

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76);
explanatory summary of Bill published in Government Gazette No. 34891
of 30 December 2011)
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 13—2012]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the—

- **National Environmental Management Act, 1998**, so as to amend certain definitions; to adjust the timeframes for the preparation of environmental implementation plans and environmental management plans; to provide for the process and procedure for submitting environment outlook reports; to empower the Minister or MEC to develop norms or standards for listed activities and non-listed activities; to empower the Minister to restrict or prohibit development in specified geographical areas; to empower the Minister to take a decision in place of the MEC under certain circumstances; to provide legal clarity on the applicability of section 24G to the unlawful commencement of a waste management activity under the National Environmental Management: Waste Act, 2008; to increase the section 24G administrative fines and to exclude payment of section 24G administrative fines for certain persons; to provide for no exemptions from the requirements to obtain an environmental authorisation; to adjust the provisions relating to the duty of care and remediation of environmental damage; to provide for textual amendments to the provisions on the powers of environmental management inspectors; to insert a provision to regulate products having a detrimental effect on the environment; to add provisions regarding the delivery of documents; to provide that the Act binds the State without any exception; and to correct certain obsolete provisions;
- **National Environmental Management: Biodiversity Act, 2004**, so as to amend certain definitions; to effect certain textual amendments to the provisions on protection of species; to revise the purpose and application of Chapter 6; to revise the provisions in respect of the Bioprospecting Fund; to repeal the appeal provisions; to add offences and penalties; and to empower the Minister to declare amnesty in certain circumstances;
- **National Environmental Management: Air Quality Act, 2004**, so as to align the penalties with other specific environmental management Acts;
- **National Environment Management Laws Amendment Act, 2008**, so as to correct an incorrect citation; and
- **National Environmental Management: Protected Areas Act, 2009**, so as to correct an incorrect citation.

and to provide for matters connected therewith.

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

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004, section 60 of Act 39 of 2004, section 3 of Act 44 of 2008, section 1 of Act 62 of 2008 and section 4 of Act 14 of 2009 5

1. Section 1 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for the definition of “Department” of the following definition: 10
 - “**‘Department’** means the Department **[of Environmental Affairs and Tourism]** responsible for environmental affairs;”;
- (b) by the substitution for the definition of “Director-General” of the following definition:
 - “**‘Director-General’** means the Director-General of **[Environmental Affairs and Tourism]** the Department;”;
- (c) by the substitution for the definition of “environmental assessment practitioner” of the following definition: 15
 - “**‘environmental assessment practitioner’**, when used in Chapter 5, means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management **[plans]** programmes or any other appropriate environmental instruments introduced through regulations;”;
- (d) by the substitution for the definition of “Minister” of the following definition: 25
 - “**‘Minister’**, in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, means the Minister **[of Environmental Affairs and Tourism]** responsible for environmental affairs;”;
- (e) by the substitution for the definition of “Minister of Minerals and Energy” of the following definition:
 - “**‘Minister [of Minerals and Energy] responsible for mineral resources’** means the Minister responsible for the implementation of 35
 - environmental matters relating to prospecting, mining, exploration, production and related activities within a mining, prospecting, exploration or production area;”;
 and
- (f) by the substitution for the definition of “specific environmental management Act” of the following definition: 40
 - “**‘specific environmental management Act’** means—
 - (a) the Environmental Conservation Act, 1989 (Act No. 73 of 1989);
 - (b) the National Water Act, 1998 (Act No. 36 of 1998);
 - (c) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);
 - (d) the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); **[or]**
 - (e) the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
 - (f) the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);
 - (g) the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008); or
 - (h) the World Heritage Convention Act, 1999 (Act No. 49 of 1999),
 and includes any regulation or other subordinate legislation made in 55
 terms of any of those Acts;”.

Amendment of section 11 of Act 107 of 1998, as amended by section 7 of Act 14 of 2009

2. Section 11 of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Every national department listed in Schedule 1 as exercising functions which may affect the environment and every [province] provincial department responsible for environmental affairs must prepare an environmental implementation plan within [one year] five years of the [promulgation of this Act] coming into operation of the National Environmental Management Laws Amendment Act, 2012, and [at least every four] at intervals of not more than five years thereafter.

(2) Every national department listed in Schedule 2 as exercising functions involving the management of the environment must prepare an environmental management plan within [one year] five years of the [promulgation of this Act] coming into operation of the National Environmental Management Laws Amendment Act, 2012, and [at least every four] at intervals of not more than five years thereafter.”.

Insertion of section 16A in Act 107 of 1998

3. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 16:

“Environment outlook report

16A. (1) The Minister must within four years of the coming into operation of the National Environmental Laws Amendment Act, 2012, prepare and publish a national environment outlook report for the Republic and at intervals of not more than four years thereafter.

(2) An MEC must—

- (a) prepare and publish a provincial environment outlook report which must contain the information determined by the Minister in terms of subsection (4); and
- (b) within four years of the coming into operation of the National Environmental Laws Amendment Act, 2012, submit the report to the Minister and at intervals of not more than four years thereafter.

(3) All metropolitan and district municipalities may prepare and publish municipal environment outlook reports which must, if prepared and published—

- (a) contain the information determined by the Minister in terms of subsection (4); and
- (b) be submitted to the Minister and MEC within four years of the coming into operation of the National Environmental Laws Amendment Act, 2012, and at intervals of not more than four years thereafter.

(4) The Minister must in respect of an environment outlook report, by notice in the *Gazette*, determine—

- (a) the procedure for compiling the report;
- (b) the format; and
- (c) the content of the report.

(5) The relevant organs of state must cooperate with the Minister or MEC by furnishing the Minister or MEC with information required for inclusion in a national or a provincial environment outlook report.

