

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL

*(As amended by the Portfolio Committee on Environmental Affairs (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B 14D—2017]

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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 Management Act, 1998, so as to correct the citation to the definition of “Constitution”; to add new definitions of “audit”, “black”, “environmental management instrument”, “latent environmental impacts”, “municipal council”, “municipality”, “municipal manager”, “mitigate”, “rehabilitate”, “remediate”, “residual environmental impacts”; to correct the definition of “environmental mineral resources inspector”; to provide clarity to the definition of “financial provision”; to add a new environmental management principle promoting diversity in the sector; to provide clarity on what an environmental management instrument is; to use the term environmental management instrument consistently in the Act, to remove a duplicated provision for making regulations for laying down the procedures for the adoption of environmental management instruments; to provide for a register and making available the register, of all environmental management instruments adopted in terms of the Act; to provide clarity that the Minister responsible for mineral resources is responsible for activities constituting prospecting, exploration, mining and production as well as those directly related to prospecting, exploration, extraction, primary processing of a mineral or petroleum resource; to clarify that the MEC can be regarded as the competent authority for providing environmental authorisation in the event that Cabinet identifies that the Minister should be the competent authority, when there is agreement between the Minister and the relevant MEC; to provide for simultaneous submission of the National Environmental Management Act and the specific Environment Management Act applications for purposes of the one environmental system, in order to enable integrated environmental authorisation; to provide for a trigger for the simultaneous submission of a National Environmental Management Act or specific environmental management Act applications after acceptance of mining right; to provide clarity that a successor in title or person who controls the land may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to empower the Minister to prescribe the information that must be contained in an environmental management programme; to enable an environmental assessment practitioner to undertake the consultation to be undertaken with a State Department on application for environmental authorisation; to provide clarity on what is to be audited in relation to financial provisioning; to provide the Minister with

the power to prescribe instances for which financial provisioning is required; to provide clarity that an applicant or holder of an environmental authorization, holder, holder of an old order right relating to mining activities must set aside financial provision for progressive rehabilitation, mitigation, mine closure and the management of post closure environmental impacts; to identify the vehicles which must be used when providing the financial provision; to allow the Minister responsible for water affairs access to the financial provision to undertake rehabilitation and remediation if the holder of an environmental authorisation, holder, holder of an old order right fails to do so; to make it clear that the financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure and post—closure activities as prescribed; to allow for a three year review of the financial provision and to require that the review decision be published within five days; to make it a requirement for the rehabilitation which can be undertaken annually to be undertaken; to provide for the Minister responsible for mineral resources in consultation with the Minister and the Minister responsible for Water Affairs to allow an annual drawdown of funds as prescribed within a certain timeframe before decommissioning and closure; to require the transfer of funds provided for latent or residual environmental impacts to the Minister responsible for mineral resources on the issuing of a closure certificate; to require the Minister responsible for mineral resources to access funds provided for latent and residual impacts upon the issuing of a closure certificate; to include the holder of an environmental authorisation for a listed and specified activity for, or directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, holder, holder of an old order right, under the provisions related to environmental liability and the requirement to plan, manage and implement mine closure procedures; to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to empower Director-General of the Department responsible for mineral resources and municipal manager to issue section 28(4) directives; to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from an organ of state that executes regulatory function; to empower the Member of Executive Council to designate environmental management inspectors to undertake compliance and enforce in respect of provincial environmental legislation; to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors; to provide clarity that an environmental mineral and petroleum inspector must also undergo approved training before designation; to provide clarity on functions and general powers of environmental management inspectors when conducting investigations; to provide clarity that the conducting of a “search” is not the primary purpose of an environmental management inspector undertaking a routine inspection; to provide clarity that an environmental management inspector may detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide clarity that the Minister’s power to develop regulations on admission of guilt fines contextualizes the related provisions of the Criminal Procedure Act, 1977; to empower the Minister responsible for Mineral Resources, Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act; to provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority; to empower the Minister of Environmental Affairs to act in circumstances necessary to address significant harm to the environment caused by prospecting and mining activities; to provide for appeal against a decision made by a licensing authority in terms of the National Environmental Management: Air Quality Act; to provide clarity on circumstances where an appeal against a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment does not automatically suspend it; to provide clarity that an appeal against a directive must be lodged with the appropriate appeal

authority; to correct references and cross references to offences and penalties, to make failure to comply with certain sections of the financial provisioning an offence and to update the list of offences and penalties;

- National Environmental Management: Protected Areas Act, 2003 so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the Board; to provide for the process of application and the criteria under which a section 48 permission may be issued or rejected; to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences;
- National Environmental Management: Biodiversity Act, 2004, so as to provide clarity on definition of “control” and to insert definitions of “eradicate” and “well-being”; to ensure that indigenous biological resources are used in an ecologically sustainable manner; to ensure that certain species remain in State custody despite their escape from land under the State’s control; to empower the Minister to prohibit certain activities that may negatively impact on the well-being of faunal biological resources; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the board; to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species; to ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act;
- National Environmental Management: Air Quality Act, 2004, so as to provide the Minister with discretion to establish the National Air Quality Advisory Committee; to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial department responsible for environmental affairs is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality; to provide for textual amendment to section 36(5)(d); to provide for revocation or suspension of atmospheric emission licence;
- National Environmental Management: Integrated Coastal Management Act, 2008, so as to allow for the removal of structures erected prior to commencement of the Act; to repeal Chapter 9 in order to align appeals with section 43 of the National Environmental Management Act, 1998;
- National Environmental Management: Waste Act, 2008, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of “residue deposits” and “residue stockpiles” and “waste”; to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act; to provide for the Waste Management Bureau to be established as a public entity; to provide for the simultaneous submission of the site assessment report and remediation plan relating to contaminated land; to provide clarity that the Minister must keep a national register of all contaminated land; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of a processing fee for the variation of a waste management licence; to increase the fines that could be imposed in terms of regulations made under the Act; to provide clarity that there will be no exemptions provided from obtaining a waste management licence; to repeal Schedule 3;
- National Environmental Management Amendment Act, 2008, so as to clarify that an environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014 is valid under the National Environmental Management Act; to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act;

- To provide for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the National Environmental Management: Waste Act, 2008; to provide for transitional provisions regarding the continuation of the Waste Management Bureau; and to provide for matters connected therewith.

