applies. This amendment will ensure that permits are required for species to which an international agreement regulating international trade applies. The amendment will ensure proper cross-referencing.

**Clause 41: Amendment of section 88**

This amendment is meant to address some of the challenges on the permit system with respect to the hunting of listed threatened or protected species, alien species or listed invasive species. Currently the permit system is being abused by ruthless individuals or syndicates to obtain protected and vulnerable species. This amendment will provide the issuing authority with a legal mandate to defer a decision to issue a permit if the applicant is under investigation for contravening the NEM: BA in relation to a similar restricted activity. The decision will be deferred until such time that the investigation is finalised. The amendment will strengthen the implementation of legal requirements and administrative processes to limit the possible abuse of the permit system.

**Clause 42: Amendment of section 91**

This is a consequential amendment as a result of the exemption notices that the Minister may publish in terms of sections 65(2) and 71(2). The amendment will ensure proper cross-referencing.

**Clause 43: Substitution of section 93**

This amendment is meant to address some of the challenges on the permit system with respect to the hunting of listed threatened or protected species, alien species or listed invasive species. Currently the permit system is being abused by ruthless individuals or syndicates to obtain protected and vulnerable species. The amendment will provide the issuing authority with a legal mandate to cancel a permit issued in terms of this Act if the permit holder is found guilty of committing an offence. The amendment will also allow the issuing authority to recover any reasonable costs, incurred and necessitated by the cancellation of the permit, from the permit holder. The amendment will strengthen the implementation of legal requirements and administrative processes to limit the possible abuse of the permit system.

**Clause 44: Insertion of section 93B**

This amendment is meant to address some of the challenges on the permit system with respect to the hunting of listed threatened or protected species, alien species or listed invasive species. Currently the permit system is being abused by ruthless individuals or syndicates to obtain protected and vulnerable species. This amendment will provide the issuing authority with a legal mandate to suspend a permit issued in terms of this Act if the suspension will assist in the sustainable use of the species or if the permit holder is under investigation for contravening any provisions of the Act or conditions of the permit. The amendment will also allow an issuing authority to recover any reasonable costs, incurred and necessitated by the suspension of the permit, from the permit holder. The amendment will strengthen the implementation of legal requirements and administrative processes to limit the possible abuse of the permit system.

**Clause 45: Amendment of section 94**

The current appeals provision appears to be misaligned with the appeals provision in section 43 of NEMA. The misalignment has caused some confusion amongst appellants with respect to the applicable provisions. This amendment will repeal the appeals provision under the NEM: BA and appeals under the NEM: BA will be processed in terms of section 43 of NEMA. The amendment will ensure a single and aligned appeal process under section 43 of NEMA for all appeals in terms of NEMA or other specific environmental management Act.

**Clause 46: Amendment of section 95**

The current appeals provision appears to be misaligned with the appeals provision in section 43 of NEMA. The misalignment has caused some confusion amongst appellants with respect to the applicable provisions. This amendment will repeal the appeals provision under the Act and appeals under the Act will be processed in terms of section 43 of NEMA. The amendment will ensure a single and aligned appeal process under section 43 of NEMA for all appeals in terms of NEMA or other specific environmental management Act.

**Clause 47: Amendment of section 96**

The current appeals provision appears to be misaligned with the appeals provision in section 43 of NEMA. The misalignment has caused some confusion amongst appellants with respect to the applicable provisions. This amendment will repeal the appeals provision under the Act and appeals under the Act will be processed in terms of section 43 of NEMA. The amendment will ensure a single and aligned appeal process under section 43 of NEMA for all appeals in terms of NEMA or other specific environmental management Act.

**Clause 48: Amendment of section 97**

The current provisions regulations making powers do not allow the Minister to develop regulations on programmes to address invasive species, systems to register certain organisation that may assist the Department in the implementation of the NEM: BA. The amendment will also provide the Minister with a legal mandate to develop regulations on self-administration within the wildlife industry; to control and eradicate invasive species; and on system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities. The amendment will also correct cross referencing within NEM: BA and repeal references to the repealed appeal provisions.

**Clause 49: Amendment of section 98**

This amendment will delete references to the repealed appeal provisions. The current provisions do not allow the Minister to specify different penalties for the different categories of species depending on their protection and vulnerability. Practically, the implementation is a challenge because the NEM: BA provides the species with different protection therefore the penalties should also be aligned with the protection afforded to the species. The amendment will also provide the Minister with a legal mandate to differentiate between the penalties for the contravention of the different provisions in the regulations made in terms of section 97 of NEM: BA.