(6) The Minister may, at the request of a province, assist with the preparation of the provincial’s environment outlook report.

(7) The MEC may, at the request of a municipality, assist with the preparation of the municipality’s environment outlook report.”.

Amendment of section 24 of Act 107 of 1998, as substituted by section 2 of Act 62 of 2008

4. Section 24 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Environmental [authorisations] impact management”;
- (b) by the insertion after subsection (2) of the following subsection:
 “(2A) (a) Subject to paragraphs (c) and (d), the Minister may by notice in the *Gazette* prohibit or restrict the granting of an environmental authorisation by the competent authority for a listed or a specified activity in a specified geographical area for such period and on such terms and conditions as the Minister may determine, if it is necessary in order to ensure protection of the environment, conservation of resources, sustainable development or human health and well-being.
 (b) A prohibition or restriction contemplated in paragraph (a) does not affect the undertaking of activities authorised by means of an environmental authorisation prior to the prohibition becoming effective.
 (c) The Minister may by notice in the *Gazette*—
 (i) lift a prohibition or restriction made in terms of paragraph (a) if the circumstances which caused the Minister to prohibit or restrict no longer exist; or
 (ii) amend any period, term or condition applicable to any prohibition or restriction made in terms of paragraph (a) if the circumstances which caused the Minister to prohibit or restrict have changed.
 (d) Before acting in terms of paragraph (a), the Minister must—
 (i) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;
 (ii) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the MEC that will be affected by the exercise of the power; and
 (iii) publish a notice in the *Gazette* inviting members of the public to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written representations on the proposed prohibition or restriction.”; and
- (c) by the substitution in subsection (10)(a) for subparagraph (i) of the following subparagraph:
 “(i) develop or adopt norms or standards for activities, sectors, geographical areas, listed activities, [or] for any part of an activity, sector, geographical area or listed activity, or for a combination of those activities, [contemplated in terms of subsection (2)(d)] sectors, geographical areas and listed activities.”.

Amendment of section 24C of Act 107 of 1998, as substituted by section 3 of Act 62 of 2008

5. Section 24C of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) will take place within an area protected by means of an international environmental instrument[, other than—
 (i) any area falling within the sea-shore or within 150 metres seawards from the high-water mark, whichever is the greater;
 (ii) a conservancy;
 (iii) a protected natural environment;
 (iv) a proclaimed private nature reserve;
 (v) a natural heritage site;
 (vi) the buffer zone or transitional area of a biosphere reserve; or
 (vii) the buffer zone or transitional area of a world heritage site];”;
- (b) by the deletion in subsection (2) of the word “or” at the end of paragraph (d), the insertion in that subsection of the word “or” at the end of paragraph (e) and the addition to that subsection of the following paragraph:

“(f) will take place 150 metres or further, as measured seawards, from the high-water mark.”; and

(c) by the addition of the following subsections:

“(4) Whenever the MEC fails to take a decision on an application for an environmental authorisation within the time periods prescribed by this Act, the applicant may apply to the Minister to take the decision.

(5) The application contemplated in subsection (4) must contain sufficient information and all the relevant documents required in terms of this Act in order to enable the Minister to make a decision.

(6) Before taking a decision contemplated in subsection (4), the Minister must consult with the MEC concerned.”.

Amendment of section 24E of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004

6. Section 24E of the National Environmental Management Act, 1998, is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) provision is made for the transfer of rights and obligations [**when there is a change of ownership in the property**], if required.”.

Amendment of section 24F of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004 and amended by section 5 of Act 62 of 2008

7. Section 24F of the National Environmental Management Act, 1998, is hereby amended by the deletion in subsection (2) of the word “or” at the end of paragraph (d), the insertion in that subsection of the word “or” at the end of paragraph (e) and the addition to that subsection of the following paragraph:

“(f) any applicable norm or standard developed in terms of section 24(10).”.

Amendment of section 24G of Act 107 of 1998, as substituted by section 6 of Act 62 of 2008

8. Section 24G of the National Environmental Management Act, 1998, is hereby amended—

(a) by the substitution for subsections (1), (2) and (2A) of the following subsections, respectively:

“(1) On application by a person who—

(a) has [**committed an offence in terms of section 24F(2)(a)] commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1);**

(b) has commenced, undertaken or conducted a waste management activity without a waste management licence in terms of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008),

the Minister, Minister [**of Minerals and Energy**] responsible for mineral resources or MEC concerned, as the case may be, may direct the applicant to—

[a] (i) compile a report containing—

[(i)] (aa) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects;

[(ii)] (bb) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;

[(iii)] (cc) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;

[(iv)] (dd) an environmental management programme; and

[(b)](ii) provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, may deem necessary.

(2) The Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, must consider any reports or information submitted in terms of subsection (1) and thereafter may—

- (a) refuse to issue an environmental authorisation and may direct the person [to cease the activity, either wholly or in part, and] to rehabilitate the environment within such time and subject to such conditions as the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, may deem necessary; or 5
- (b) issue an environmental authorisation to such person subject to such conditions as the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, may deem necessary. 10

(2A) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed **[R1 million]** R5 million and which must be determined by the competent authority, before the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, may act in terms of subsection 2(a) or (b).”; and 15

- (b) by the addition of the following subsection: 20

“(4) Subsection (2A) is not applicable to a person contemplated in subsection (1)(a) who has commenced with a listed or specified activity in an emergency response situation in order to protect human life or the environment.”.

Amendment of section 24M of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008 25

9. Section 24M of the National Environmental Management Act, 1998, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) No exemption may be granted from the requirement to obtain an environmental authorisation contemplated in section 24(2)(a) or (b).”.