BE 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 1 of Act 44 of 2008, section 1 of Act 62 of 2008, section 1 of Act 14 of 2009, section 1 of Act 30 of 2013, and section 1 of Act 25 of 2014 5

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

- (a) by the insertion after the definition of ‘assessment’ of the following definition: 10

“**‘audit’** means a review of the scientific and engineering acceptability of the measures and the adequacy of related costs associated with undertaking progressive rehabilitation, decommissioning, closure and post closure activities for listed and specified activities, including the pumping and treatment of extraneous and polluted water, where relevant;”;

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- (b) by the insertion after the definition of ‘best practicable environmental option’ of the following definition:

“**‘black’**, when used in section 2(4)(qA), has the meaning assigned to “black people” in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);”;

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- (c) by the substitution for the definition of “Constitution” of the following definition:

“**‘Constitution’** means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];”;
- (d) by the insertion after the definition of ‘environmental management inspector’ 25
 of the following definition:

“**‘environmental management instrument’** means—

(i) environmental management framework; (ii) strategic environmental assessment; (iii) spatial tool; (iii) environmental management programme; (iv) environmental risk assessment; (v) environmental feasibility assessment; (vi) norm or standard; (vii) minimum information requirements; or (viii) any other relevant environmental management instrument, as may be developed in time;”;	30 35
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- (e) by the substitution for the definition of “environmental mineral resource inspector” of the following definition:

“**‘environmental mineral [resource] and petroleum inspector’** means a person designated as an environmental mineral [resource] and petroleum inspector in terms of section 31BB;”;

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- (f) by the substitution for the definition of ‘financial provision’ of the following definition:

“**‘financial provision’** means the amount which is to be provided in terms of this Act, guaranteeing the availability of sufficient funds to undertake progressive rehabilitation, decommissioning, closure and post closure activities for listed and specified activities to ensure the mitigation, remediation and rehabilitation of adverse environmental impacts including latent environmental impacts and residual environmental impacts as well as the pumping and treatment of extraneous and polluted water, where relevant;”;

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- (g) by the insertion after the definition of ‘international environmental instrument’ of the following definition:
 “**‘latent environmental impacts’** means impacts which are existing but not yet developed or manifest, dormant;”;
- (h) by the insertion after the definition of ‘Minister responsible for mineral resources’ of the following definitions: 5
 “**‘municipal council’** means a municipal council referred to in section 157(1) of the Constitution;
‘municipality’, when referred to as—
 (a) an entity, means a municipality as described in section 2 of the Municipal Systems Act, 2000 (Act No. 32 of 2000); and 10
 (b) a geographic area, means a municipal area determined in terms of section 21 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
‘municipal manager’ means a person appointed in terms of section 54A(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 15
‘mitigate’ means to alleviate, reduce or make less severe;”;
- (i) by the insertion after the definition of ‘regulation’ of the following definitions:
 “**‘rehabilitate’** means to restore to the approved end use of land; 20
‘remediate’ means to repair or reverse damage;
‘residual environmental impacts’ means impacts remaining after all actions to mitigate, rehabilitate and remediate have been undertaken;”;
 and
- (j) by the deletion of the definition ‘spatial development tool’. 25

Amendment of section 2 of Act 107 of 1998

2. Section 2 of the National Environmental Management Act, 1998, is hereby amended by the insertion in subsection (4) after paragraph (q) of the following paragraph:

- “(qA) The full participation of black professionals in the environmental management sector must be recognised and their participation in the sector promoted.” 30

Amendment of section 24 of Act 107 of 1998, as amended by section 2 of Act 8 of 2004, section 2 of Act 62 of 2008, section 5 of Act 30 of 2013 and section 2 of Act 25 of 2014 35

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

- (a) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs:
 “(b) geographical areas based on environmental attributes, and as specified in [spatial development tools] an environmental management instrument, adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which specified activities may be excluded from the requirement to obtain an environmental authorisation from the competent authority; 40
 (c) geographical areas based on environmental attributes, and specified in [spatial tools or] an environmental management [instruments] instrument, adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which [specified] activities contemplated in paragraphs (a) and (b) may be excluded from the requirement to obtain an environmental authorisation from the competent authority, but which must comply with the requirements set in such environmental management instrument, if any;” 45
- (b) by the substitution in subsection (2A) for subparagraph (i) of paragraph (b) of the following subparagraph: 50
 “(i) not accept any further application for an environmental authorisation for the identified listed or specified activity in the identified geographical area until such time that the prohibition or restriction has been lifted;” 55

- (c) by the substitution in subsection (5)(bA) for the words preceding subparagraph (i) of the following words:
 “laying down the procedure to be followed for the preparation, evaluation, adoption and review of **[prescribed]** environmental management instruments, including any conditions set out in such instrument, if any condition applies, including—”; 5
- (d) by the deletion in subsection (5) of paragraph (bB); and
- (e) by the insertion after subsection (5) of the following subsection:
 “(5A) The Minister must keep a register of all environmental management instruments adopted in terms of this Act and make it publicly available.”. 10

Amendment of section 24C of Act 107 of 1998, as amended by section 3 of Act 62 of 2008, section 6 of Act 30 of 2013 and section 3 of Act 25 of 2014