**Clause 50: Amendment of section 101**

The current provisions do not make it an offence for any person engaging in bioprospecting discovery phase without proper notification to the Minister, and for any permit holders that allows someone to either contravene permit conditions or provisions of NEM: BA. Therefore, the Department is not able to fully enforce NEM: BA. This amendment will create offences for any person to engage in bioprospecting discovery phase without proper notification to the Minister as well as for any person to carry out a restricted activity, which has been prohibited, involving a listed invasive species. This amendment will further make it an offence for any person who is involved in

an illegal restricted activity but who does not physically carry out the restricted activity. These amendments will ensure compliance by members of the public.

**Clause 51: Amendment of section 102**

Some of the large national and multinational industries are engaging in bioprospecting without the necessary permits. Because some of the current penalties are not deterrent enough to promote a culture of compliance with the NEM: BA. This amendment will ensure that heavy penalties are imposed against large national and multinational industries found guilty of bioprospecting related offences. The amendment will also ensure the imposition of a fine equivalent to the recovery costs associated with the control and eradication of invasive species.

**Clause 52: Insertion of section 105A**

The current provisions of NEM: BA does not allow the Minister to declare certain areas for intervention with respect to addressing the challenges posed by alien species or invasive species. There are situations where alien species or invasive species may be a threat to a particular ecosystem and if no interventions are deployed to eradicate those species the ecosystem may be destroyed. This amendment will insert a new section providing the Minister with a legal mandate to declare an emergency intervention for the control or eradication of alien species or listed invasive species, if the Minister is satisfied that species constitutes a significant threat to the environment. The amendment will ensure that our environment is conserved for future generation.

**Clause 53: Insertion of section 105B**

Many persons are in possession of provincial permits but have not yet applied for permits in terms of NEM: BA. These persons may either not be aware of NEM: BA, or do simply not comply with NEM: BA, but does not necessarily have the intention of carrying out an illegal activity. The intention is to allow persons to apply for permits, without the fear of being prosecuted

for not having applied earlier. This amendment will insert a new section providing the Minister with a legal mandate to declare amnesty from prosecution for the purposes of facilitating compliance with the provisions of NEM: BA.

**Clause 54: General amendment**

This amendment will replace the "bio-prospecting trust fund" with the "bio-prospecting fund" wherever it appears in the Act. The amendment will allow for consistent use of terminology.

**3.3. *National Environmental Management: Air Quality Act, 2004***

**Clause 55: Amendment of section 55 of Act 39 of 2004**

The current provision of section 55 is not in line with the penalties of other specific environmental management Act. The intention is to ensure that NEMA and other specific environmental management Act are aligned in most issues. This amendment will adjust penalties that may be imposed in terms of any regulations developed under the Act. The amendment will ensure that penalties are in line with penalties imposed in terms of other specific environmental management Act.

**3.4. *National Environment Management Laws Amendment Act, 2009***

**Clause 56: Amendment of Short title of Act 14 of 2008**

This amendment will rectify the incorrect citation of the National Environmental Management Laws Amendment Act, 2009 (Act No. 14 of 2008).

**3.5. *National Environment Management Laws Amendment Act, 2009***

**Clause 57: Amendment of Short title of Act 15 of 2009**

This amendment will rectify the incorrect citation of the National Environment Management Laws Amendment Act, 2009 (Act No. 15 of 2009).

#### **4. DEPARTMENTS / BODIES / PERSONS CONSULTED**

The national Departments were consulted Agriculture, Forestry and Fisheries, Cooperative Governance and Traditional Affairs, Defence and Military Veterans, Energy, Health, Human Settlements, Labour, Mineral Resources, Rural Development and Land Reform, Trade and Industry, Transport and Water Affairs. These Departments are identified in schedules 1 and 2 to NEMA as national Departments exercising functions which may affect the environment or that involve the management of the environment.

#### **5. IMPLICATIONS FOR PROVINCES**

All provincial environmental affairs departments.

#### **6. FINANCIAL IMPLICATIONS FOR STATE**

The Bill does not create further financial liabilities to the State.

#### **7. PARLIAMENTARY PROCEDURE**

7.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Schedule 4 to the Constitution, namely "Environment" and "Nature Conservation".

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.