Amendment of section 24O of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008 30

10. Section 24O of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1)(b) for subparagraph (viii) of the following subparagraph:

- “(viii) any guidelines, departmental policies and **[decision making]** environmental management instruments that have been **[developed or]** adopted and any other information in the possession of the competent authority that are relevant to the application; and”.

Amendment of section 28 of Act 107 of 1998, as amended by section 12 of Act 14 of 2009 40

11. Section 28 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (4) of the following subsection:

“(4) The Director-General **[or]**, a provincial head of department or an administrative head of any relevant organ of state may, **[after consultation with any other organ of state concerned and]** after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who **[fails to take the measures required under subsection (1)]** is causing, has caused or may cause significant pollution or degradation of the environment, to— 45

- (a) [investigate, evaluate and assess the impact of specific activities and report thereon] cease with any activity, operation or undertaking; 50
- (b) [commence taking specific reasonable measures before a given date] investigate, evaluate and assess the impact of specific activities and report thereon; 55

- (c) **[diligently continue with those measures; and]** commence taking specific measures before a given date;
 (d) **[complete them before a specified reasonable date]** diligently continue with those measures; and
 (e) complete those measures before a specified reasonable date: 5
 Provided that the Director-General **[or]**, a provincial head of department or an administrative head of any relevant organ of state may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable.”; 10
- (b) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
 “The Director-General **[or a]**, a provincial head of department or an administrative head of any relevant organ of state, when considering any measure or time period envisaged in subsection (4), must have regard to the following.”; 15
- (c) by the substitution in subsection (5) for paragraph (e) of the following paragraph:
 “(e) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people; and”; 20
- (d) by the substitution for subsection (7) of the following subsection:
 “(7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General **[or]**, a provincial head of department **[responsible for environmental affairs]** or an administrative head of any relevant organ of state may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.”; 25
- (e) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
 “Subject to subsection (9), the Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state may recover costs for reasonable remedial measures to be undertaken under subsection (7), before such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons[—];” 30
- (f) by the substitution for subsection (9) of the following subsection:
 “(9) The Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state may in respect of the recovery of costs under subsection (8), claim proportionally from any other person who benefited from the measures undertaken under subsection (7).”; 35
- (g) by the substitution for subsection (12) of the following subsection:
 “(12) Any person may, after giving the Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state 30 days’ notice, apply to a competent court for an order directing the Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state to take any of the steps listed in subsection (4) if the Director-General **[or]**, a provincial head of department or an administrative head of any relevant organ of state fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps, and the provisions of section 32(2) and (3) shall apply to such proceedings with the necessary changes.”; and 40
- (h) by the deletion of subsections (14) and (15). 55

Insertion of section 28A in Act 107 of 1998

12. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 28:

“Criminal liability of certain persons

28A. (1) No person may—

- (a) unlawfully and intentionally or negligently commit any act or omission which causes pollution or degradation of the environment or is likely to cause pollution or degradation of the environment; or 5
 - (b) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the environment. 10
- (2) A person that fails to comply with a directive issued in terms of section 28 is guilty of an offence. 10
- (3) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment. 15
- (4) Any person convicted of an offence referred to in subsection (2) may be sentenced to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.”. 20

Amendment of section 30 of Act 107 of 1998, as amended by section 13 of Act 14 of 2009

13. Section 30 of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (11) of the following subsection: 25

- “(11) A person who contravenes or fails to comply with subsection (3), (4)[,] or (5) or who fails to comply with a directive issued in terms of subsection (6) is guilty of an offence and liable on conviction to a fine not exceeding [R1] R5 million or to imprisonment for a period not exceeding [1 year, or] five years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such [a] fine and such imprisonment.”. 30

Amendment of section 31J of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

14. Section 31J of the National Environmental Management Act, 1998, is hereby amended— 35

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40

“An environmental management inspector, within his or her mandate in terms of section 31D, may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal or any other mechanism of transport, on reasonable suspicion that that vehicle, vessel, aircraft, [or] pack animal or other mechanism of transport—;”; and
- (b) by the substitution for subsection (2) of the following subsection: 45

“(2) An environmental management inspector may, without a warrant, seize a vehicle, vessel, aircraft, pack-animal or any other mechanism of transport or anything contained in or on any vehicle, vessel, aircraft [or], pack-animal [that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act] or other mechanism of transport— 50

 - (a) which is concerned in or is on reasonable grounds believed to be concerned in the commission of an offence in terms this Act or a specific environmental management Act; 55
 - (b) which may afford evidence of the commission or suspected commission of an offence in terms of this Act or a specific environmental management Act; or

- (c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence in terms of this Act or a specific environmental management Act.”.

Amendment of section 44 of Act 107 of 1998, as amended by Act 56 of 2002

15. Section 44 of the National Environmental Management Act, 1998, is hereby amended— 5

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (aA) and the insertion in that subsection after paragraph (aA) of the following paragraph: 10
“(aB) dealing with the prohibition, control, sale, distribution, import or export of products that may have a substantial detrimental effect on the environment or on human health; and”; and
 (b) by the insertion after subsection (1) of the following subsection:
“(1A) Any regulation made under subsection (1)(aB) must be made after consultation with the Minister responsible for trade and industry.”. 15

Amendment of section 47 of Act 107 of 1998, as amended by section 5 of Act 8 of 2004 and section 11 of Act 62 of 2008

16. Section 47 of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) Notwithstanding subsection (2), any regulation made in terms of section 24(5)(bA) must be submitted to Parliament 30 days prior to final publication.”. 20

Amendment of section 47D of Act 107 of 1998, as inserted by section 11 of Act 46 of 2003

17. Section 47D of the National Environmental Management Act, 1998, is hereby amended— 25

- (a) by the deletion in subsection (1)(b) of the word “or” at the end of subparagraph (ii) and the insertion in subsection (1) after paragraph (b) of the following paragraphs: 30
“(bA) by faxing a copy of the notice or other document to the person, if the person has a fax number;
(bB) by e-mailing a copy of the notice or other document to the person, if the person has an e-mail address; or
(bC) by posting a copy of the notice or other document to the person by ordinary mail, if the person has a postal address; or”; and
 (b) by the substitution for subsection (2) of the following subsection: 35
“(2) A notice or other document issued in terms of subsection (1)(b), (bA), (bB), (bC) or (c) must be regarded as having come to the notice of the person [**unless the contrary is proved**] in the absence of evidence to the contrary which raises reasonable doubt.”.