4. Section 24C of the National Environmental Management Act, 1998, is hereby amended— 15

- (a) by the substitution in subsection (2A) for the words preceding paragraph (a) of the following words:
 “The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection (1) where the listed or specified activity is, or is directly related to—”; 20
- (b) by the substitution in subsection (2B) for paragraph (a) of the following paragraph:
 “(a) Notwithstanding the other provisions of this section, and in the event of the Minister not being the competent authority, the Minister must be identified as the competent authority where a Cabinet decision stipulates that the Minister must be the competent authority for activities related to a matter declared as a national priority or matters related to such national priority, unless otherwise agreed to in terms of subsection (3).”; 25
- (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) contemplated in **[subsection]** subsections (2) and (2B) may be dealt with by the MEC;”; and 30
- (d) by the addition of the following subsections:
 “(11) A person who requires an environmental authorisation which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts must simultaneously submit those applications to the relevant competent authority or licensing authority, as the case may be, indicating in each application, all other licences, authorisations and permits applied for. 35
 (12) A person who wishes to apply for an environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts, must simultaneously apply for an environmental authorisation after the acceptance of the application for a right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002. 40
 (13) If the competent authority or licensing authority contemplated in subsections (11) and (12), as the case may be, is the same authority to consider and decide the application for an environmental authorisation under this Act and the application under a specific environmental management Act, an integrated decision must be issued in accordance with section 24L.”. 45 50 55

Amendment of section 24G of Act 107 of 1998, as substituted by section 6 of Act 62 of 2008 and section 9 of Act 30 of 2013

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

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraphs: 5

“(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)[,]; 10

(c) is in control of, or successor in title to, land on which a person—
 (i) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1);
 (ii) has commenced with, undertaken or conducted a waste management activity in contravention of, section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), 15

the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be[,];— 20

(aa) **[may]** must direct the applicant to—

[(i)](A) immediately cease the activity pending a decision on the application submitted in terms of this subsection, except if there are reasonable grounds to believe the cessation will result in serious harm to the environment; 25

[(ii)](B) investigate, evaluate and assess the impact of the activity on the environment;

[(iii)](C) remedy any adverse effects of the activity on the environment; 30

[(iv)](D) cease, modify or control any act, activity, process or omission causing pollution or environmental degradation;

[(v)](E) contain or prevent the movement of pollution or degradation of the environment; 35

[(vi)](F) eliminate any source of pollution or degradation;

[(vii)](G) compile a report containing—

[(aa)](AA) a description of the need and desirability of the activity;

[(bb)](BB) 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 and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity; 40 45

[(cc)](CC) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment of the activity; 50

[(dd)](DD) 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 the issues raised have been addressed, if applicable; and 55 60

[(ee)](EE) compile an environmental management programme; **[or]** and

- (F) undertake public participation as prescribed;
and
[(viii)](bb) may direct the applicant to provide such other
information or undertake such further studies as the
Minister, Minister responsible for mineral re- 5
sources or MEC, as the case may be, may deem
necessary.”; and
- (b) by the substitution for subsection (4) of the following subsection:
“(4) A person contemplated in [subsection] subsections (1) and (1A)
must pay an administrative fine, which may not exceed [R5] R10 million 10
and which must be determined by the competent authority, before the
Minister, Minister responsible for mineral resources or MEC concerned
may act in terms of subsection (2)(a) or (b).”.

Amendment of section 24N of Act 107 of 1998, as amended by section 5 of Act 25 of 2014 15

6. Section 24N of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The environmental management programme must contain[—] information that is prescribed. 20
- [(a) **information on any proposed management, mitigation, protection or remedial measures that will be undertaken to address the environmental impacts that have been identified in a report contemplated in subsection (1A), including environmental impacts or objectives in respect of—** 20
- (i) **planning and design;**
 - (ii) **pre-construction and construction activities;** 25
 - (iii) **the operation or undertaking of the activity in question;**
 - (iv) **the rehabilitation of the environment;**
 - (v) **closure, if applicable;**
- (b) **details of—**
- (i) **the person who prepared the environmental management programme; and** 30
 - (ii) **the expertise of that person to prepare an environmental management programme;**
- (c) **a detailed description of the aspects of the activity that are covered by the environmental management programme;** 35
- (d) **information identifying the persons who will be responsible for the implementation of the measures contemplated in paragraph (a);**
- (e) **information in respect of the mechanisms proposed for monitoring compliance with the environmental management programme and for reporting on the compliance;** 40
- (f) **as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and** 45
- (g) **a description of the manner in which it intends to—**
- (i) **modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;**
 - (ii) **remedy the cause of pollution or degradation and migration of pollutants; and** 50
 - (iii) **comply with any prescribed environmental management standards or practices.]”.**

Amendment of section 24O of Act 107 of 1998, as amended by section 11 of Act 30 of 2013 and amended by section 6 Act 25 of 2014

7. Section 24O of the National Environmental Management Act, 1998, is hereby amended— 55

- (a) by the substitution for the heading of the following heading:
“**Criteria to be taken into account by competent authorities when considering applications and consultation requirements**”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The Minister, the Minister responsible for mineral resources [or], an MEC or an environmental assessment practitioner must consult with every State department that administers a law relating to a matter affecting the environment when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation.”; and

(c) by the deletion of subsection (2A).

Substitution section 24P of Act 107 of 1998, as amended by section 7 of Act 25 of 2014

8. The following section is hereby substituted for section 24P of the National Environmental Management Act, 1998:

“Financial provision for remediation of environmental damage

24P. (1) In this section, “review” means a formal assessment of the financial provisioning with the intention of instituting change, if necessary.

(2) The Minister, or an MEC in concurrence with the Minister, may prescribe the instances for which financial provision must be determined and provided for listed or specified activities.

(3) Where prescribed, an applicant, must, before the competent authority issues an environmental authorisation, determine the financial provision which is required for undertaking progressive rehabilitation, decommissioning, closure and post closure activities including the pumping and treatment of extraneous and polluted water where relevant.

(4) Where prescribed, the applicant, holder of an environmental authorisation, holder, holder of an old order right is required to provide financial provision for progressive rehabilitation, decommissioning, closure and post closure activities, including the pumping and treatment of extraneous and polluted water where relevant, to ensure the mitigation, remediation and rehabilitation of adverse environmental impacts, including latent environmental impacts and environmental residual impacts.

(5) A holder of an environmental authorisation, holder or holder of an old order right must annually undertake, as prescribed, the mitigation, remediation and rehabilitation measures.

(6) The financial provisioning vehicles which must be used when providing the financial provision include—

- (a) cash deposited into an account administered by the Minister responsible for mineral resources;
- (b) insurance from an institution that is registered in terms of the applicable insurance sector legislation;
- (c) a financial guarantee from an institution that is registered in terms of the applicable financial sector legislation;
- (d) a trust fund established for the sole purposes of subsection (4); and
- (e) any other vehicle, including any condition applicable to such a vehicle, identified by the Minister by notice in the *Gazette* in concurrence with the Minister of Finance and the Minister responsible for mineral resources, and including, but not limited to—
 - (i) a closure rehabilitation company,
 - (ii) a parent company guarantee; and
 - (iii) an affiliate company guarantee.

(7) The financial provisioning vehicles contemplated in subsection (6) may be used in combination as required.

(8) (a) Where the Minister, Minister for mineral resources or the MEC is not satisfied with the determination or review of the financial provision, the Minister, the Minister responsible for mineral resources or the MEC may appoint an independent party to conduct an assessment of the determination or review on their behalf.

(b) Any costs in respect of such assessment must be borne by the applicant, holder of the environmental authorisation, holder or holder of an old order right.

(9) If any holder of an environmental authorisation, holder or holder of an old order right fails to undertake such mitigation, remediation and rehabilitation of such impact, as prescribed, the Minister responsible for mineral resources, the Minister responsible for water affairs or MEC may, upon written notice to such holder, use all or part of the financial provision contemplated in this section to undertake mitigation, remediation and rehabilitation as the Minister responsible for mineral resources, the Minister or MEC deems appropriate. 5

(10) The financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure, post closure, as prescribed, to ensure mitigation, remediation and rehabilitation of adverse environmental impacts for which it was provided and shall not be used for any other purposes. 10

(11) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (2) and all amounts arising from that provision.”. 15

Insertion of section 24PA in Act 107 of 1998

9. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 24P:

“Financial provision for mining 20

24PA. (1) A holder of an environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, a holder or holder of an old order right must— 25

- (a) maintain and retain a financial provision until a closure certificate is issued by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002;
- (b) every three years review the environmental liability as prescribed and adjust, where required, the financial provision accordingly to the satisfaction of the Minister responsible for mineral resources; 30
- (c) every three years subject the financial provision and the basis of the calculations to an independent audit, as prescribed;
- (d) every five years, or in the case of a mining permit every three years, submit to the Minister responsible for mineral resources, an audit report; 35
- (e) publish, within five days of being notified by the Minister responsible for mineral resources of the review decision, the decision in a provincial newspaper as well as a newspaper distributed within the municipal area within which the mining operation is located, and indicate where the review can be obtained; and 40
- (f) annually undertake the mitigation, remediation and rehabilitation measures, as prescribed.

(2) The Minister responsible for mineral resources may, in consultation with the Minister and Minister responsible for water affairs, approve an annual drawdown of the financial provision in the prescribed manner to support final decommissioning and closure for a period not exceeding 10 years before the final decommissioning and closure. 45

(3) The financial provision provided in respect of latent environmental impacts or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, must be transferred to the Minister responsible for mineral resources upon the issuing of a closure certificate, unless otherwise prescribed. 50

(4) Where the financial provisioning vehicle used for the financial provision in respect of latent environmental impacts or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, is insurance, the Minister responsible for mineral resources must access the funds on issuing the closure certificate. 55

(5) If any holder of an environmental authorisation contemplated in subsection (1) fails to mitigate, remediate and rehabilitate environmental impacts as prescribed, the Minister responsible for mineral resources or the Minister responsible for water affairs may, upon written notice to such holder, use all or part of the financial provision contemplated in this section to rehabilitate or manage the environmental impact in question.”. 5

Amendment of section 24R of Act 107 of 1998, as amended by section 8 of Act 25 of 2014

10. Section 24R of the National Environmental Management Act, 1998, is hereby amended— 10

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

“(1) Every holder, holder of an environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, holder of an old order right and owner of works remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of polluted or extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned. 15 20

(b) by the deletion of subsection (2).

(c) by the substitution for subsection (3) of the following subsection:

“(3) Every holder, holder of environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, holder of an old order right or owner of works must plan, manage and implement such procedures and requirements in respect of the closure of a mine as may be prescribed.”. 25 30

Repeal of section 24S of Act 107 of 1998, as inserted by section 9 of Act 25 of 2015

11. Section 24S of the National Environmental Management Act, 1998, is hereby repealed.

Amendment of section 28 of Act 107 of 1998, as amended by section 12 of Act 14 of 2009, section 12 of Act 30 of 2013 and section 10 of Act 25 of 2014 35

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

(a) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) contain or prevent the movement of pollutants or the [causant] cause of degradation;” 40

(b) by the substitution for subsection (4) of the following subsection:

“The Director-General, the Director-General of the department responsible for mineral resources [or], a provincial head of department or a municipal manager of a municipality may[, after having given adequate opportunity to affected persons to inform him or her of their relevant interests,] direct any person [who is causing, has caused or may cause significant pollution or degradation of the environment] referred to in subsection (2) to— 45