Substitution of section 48 of Act 107 of 1998 40

18. The following section is hereby substituted for section 48 of the National Environmental Management Act, 1998:

“State bound

48. This Act is binding on the State [except in so far as any criminal liability is concerned].”. 45

Substitution of certain expressions in Act 107 of 1998

19. The National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for the expression “Minister of Minerals and Energy”, wherever it occurs, of the expression “Minister responsible for mineral resources”; and 50

- (b) by the substitution for the expression “Minister of Water Affairs and Forestry”, wherever it occurs, of the expression “Minister responsible for water affairs”.

Amendment of section 1 of Act 10 of 2004, as amended by section 29 of Act 14 of 2009

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20. Section 1 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion in the definition of “bioprospecting” of the word “or” at the end of paragraph (b), the insertion in that definition of the word “or” at the end of paragraph (c) and the addition to that definition of the following paragraph:
- “(d) the trading in and exporting of indigenous biological resources in order to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils;”;
- (b) by the insertion after the definition of “Board” of the following definition:
- “‘commercial exploitation’ means the engaging in any bioprospecting activity with the intention of making a profit;”;
- (c) by the substitution for the definition of “commercialisation” of the following definition:
- “‘commercialisation’, in relation to indigenous biological resources, includes the following activities:
- (a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;
- (b) obtaining or transferring any intellectual property rights or other rights;
- (c) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; **[or]**
- (d) the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours **[and]**, extracts and essential oils;
- (e) trading in and exporting of indigenous biological resources to develop and produce products, such as drugs, industry enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils; and
- (f) commercial exploitation;”;
- (d) by the substitution for the definition of “Department” of the following definition:
- “‘Department’ means the national Department **[of Environmental Affairs and Tourism]** responsible for environmental affairs;”;
- (e) by the substitution for the definition of “derivative” of the following definition:
- “‘derivative’, in relation to an animal, plant or other organism, means any part, tissue or extract[,] of an animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material or chemical compound derived from such part, tissue or extract;”; and
- (f) by the substitution for paragraph (b) of the definition of “genetic resource” of the following paragraph:
- “(b) the genetic potential **[or]**, characteristics or information of any species;”.

Amendment of section 51 of Act 10 of 2004

21. Section 51 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the deletion of the word “and” at the end of paragraph (c), the insertion of the word “and” at the end of paragraph (d) and the addition of the following paragraph:

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“(e) provide for the regulation of threatened or protected indigenous species to ensure that the utilisation of these species is managed in an ecologically sustainable manner.”.

Amendment of section 56 of Act 10 of 2004

22. Section 56 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
 - “(d) protected species, being any species which are of [such] high conservation value or national importance **[that they require national protection, although they are not listed in terms of paragraph (a), (b) or (c)]** or require regulation in order to ensure that the species is managed in an ecologically sustainable manner.”; and
- (b) by the insertion after subsection (1) of the following subsections:
 - “(1A) The Minister may further categorise within the different categories of species listed in subsection (1)(a) to (d) when compiling the lists referred to in subsection (1).
(1B) The notice contemplated in subsection (1) may apply generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas.”.

Amendment of section 57 of Act 10 of 2004, as amended by section 35 of Act 14 of 2009

23. Section 57 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for the heading of the following heading:
 - “**Restricted activities involving listed threatened or protected species and species to which an international agreement regulating international trade applies**”;
- (b) by the insertion after subsection (1) of the following subsection:
 - “(1A) A person may not import, export, re-export or introduce from the sea, a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora without a permit issued in terms of Chapter 7.”;
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, prohibit the carrying out of any activity—”;
- (d) by the substitution for subsection (3) of the following subsection:
 - “(3) **[Subsection]** Subsections (1) **[does]** and (1A) do not apply in respect of a specimen of a listed threatened or protected species or a species to which an international agreement regulating international trade applies conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place **[under the control of an environmental management inspector]** with the required original documentation from the country of origin accompanying the shipment.”;
- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
 - “(a) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt a person or category of persons from a restriction contemplated in subsection (1) or (1A).”;
- (f) by the addition of the following subsection:
 - “(5) A notice in terms of subsection (2) or (4) may—
 - (a) apply generally—
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or specified category of areas;

- (ii) to all persons or only to a specified category of persons;
- (iii) to all species or only to a specified species or specified category of species; or
- (b) differentiate between—
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.

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Substitution of section 58 of Act 10 of 2004, as substituted by section 36 of Act 14 of 2009

24. The following section is hereby substituted for section 58 of the National Environmental Management: Biodiversity Act, 2004:

“Amendment of notices

58. The Minister may by notice in the *Gazette* amend or repeal any notice published in terms of section 56(1)[, **56(2)**] or 57(2) or (4).”.

Amendment of section 59 of Act 10 of 2004

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25. Section 59 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (e) and the substitution for paragraph (f) of the following paragraph:
 - “(f) may prescribe a system for the registration of persons, institutions, ranching operations, nurseries, captive breeding operations and other facilities; and”; and
- (b) by the addition of the following paragraph:
 - “(g) may prescribe a system for the registration of professional hunters, hunting outfitters and trainers in the hunting industry.”.