(a) cease any activity, operation or undertaking; 50

(b) investigate, evaluate and assess the impact of specific activities and report thereon;

(c) commence taking specific measures before a given date;

(d) diligently continue with those measures; and

(e) complete those measures before a specified reasonable date[: 55

Provided that the Director-General or a provincial head of department 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].”;

- (c) by the insertion after subsection (4) of the following subsection:

“(4A) Before issuing a directive contemplated in subsection (4), the Director-General, the Director-General of the department responsible for mineral resources, or a provincial head of department or a municipal manager of a municipality must give adequate notice in writing to the person to whom the directive is intended to be issued, of his or her intention to issue the directive and provide such person with a reasonable opportunity to make representations in writing: Provided that the Director-General, the Director-General of the department responsible for mineral resources, a provincial head of department or a municipal manager of a municipality may, if urgent action is necessary for the protection of the environment, issue the directive referred to in subsection (4), and give the person on whom the directive was issued an opportunity to make representations as soon as is reasonable thereafter.”;

- (d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“The Director-General, the Director-General of the department responsible for mineral resources **[or]**, a provincial head of department or a municipal manager of a municipality, when considering any measure or time period envisaged in subsection (4), must have regard to the following[—];”;

- (e) by the substitution for subsection (7) of the following subsection:

“(7) Should a person fail to comply, or inadequately comply, with a directive issued under subsection (4), the Director-General, the Director-General of the department responsible for mineral resources **[or]**, a provincial head of department or a municipal manager of a municipality may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.”;

- (f) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

“Subject to subsection (9), the Director-General, the Director-General of the department responsible for mineral resources **[or]**, provincial head of department or a municipal manager of a municipality may recover costs for reasonable remedial measures undertaken or to be undertaken under subsection (7), before or after such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—”;

- (g) by the substitution for subsection (9) of the following subsection:

“(9) The Director-General, the Director-General of the department responsible for mineral resources **[or]**, provincial head of department or a municipal manager of a municipality, may in respect of the recovery of costs under subsection (8), claim proportionally from any person who benefited from the measures undertaken under subsection (7).”;

- (h) by the substitution for subsection (12) of the following subsection:

“(12) Any person may, after giving the Director-General, the Director-General of the department responsible for mineral resources **[or]**, provincial head of department or a municipal manager of a municipality, 30 days’ notice, apply to a competent court for an order directing the Director-General, the Director-General of the department responsible for mineral resources **[or]**, any provincial head of department or a municipal manager of a municipality, to take any of the steps listed in subsection (4) if the Director-General, the Director-General of the department responsible for mineral resources **[or]**, provincial head of department or a municipal manager of a municipality, fails to inform such person in writing that he or she has directed a person contemplated in subsection **[(8)]** (4) to take one of those steps, and the provisions of section 32(2) and (3) shall apply to such proceedings, with the necessary changes.”.

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

13. Section 31B of the of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) any other organ of state that executes a regulatory function; and”.

Amendment of section 31BA of Act 107 of 1998, as inserted by section 4 of Act 44 of 2008

14. Section 31BA of the of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1)(a) for subparagraphs (i) and (ii) of the following subparagraphs:

- “(i) the Department **[of Water Affairs and Forestry]** responsible for water affairs; or
- (ii) any other organ of state that executes a regulatory function; and”.

Amendment of section 31BB of Act 107 of 1998, as inserted by section 11 of Act 25 of 2014

15. Section 31BB of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Designation of environmental mineral [resource] and petroleum inspectors by Minister responsible for mineral resources”;
- (b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 “(a) designate as an environmental mineral **[resource]** and petroleum inspector, any staff member of **[the Department of Mineral Resources]**—
 (i) the department responsible for mineral resources; or
 (ii) any other organ of state that executes a regulatory function; and”; and
- (c) by the addition of the following subsection:
 “(2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister responsible for mineral resources and the relevant organ of state.”.

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

16. Section 31C of the of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) any other provincial organ of state that executes a regulatory function; and”.

Amendment of section 31D of Act 107 of 1998, as amended by section 12 of Act 25 of 2014

17. Section 31D of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (d) and (e) of the following paragraphs, respectively:
 “(d) this Act and all specific environmental management Acts; **[or]**
 (e) **[any combination of those Acts or provisions of those Acts.]** any provincial Act that substantively deals with environmental management; or”; and
- (b) by the addition in subsection (1) of the following paragraph:
 “(f) any combination of the Acts contemplated in this subsection or combination of the provisions of the said Acts.”;

- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “An MEC may designate a person as an environmental management inspector for the enforcement of only those provisions of this Act **[or]**, any specific environmental management Act or any provincial Act that substantively deals with environmental management—”; 5
- (d) by the insertion after subsection (3) of the following subsection:
 “(3A) An environmental management inspector and environmental mineral and petroleum inspector must exercise any power bestowed on them in terms of this Act in accordance with any applicable duty provided for in this Act.”; 10
- (e) by the substitution for subsection (4) of the following subsection:
 “(4) Despite the provisions in subsections (2A) and (3), the Minister may, **[with the concurrence of]** after consultation with the Minister responsible for mineral resources, **[if the environmental mineral resource inspectors are unable or not adequately able to fulfil the compliance and enforcement functions,]** if it is necessary to address significant harm to the environment caused by prospecting, exploration, mining or production activities, **[designate]** direct the environmental management inspectors to implement or support the implementation of these functions in terms of this Act or a specific environmental management Act in respect of which powers have been conferred on the Minister responsible for mineral resources.”; 15 20
- (f) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words: 25
 “Subsequent to subsection (7), the Minister may, **[in concurrence]** after consultation with the Minister responsible for mineral resources, within a reasonable period of time and where appropriate, direct the environmental management inspectors to—”.

Amendment of section 31E of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 30

18. Section 31E of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: 35
 “(a) qualification criteria for environmental management inspectors and environmental mineral and petroleum inspectors; and
 (b) training that must be completed by environmental management inspectors and environmental mineral and petroleum inspectors.”; 40
 and
- (b) by the addition of the following subsection:
 “(3) The Minister may prescribe a Code of Conduct applicable to all designated environmental management inspectors and environmental mineral and petroleum inspectors.”.

Substitution of section 31F of Act 107 of 1998, as amended by section 17 of Act 14 of 2009 45

19. The following section is hereby substituted for section 31F of the National Environmental Management Act, 1998:

“Proof of designation

31F. (1) A prescribed identity card must be issued to each person designated as an environmental management inspector or an environmental mineral and petroleum inspector. 50

(2) When exercising any powers or performing any duties in terms of this Act **[or]**, a specific environmental management Act, or a provincial Act that substantively deals with environmental management, an environmental management inspector or environmental mineral and petroleum inspector 55

must, on demand by a member of the public, produce the identity card referred to in subsection (1).”.

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

20. Section 31G of the National Environmental Management Act, 1998, is hereby amended— 5

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

“An environmental management inspector or an environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D—”; and 10
- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) may access and inspect any property, object or pack-animal for the purposes of ascertaining compliance with the legislation for which that inspector has been designated in terms of section 31D and for ascertaining compliance with a term or condition of a permit, authorisation or other instrument issued in terms of relevant legislation.”. 15

Amendment of section 31H of Act 107 of 1998, as amended by section 6 of Act 44 of 2008 and section 18 of Act 14 of 2009 20

21. Section 31H of the National Environmental Management Act, 1998, is hereby amended—

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

“question a person about any act or omission **[in respect of which there is a reasonable suspicion that it might]** that may constitute—”; 25
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) upon reasonable suspicion, issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;”; 30
- (c) by the substitution in subsection (1)(c) for subparagraph (ii) of the following subparagraph:

“(ii) to which this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management, relates;”; 35
- (d) by the substitution in subsection (1) for paragraphs (j) and (k) of the following paragraphs, respectively:

“(j) remove any waste or other matter deposited or discharged in contravention of the law for which that inspector has been designated in terms of section 31D or a term or condition of a permit, authorisation or other instrument issued in terms of such law; **[or]** 40

(k) **[carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific environmental management Act]** issue a lawful instruction in the execution of his or her mandate;”; 45
- (e) by the addition in subsection (1) of the following paragraph:

“(l) carry out any other prescribed duty not inconsistent with this Act, and any other duty that may be prescribed in terms of a specific environmental management Act or a provincial Act that substantively deals with environmental management.”; 50
- (f) by the substitution for subsection (2) of the following subsection:

“(2) A written notice issued in terms of subsection (1)(b) must **[be in the]** correspond substantially with the prescribed format and must require a person to answer specified questions either orally or in writing, 55

and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.”; and

- (g) by the substitution for subsection (3) of the following subsection:

“(3) A person who receives a written notice in terms of subsection (1)(b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management.”.

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

22. Section 31I of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) When an item is seized in terms of this Part, the environmental management inspector may **[request]** instruct the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the inspector, and if the person refuses to take the item to the designated place, the inspector may do so.”; and

- (b) by the substitution for paragraphs (a) and (b) of subsection (5) of the following paragraphs, respectively:

- “(a) in the case of a specimen of threatened or protected species or alien species being imported into the Republic, at the port of entry, **[request]** instruct the person responsible for the import or that person’s agent, to produce the original copies of the import permit, together with such other documentation as may be required; and
(b) in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit, **[request]** instruct the person responsible for the export or re-export or that person’s agent to produce the original copy of the export or re-export permit, together with such other documentation as may be required.”.

Amendment of section 31J of Act 107 of 1998, as amended by section 15 of Act 30 of 2013

23. Section 31J of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (2) for the words following paragraph (d) of the following words:

“in terms of this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management.”.

Amendment of section 31K of Act 107 of 1998, as amended by section 19 of Act 14 of 2009

24. Section 31K of the National Environmental Management Act, 1998, is hereby amended—

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

“An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, and subject to subsection (2), may at any reasonable time conduct routine inspections and, without a warrant, enter and inspect any building, land or premises **[or search]**, including but not limited to, any vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purposes of ascertaining compliance with—”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector

or an environmental mineral and petroleum inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the Acts for which that inspector has been designated in terms of section 31D.”; and

(c) by the substitution for subsection (5) of the following subsection:

“(5) While carrying out a routine inspection, an environmental management inspector or environmental mineral and petroleum inspector may **[seize anything in or on any, including but not limited to business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item 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.]—**

(a) upon reasonable suspicion that an offence in terms of the law for which that inspector has been designated in terms of section 31D has been committed, seize anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item that may be used as evidence in the prosecution of any person for an offence in terms of this Act, a specific environmental management Act or a provincial Act that substantively deals with environmental management; and

(b) detain, for a reasonable period of time, anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purpose of ascertaining compliance with the legislation for which that inspector has been designated in terms of sections 31B, 31BA and 31C, as the case may be.”.

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

25. Section 31L of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may issue a compliance notice **[in] which must correspond substantially with** the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied—”.

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

26. Section 31M of the National Environmental Management Act, 1998, is hereby amended—

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

“(1) Any person who receives a compliance notice in terms of section 31L may object to the notice by making representations, in writing, to the Minister **[or], the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council**, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister **[or], the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council** may determine.”; and

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“After considering any representations made in terms of subsection (1) and any other relevant information, the Minister **[or], the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council**, as the case may be—”.

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

27. Section 31O of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A member of the South African Police Service has, in respect of an offence in terms of this Act [or], a specific environmental management Act or a provincial Act that substantively deals with environmental management, all the powers of an environmental management inspector in terms of this Part, excluding the power to conduct routine inspections in terms of section 31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O.”.