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Amendment of section 60 of Act 10 of 2004

26. Section 60 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister must establish a scientific authority for the purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies.”.

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Substitution to section 61 of Act 10 of 2004

27. Section 61 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

- “(d) make non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, and must submit those findings to the Minister;”.

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Substitution of section 62 of Act 10 of 2004

28. The following section is hereby substituted for section 62 of the National Environmental Management: Biodiversity Act, 2004:

“Annual non-detriment findings

62. (1) The [scientific authority] Minister must, by notice in the *Gazette*, publish [in the *Gazette*] any [annual] non-detriment findings made by the scientific authority on trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, in accordance with [an] the requirements of the

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international agreement regulating international trade **[in specimens of listed threatened or protected species which is]** that are binding on the Republic.

(2) Any interim findings of the scientific authority must be published in the *Gazette* by the Minister for public information within 30 days after the **[decision]** finding has been made. 5

(3) Before publishing a notice in terms of subsection (1), the Minister must publish any non-detriment findings made by the scientific authority in the *Gazette*, inviting members of the public to submit to the scientific authority, within 30 days of publication in the *Gazette*, written scientific information relating to the non-detriment findings.”. 10

Insertion of section 62A in Act 10 of 2004

29. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 62:

“Amendment of notices 15

62A. The Minister may by notice in the *Gazette* amend or repeal a notice published in terms of section 62(1).”.

Amendment of section 63 of Act 10 of 2004

30. Section 63 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) Before publishing a notice in terms of section 52(1), 53(1), 56(1) **[or]**, 57(2) or 57(4), or amending or repealing such a notice in terms of section 55 or 58, the Minister must follow a consultative process in accordance with sections 99 and 100.”.

Amendment of section 66 of Act 10 of 2004 25

31. Section 66 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt **[from the provisions of section 65]**— 30

(a) any alien species specified in the notice; **[or]**

(b) any alien species of a category specified in the notice; or

(c) any person, from the provisions of section 65.”; and 35

(b) by the addition of the following subsection:

“(4) The notice in terms of subsection (1) may—

(a) apply generally—

(i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas; 40

(ii) to all persons or only to a specified category of persons;

(iii) to all species or only to a specified species or specified category of species; or

(b) differentiate between—

(i) areas or categories of areas; 45

(ii) persons or categories of persons; or

(iii) species or categories of species.”.

Amendment of section 70 of Act 10 of 2004

32. Section 70 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the addition of the following subsection: 50

- “(4) A notice in terms of subsection (1) may—
- (a) apply generally—
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all species or only to a specified species or a specified category of species; or
 - (b) differentiate between—
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.”.

Amendment of section 71 of Act 10 of 2004

33. Section 71 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the addition of the following subsections:

- “(3) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt a person from a restriction contemplated in subsection (1) or (2). 15
- (4) A notice in terms of subsection (3) may—
- (a) apply generally—
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all species or only to a specified species or a specified category of species; or
 - (b) differentiate between—
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.”.

Insertion of section 71A in Act 10 of 2004

34. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 71: 30

“Prohibitions

- 71A.** (1) The Minister may, by notice in the *Gazette*, specify a specimen of a listed invasive species for which a permit to carry out a restricted activity may not be issued in terms of Chapter 7. 35
- (2) The notice in terms of subsection (1) may—
- (a) apply generally—
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all species or only to a specified species or a specified category of species; or
 - (b) differentiate between—
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.”.

Substitution of section 72 of Act 10 of 2004

35. The following section is hereby substituted for section 72 of the National Environmental Management: Biodiversity Act, 2004:

“Amendment of notices

- 72.** (1) The Minister may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 70(1)(a), 71(3) or 71A(1). 50

(2) The MEC may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 70(1)(b).”.

Amendment of section 79 of Act 10 of 2004

36. Section 79 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) Before publishing a notice in terms of section 66(1), 67(1) [or], 70(1), 71(3) or 71A(1), or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100.”.

Amendment of section 80 of Act 10 of 2004 10

37. Section 80 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The purpose of this Chapter is—

- (a) to regulate bioprospecting involving indigenous genetic and biological resources; 15
- (b) to regulate the export from the Republic of indigenous genetic and biological resources for the purpose of bioprospecting or any other kind of research; [and]
- (c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous genetic and biological resources; 20 and
- (d) to ensure that the nation’s indigenous genetic and biological resources are developed and utilised in an ecologically sustainable manner while promoting social and economic development, in particular in the areas where the indigenous genetic or biological resources and associated traditional know- 25 ledge are accessed.”.

Substitution of section 85 of Act 10 of 2004, as amended by section 41 of Act 14 of 2009

38. The following section is hereby substituted for section 85 of the National Environmental Management: Biodiversity Act, 2004: 30

“Establishment of Bioprospecting Fund

85. (1) There is hereby established a fund to be known as the Bioprospecting Fund.

(2) The Bioprospecting Fund must be credited with all money arising from benefit-sharing agreements and material transfer agreements, and which is due to stakeholders. 35

(3) The money in the Bioprospecting Fund must be utilised for all payments to, or for the benefit of, stakeholders.