Substitution of section 31P of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

28. The following section is hereby substituted for section 31P of the National Environmental Management Act, 1998:

“Duty to produce documents

31P. Any person to whom a permit, licence, permission, certificate, authorisation or any other document has been issued in terms of this Act [or], a specific environmental management Act or a provincial Act that substantively deals with environmental management, must produce that document [at the request] on instruction of an environmental management inspector or an environmental mineral and petroleum inspector.”.

Amendment of section 31Q of Act 107 of 1998, as amended by section 21 of Act 14 of 2009 and section 17 of Act 30 of 2013

29. Section 31Q of the National Environmental Management Act, 1998, is hereby amended—

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

“It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act [or], a specific environmental management Act[,], or a provincial Act that substantively deals with environmental management, except—”; and
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) if the information is disclosed to enable a person to perform a function in terms of this Act [or], a specific environmental management Act or a provincial Act that substantively deals with environmental management; or”.

Substitution of section 34E of Act 107 of 1998, as inserted by section 7 of Act 46 of 2003

30. The following section is hereby substituted for section 34E of the National Environmental Management Act, 1998:

“Treatment of seized live specimens

34E. (1) Pending the institution of any criminal proceedings in terms of this Act or a specific environmental management Act or the resolution of such proceedings, a live specimen that has been seized in terms of this Part [must] may be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

(2) For the purposes of this Chapter, seized live specimens may be disposed of in terms of section 30(a) of the Criminal Procedure Act, 1977.”.

Amendment of section 34G of Act 107 of 1998, as inserted by section 7 of Act 46 of 2003

31. Section 34G of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[The]** Despite section 57(5) of the Criminal Procedure Act, 1977, the Minister may by regulation specify offences in terms of this Act or a specific environmental management Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence.”.

Amendment of section 42B of Act 107 of 1998, as inserted by section 9 of Act 62 of 2008

32. Section 42B of the National Environmental Management Act, 1998, is hereby amended—

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

“(1) The Minister **[of Minerals and Energy]** responsible for mineral resources may delegate a function entrusted to him or her in terms of this Act to—

(a) the Director-General of the Department **[of Minerals and Energy; or]** responsible for mineral resources;

(b) any officer in the Department **[of Minerals and Energy.]** responsible for mineral resources; or

(c) any organ of state, by agreement with that organ of state.”;

(b) by the substitution in subsection (2) for paragraphs (c) and (d) of the following paragraphs, respectively:

“(c) does not prevent the performance of the function by the Minister responsible for mineral resources himself or herself; **[and]**

(d) **[may be withdrawn by the Minister]** may include the power to subdelegate[.];”;

(c) by the addition in subsection (2) of the following paragraphs:

(e) may be withdrawn by the Minister responsible for mineral resources, subject to any rights that may have accrued to any person; and

(f) does not divest the Minister responsible for mineral resources of the responsibility for the performance of the function.”; and

(d) by the addition of the following subsection:

“(3) The Minister responsible for mineral resources may confirm, vary or revoke any decision taken in consequence of a delegation or subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.”.

Insertion of sections 42C and 42D in Act 107 of 1998

33. The following sections are hereby inserted in the National Environmental Management Act, 1998, after section 42B:

“Delegation of powers and duties by Minister responsible for water affairs

42C. (1) The Minister responsible for water affairs may delegate a power or duty vested in him or her in terms of this Act to an official in the department responsible for water affairs.

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

(a) must be in writing;

(b) may be subject to conditions;

(c) does not prevent the exercise of the power or the performance of the duty by the Minister responsible for water affairs personally;

(d) may include the power to subdelegate;

(e) may be withdrawn by the Minister responsible for water affairs, subject to any rights that may have accrued to any person; and

- (f) does not divest the Minister responsible for water affairs of the responsibility for the exercise of the power or the performance of the duty.

Delegation of powers and duties by municipal manager

- 42D.** (1) The municipal manager of a municipality may delegate a power or duty vested in him or her in terms of this Act to an official in the municipality. 5
- (2) A delegation in terms of subsection (1)—
- (a) must be in writing;
 - (b) may be subject to conditions;
 - (c) does not prevent the exercise of the power or the performance of the duty by the municipal manager personally;
 - (d) may be withdrawn by the municipal manager, subject to any rights that may have accrued to any person; and
 - (e) does not divest the municipal manager of the responsibility for the exercise of the power or the performance of the duty.”. 10 15

Amendment of section 43 of Act 107 of 1998, as substituted by section 4 of Act 8 of 2004 and section 10 of Act 62 of 2008 and amended by section 14 of Act 25 of 2014

34. Section 43 of the National Environmental Management Act, 1998, is hereby amended— 20

- (a) by the insertion after subsection (1B) of the following subsection—
- “(1C) Any person may appeal against a decision made by the licensing authority contemplated in section 36(1) or 47A of the National Environmental Management: Air Quality Act, 1998 (Act No. 39 of 2004), in the case of municipalities, to the executive committee or executive mayor, or if the municipality does not have an executive committee or an executive mayor, such person may appeal to the municipal council.”; and 25
- (b) by the substitution for subsections (7), (8) and (9) of the following subsections, respectively: 30
- “(7) An appeal under this section suspends an environmental authorisation, exemption[,**directive**,] or any other decision made in terms of this Act or any other specific environmental Act, or any provision or condition attached thereto, except for a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act. 35
- (8) A person who receives a directive in terms of section 28(4) may lodge an appeal against the decision made by the Director-General or any person acting under his or her delegated authority, the Director-General of the department responsible for mineral resources or any person acting under his or her delegated authority, **[or]** the provincial head of department or any person acting under his or her delegated authority or the municipal manager of a municipality or any person acting under his or her delegated authority, to the Minister, the Minister responsible for mineral resources **[or]**, the MEC or the municipal council, as the case may be, within thirty days of receipt of the directive, or within such longer period as the Minister, the Minister responsible for mineral resources **[or]**, MEC or municipal council may determine. 40 45
- (9) **[Notwithstanding]** Despite subsection (7) [and], pending the finalisation of the appeal, the Minister, Minister responsible for mineral resources [or], the MEC or municipal council, as the case may be, may, on application and on good cause shown, direct that [any part or provision of the directive not be suspended, but only strictly in exceptional circumstances and where there is an imminent threat to human health or the environment.]— 50 55
- (a) the environmental authorisation, exemption or any other decision made in terms of this Act or any other specific environmental