(4) The Director-General is the accounting officer of the Bioprospecting Fund in terms of the Public Finance Management Act, 1999. 40

(5) Notwithstanding subsection (2), where a stakeholder has an established traditional council in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), all money arising from benefit-sharing agreements and material transfer agreements must be paid into the bank account of the relevant traditional authority.”. 45

Amendment of section 86 of Act 10 of 2004, as amended by section 42 of Act 14 of 2009

39. Section 86 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (a), 50 the deletion in that subsection of the word “and” at the end of paragraph (b) and the insertion in that subsection after paragraph (b) of the following paragraphs:

- “(bA) declare that this Chapter does not apply to the activity of collection, use, propagation cultivation or trade of indigenous biological resources for domestic use or subsistence purposes; or
 (bB) declare that the benefit-sharing agreements and material transfer agreements contemplated in section 83 and 84 do not apply to certain categories of commercial or industrial exploitation of indigenous biological resources.”; 5
- (b) by the deletion in subsection (1) of paragraph (c);
- (c) by the insertion after subsection (1) of the following subsection:
 “(1A) The Minister may amend or withdraw any notice referred to in subsection (1).”; and 10
- (d) by the substitution for subsection (2) of the following subsection:
 “(2) Before publishing a notice in terms of subsection (1), or amending or repealing such a notice in terms of subsection (1A), the Minister must follow a consultative process in accordance with sections 99 and 100.”. 15

Amendment of section 87 of Act 10 of 2004

40. Section 87 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the deletion of the word “or” at the end of paragraph (c), the insertion of the word “or” at the end of paragraph (d) and the addition of the following paragraph: 20

- “(e) the import, export, re-export or introduction from the sea, of a specimen of a species listed in terms of the international agreement referred to in section 57(1A).”.

Amendment of section 88 of Act 10 of 2004

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41. Section 88 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the deletion in subsection (2) of the word “or” at the end of paragraph (c), the insertion in that subsection of the word “or” at the end of paragraph (d) and the addition to that subsection of the following paragraph:

- “(e) defer a decision to issue a permit if the applicant is under investigation for the contravention or failure to comply with any provision of this Act, until such time that the investigation is concluded and— 30
- (i) no prosecution in respect of such contravention or failure is instituted against the applicant concerned;
 - (ii) the applicant concerned is acquitted or found not guilty, if a prosecution in respect of such contravention or failure has been instituted; or 35
 - (iii) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.”. 40

Amendment of section 93 of Act 10 of 2004

42. Section 93 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion of the word “or” at the end of paragraph (a), the insertion of the word “or” at the end of paragraph (b) and the addition of the following paragraph: 45
 “(c) the applicant or permit holder has been convicted of an offence in terms of this Act.”; and
- (b) by the addition of the following subsection, the existing section becoming subsection (1): 50
 “(2) An issuing authority may recover any reasonable costs incurred by that authority and necessitated by the cancellation of the permit, from the permit holder.”.

Insertion of section 93B in Act 10 of 2004

43. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 93A:

“Suspension of permits

93B. (1) An issuing authority which issued a permit may suspend the permit if— 5

- (a) the carrying out of the restricted activity is likely to have a negative impact on the survival of listed threatened or protected species; or
- (b) the permit holder is under investigation for the contravention of or failure to comply with any provision of this Act or any condition of the permit. 10

(2) An issuing authority may recover any reasonable costs, incurred by that authority and necessitated by the suspension of the permit, from the permit holder.”.

Repeal of section 94 of Act 10 of 2004

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44. Section 94 of the National Environmental Management: Biodiversity Act, 2004, is hereby repealed.

Repeal of section 95 of Act 10 of 2004

45. Section 95 of the National Environmental Management: Biodiversity Act, 2004, is hereby repealed. 20

Repeal of section 96 of Act 10 of 2004

46. Section 96 of the National Environmental Management: Biodiversity Act, 2004, is hereby repealed.

Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009

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47. Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1)(c) for subparagraph (i) of the following subparagraph: 30
 - “(i) the designation of organs of state which may be issuing authorities for permits referred to in section [67]65(1) or 71(1);”;
- (b) by the substitution in subsection (1)(c) for subparagraphs (v) and (vi) of the following subparagraphs, respectively:
 - “(v) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; [and] 35
 - (vi) the control and eradication of [listed] invasive species;”;
- (c) by the addition to subsection (1)(c) of the following subparagraphs:
 - “(vii) the coordination and implementation of programmes for the prevention, control or eradication of invasive species; and 40
 - (viii) a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities;”;
- (d) by the substitution in subsection (1)(e) for subparagraph (iv) of the following subparagraph:
 - “(iv) the administration of the Bioprospecting [Trust] Fund;”;
- (e) by the deletion in subsection (1)(f) of subparagraph (xvi); and
- (f) by the insertion in subsection (1) after paragraph (f) of the following paragraph:
 - “(fA) self-administration within the wildlife industry;”.

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Amendment of section 98 of Act 10 of 2004

48. Section 98 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1)(b) for subparagraph (iv) of the following subparagraph: 5
 “(iv) generally with respect to all permits **[or appeals]** or only to a specified category of permits **[or appeals]**; or”;
- (b) by the substitution in subsection (1)(c) for subparagraph (iv) of the following subparagraph: 10
 “(iv) categories of permits **[or appeals]**.”; and
- (c) by the addition of the following subsection: 15
 “(3) Regulations made in terms of section 97 may differentiate between the penalties for the contravention of the different provisions thereof, but the maximum penalty may not exceed the penalty provided for in subsection (2).”.

Amendment of section 101 of Act 10 of 2004

49. Section 101 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 20
 “(a) section 57(1), 57(1A), 65(1), 67(2), 71(1) **[or]**, 81(1) or 81A(1);”;
- (b) by the insertion in subsection (2) of the word “or” at the end of paragraph (a), the deletion in that subsection of the word “or” at the end of paragraph (b) and the deletion in that subsection of paragraph (c); and
- (c) by the deletion in subsection (3) of the word “or” at the end of paragraph (c), 25
 the insertion in that subsection of the word “or” at the end of paragraph (d) and the addition to that subsection of the following paragraph:
 “(e) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsection (1) or (2).”.

Amendment of section 102 of Act 10 of 2004, as amended by section 47 of Act 14 of 2009 30

50. Section 102 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 35
 “(2) If a person is convicted of an offence involving a specimen of a listed threatened or protected species or in the commercialisation phase of bioprospecting without a permit issued in terms of Chapter 7, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.”; and
- (b) by the insertion after subsection (2) of the following subsection: 40
 “(2A) If a person is convicted of an offence involving a specimen of a listed invasive species, a fine may be determined, either in terms of subsection (1) or equal to the estimated cost associated with the eradication of the specimen in respect of which the offence was committed or both.”.

Insertion of sections 105A and 105B in Act 10 of 2004

51. The following sections are hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 105:

“Emergency incidents 50

105A. (1) The Minister may, by notice in the *Gazette*, declare an emergency intervention for the purpose of the control or eradication of an alien species or a listed invasive species if that alien species or listed invasive species constitutes a significant threat to the environment.

- (2) A notice contemplated in subsection (1) must—
- (a) list the species to which the emergency intervention relates;
 - (b) indicate the reasons for the intervention; and
 - (c) provide the details relating to the intervention.

Amnesty

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105B. (1) In this section, ‘amnesty’ means indemnity against prosecution for the—

- (a) carrying out of a restricted activity involving specimens of listed threatened or protected species in terms of section 57(1), alien species in terms of section 65(1) or listed invasive species in terms of section 71(1); or
- (b) engagement in the commercialisation phase of bioprospecting, without a permit issued in terms of Chapter 7.

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(2) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may determine in the notice, declare a period of amnesty to facilitate compliance with the provisions of the Act.

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(3) A notice contemplated in subsection (2) must specify—

- (a) the person or category of persons to whom the amnesty applies;
- (b) the species to which the amnesty applies;
- (c) the restricted activity to which the amnesty applies;
- (d) the period during which a person must apply for a permit; and
- (e) the period for which the amnesty applies.”.

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Amendment of section 55 of Act 39 of 2004

52. Section 55 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the substitution for subsection (2) of the following subsection: 25

“(2) Regulations made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable **[on conviction to—**

- (a) **imprisonment for a period not exceeding five years;**
- (b) **an appropriate fine; or**
- (c) **both a fine and imprisonment]** in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in respect of both instances to both such fine and such imprisonment.”.

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Substitution of section 51 of Act 14 of 2009

53. The following section is hereby substituted for section 51 of the National Environment Management Laws Amendment Act, 2009:

“Short title and commencement

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51. This Act is called the National Environmental Management Laws Amendment Act, ~~[2008]~~ 2009, and comes into effect on a date fixed by the President by proclamation in the *Gazette*.”.

Substitution of section 7 of Act 15 of 2009

54. The following section is hereby substituted for section 7 of the National Environmental Management: Protected Areas Amendment Act, 2009: 45

“Short title and commencement

[7] 9. This Act is called the National Environmental Management: Protected Areas Amendment Act, 2009, and comes into effect on a date fixed by the President by proclamation in the *Gazette*.”.

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Short title and commencement

55. This Act is called the National Environmental Management Laws Amendment Act, 2012, and comes into effect on a date fixed by the Minister by notice in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2012

1. PURPOSE OF BILL

The purpose of the Bill is to amend certain provisions under the 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, is the 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, the National Environmental Management: Biodiversity Act, 2004, the National Environmental Management: Air Quality Act, 2004, the National Environmental Management: Integrated Coastal Management Act, 2008, and the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

2.2 The Bill proposes amendments to certain provisions under the National Environmental Management Act, 1998, the National Environmental Management: Biodiversity Act, 2004, and the National Environmental Management: Air Quality Act, 2004. 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 BILL

3.1. National Environmental Management Act, 1998 (the NEMA)

Clause 1: Amendment of section 1

This amendment seeks to revise certain definitions to provide clarity and to remove any ambiguity in the Act.

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 four years to five years.

Clause 3: Insertion of section 16A

This amendment inserts a new section requiring the national department responsible for environmental affairs and provincial departments responsible for environmental affairs to prepare and publish environment outlook reports, within four years of the coming into operation of the Amendment Act and at intervals of not more than four years thereafter. Metropolitan and district municipalities are given a choice whether or not to prepare and publish environmental outlook reports. Not all provinces are currently producing the environment outlook reports. This new section will ensure uniformity. The environment outlook reports prepared by the provinces and municipalities will be prepared and published a year before the environmental implementation plans and environmental

management plans in order to ensure that they feed into the national environment outlook report as well as environmental implementation plans and environmental management plans. The amendment further requires the Minister responsible for environmental affairs to publish in the *Gazette* the procedure to be followed to compile the report, the format of the report and the 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

This amendment will change the heading of 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. This amendment will 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 for 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 for clarity regarding whether particular applications should be submitted to the Province or the National Department. 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.

The clause also seeks to add new subsections to section 24C. The additions propose that in instances where the MEC responsible for environmental affairs fails to take a decision within prescribed timeframes, an applicant for an environmental authorisation may approach the Minister to take the decision, after the Minister has consulted the MEC concerned.

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 it 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.

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 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 situations.

Clause 9: Amendment of section 24M

There seems to be the perception amongst the regulated community that they can always apply for exemption from undertaking environmental impact assessments 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 the 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 responsible for environmental affairs, the provincial head of the Department responsible for environmental affairs and the administrative heads of relevant organs of state.

Clause 12: Insertion of section 28A

The amendment will make it 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 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 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 Acts.

Clause 13: Amendment of section 30

There seems to be confusion amongst 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 the 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 the 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 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 Acts.

Clause 14: Amendment of section 31J

This amendment will make it possible for other mechanisms of transport to be searched apart from those already mentioned section 31J(1)(a).

Section 31J(2) currently makes provision that everything in a vehicle, vessel, aircraft, pack-animal or any other mechanism of transport that may be used as evidence in a prosecution, may be seized, but not the vehicle, vessel, aircraft, pack-animal or other mechanism of transport itself. The amendment makes it possible to seize the vehicle, vessel, aircraft, pack-animal or other mechanism of transport, and the grounds on which it may be seized have been expanded.

Clause 15: Amendment of section 44

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 those regulations after consultation with the Minister responsible for trade and industry.

Clause 16: Amendment of section 47

This amendment will require the Department to submit Environmental Impact Assessment Regulations to 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 cater 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 Acts, namely by fax, e-mail or ordinary mail.

Clause 18: Amendment to section 48

This amendment seeks to reiterate that the NEMA is applicable to the State without exception.

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 changes wherever they appear in the NEMA.

3.2. National Environmental Management: Biodiversity Act, 2004 (the NEM: BA)

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

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

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, amongst 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 utilisation. 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, and 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 utilisation 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 are 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. 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 section 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 the 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 pose as legal professional hunters and outfitters. This amendment will provide the Minister with a legal mandate to prescribe a system for the registration of 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 to 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 the 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 issuing of permits under the 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 a public participation process in order for members of the public to be informed about issues 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 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 issuing of permits under the 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 a public participation process in order for the members of the public to be informed about issues 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*, upon recommendation 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 proposed 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 the 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 each case presented to the Department. However, the current provisions of section 66 do not allow the Minister to deal with 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 categorisation 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 each case presented to the Department. However, the current provisions of section 77 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 a proposed new section. The current provisions in the NEM: BA do 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. The 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 sections 70, 71 and 71A by allowing the Minister and MEC to amend or repeal the 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 sections 71 and 71A by requiring the Minister to subject such notices to a 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's international obligations with respect to 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. 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 biological resources. The amendment will ensure the application of 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 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 monies arising from bioprospecting agreements on behalf of communities. These moneys are paid to the communities after the finalisation of bioprospecting agreements. This amendment will allow changing the current provisions to allow the Department to keep all monies 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 monies 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 the 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. This 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 the NEM: BA (Benefit-sharing and Material transfer agreements).

Clause 40: Amendment of section 87

This amendment is meant to ensure alignment with the proposed amendments to section 57, which require permits for species to which an international agreement regulating international trade applies. The amendment will ensure that permits are required for species to which an international agreement regulating international trade applies.

Clause 41: Amendment of section 88

This amendment is meant to address some of the challenges to 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: Substitution of section 93

This amendment is meant to address some of the challenges to 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 43: Insertion of section 93B

This amendment is meant to address some of the challenges to 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.

Clauses 44, 45 and 46: Repeal of sections 94, 95 and 96

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

Clause 47: Amendment of section 97

The current provisions do not allow the Minister to develop regulations on programmes to address invasive species or systems to register certain organisations 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 to provide for

a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities. The amendment will also correct cross-referencing within the NEM: BA and repeal references to repealed appeal provisions.

Clause 48: Amendment of section 98

This amendment will delete references to 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 the NEM: BA.

Clause 49: 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 the NEM: BA. Therefore, the Department is not able to fully enforce the NEM: BA. This amendment will make it an offence 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 50: 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 51: Insertion of sections 105A and 105B

The current provisions of the 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. The insertion of section 105A will provide 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 those species constitutes a significant threat to the environment. The proposed section 105A will ensure that our environment is conserved for future generations.

Many persons are in possession of provincial permits but have not yet applied for permits in terms of the NEM: BA. These persons may either not be aware of the NEM: BA, or simply do not comply with the NEM: BA, even though they have no intention of carrying out an illegal activity. The intention is to allow these persons to apply for permits, without the fear of being prosecuted for not having applied earlier. The insertion of section 105B will provide the Minister with a legal mandate to declare amnesty from prosecution for the purposes of facilitating compliance with the provisions of the NEM: BA.

3.3. National Environmental Management: Air Quality Act, 2004

Clause 52: Amendment of section 55 of Act 39 of 2004

The current section 55 is not in line with the penalties of other specific environmental management Acts. The intention is to ensure that the NEMA and other specific environmental management Acts 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 Acts.

3.4. National Environment Management Laws Amendment Act, 2009

Clause 53: 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: Protected Areas Amendment Act, 2009

Clause 54: Amendment of short title of Act 15 of 2009

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

4. DEPARTMENTS CONSULTED

The following 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 the NEMA as national Departments exercising functions which may affect the environment or that involve the management of the environment.

5. FINANCIAL IMPLICATIONS FOR STATE

A Regulatory Impact Assessment of the Bill, finalised in March 2012, identified areas where an additional personnel complement will be required in order for the National Department of Environmental Affairs to cope with the expansion of the already existing regulatory functions. The estimated additional cost to the National Department for the enforcement requirements, excluding seizure, as detailed in the Bill, is R2,4 million per annum [2011 cost base]. Using information provided, remedies have been put forward for dealing with the cost of seizure.

The estimated additional cost to the National Department for the bioprospecting requirements, as detailed in the Bill, is R9 million per annum [2011 cost base].

The Regulatory Impact Assessment Report would have benefited greatly from greater input from the Provinces. Although numerous attempts were made, using a number of different methods, to elicit this information, the results were disappointing. This in turn has affected the quality and value of the Report.

The average annual cost of producing the nine Provincial Environmental Outlook Reports is estimated at R8 058 789. The total cost of producing nine Provincial State of the Environment Reports is estimated at R32 235 156 over a four-year cycle. [The Report is required once every four years.]

6. PARLIAMENTARY PROCEDURE

- 6.1 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”.
- 6.2 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 customs of traditional communities.