- management Act, or any provision or condition attached thereto may wholly or in part, not be suspended; or
- (b) the directive or any administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act or part thereof, be suspended.”.

Amendment of section 49A of Act 107 of 1998, as inserted by section 25 of Act 30 of 2013

35. Section 49A of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
- “(bA) fails to comply with any provision identified as an offence in such applicable norm or standard, in which case paragraph (b) does not apply.”;
- (b) by the substitution in subsection (1) for paragraphs (m), (n), (o) and (p) of the following paragraphs, respectively:
- “(m) hinders or interferes with an environmental management inspector or an environmental mineral and petroleum inspector in the execution of that inspector’s official duties;
- (n) pretends to be an environmental management inspector or an environmental mineral and petroleum inspector, or the interpreter or assistant of such an inspector;
- (o) furnishes false or misleading information when complying with [a request] an instruction of an environmental management inspector or an environmental mineral and petroleum inspector;
- (p) fails to comply with [a request of] an instruction from an environmental management inspector or an environmental mineral and petroleum inspector.”; and
- (c) by the addition in subsection (1) of the following paragraphs:
- “(g) fails to comply with section 24P(3), (4), (5), (6) or (10);
- (r) fails to comply with section 24PA(1) or (3).”.

Amendment of section 49B of Act 107 of 1998, as inserted by section 25 of Act 30 of 2013

36. Section 49B of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A person convicted of an offence in terms of section 49A(1)(a), (b), (bA), (c), (d), (e), (f) [or (g)], (g), (q) or (r) is liable to a fine not exceeding R10 million or imprisonment not exceeding 10 years, or to both fine and such imprisonment.”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) A person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine not exceeding R1 million or imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.”.

Amendment of Schedule 3 to Act 107 of 1998, as amended by section 8 of Act 8 of 2004, section 25 of Act 14 of 2009, Government Notice No. 731 of 2012 and section 27 of Act 30 of 2013

37. Schedule 3 to the National Environmental Management Act, 1998, is hereby amended—

- (a) by the repeal in part (a) of line 5;
- (b) by the substitution in line 17 of part (a) for column 3 the following column:
- “Section 45(1), 46(1), 47(2), 47(3), 48(1), 48A(1), 50(5), read with sections 89(1)(b), (c) and (d) and 50A”;
- (c) by the substitution in line 21 of part (a) for column 3 of the following column:

“Sections 7B, 7C read with 79(1)(j), (k), 13(3) read with 79(1)(l), 13(1A) read with 79(2)(j), 79(2)(k), 15 read with 79(2)(d), 59 read with 79(2)(e), 60 read with 79(2)(a), 65 read with 79(1)(m), 69 read with 79(1)(a), 70(1) read with 79(1)(b), (c), (d), (e), 79(1)(f), (g), (h), (i), [79(2)(a), (b), (c), 79(3)(a), (b), (c), 79(4)(a), (b)] 92 read with 79(1)(n), 95 read with 79(2)(h), 79(2)(i), 96 read with 79(1)(o), 79(2)(a)”;

- (d) by the substitution in line 4 of part (b) for column 3 of the following column:
 “Section 86(1) in so far as it relates to contraventions of sections 26, [41] 44(1)(b)(ii) and 44(1)(c) to (e), 52(a), 57(a), 58(b) and 62(1)”.

Amendment of section 48 of Act 57 of 2003, as substituted by section 18 of Act 31 of 2004 and section 21 of 2014

38. Section 48 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended—

- (a) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
- “Despite other legislation, no person may conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) in a protected environment without the written permission of the Minister **[and the Cabinet member responsible for mineral and energy affairs]**; or”;
- (c) by the substitution for subsections (2), (3) and (4) of the following subsections:
- “(2) The Minister, after consultation with the Cabinet member responsible for mineral resources **[and energy affairs]**, must review all mining activities which were lawfully conducted in areas indicated in subsection (1) (a), (b) and (c) immediately before this section took effect.
- (3) The Minister, after consultation with the Cabinet member responsible for mineral resources **[and energy affairs]**, may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment or for the environmental protection of the area concerned.
- (d) by the substitution for subsection (4) of the following subsection:
- (4) A person who wishes to apply for permission under subsection (1)(b) to conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production, must immediately on receipt of an environmental authorisation in terms of the National Environmental Management Act, submit his or her application in the prescribed manner to the Minister, together with—
- (a) any information, reports, studies conducted or consultation done for the environmental impact assessments process in respect of the activities under consideration in terms of Chapter 5 of the National Environmental Management Act; and
- (b) any appeal lodged in respect of the environmental authorisation.
- (e) by the addition of the following subsections:
- (5) The Minister, when exercising his or her power in terms of subsection (1)(b)—
- (a) must take into account—
- (i) the principles contained in section 2 of the National Environmental Management Act;
- (ii) any information, reports, studies conducted or consultation done for the environmental impact assessments process in respect of the activities under consideration in terms of chapter 5 of the National Environmental Management Act;
- (iii) any appeal contemplated in subsection (4)(b);
- (iv) the ecological integrity of the protected environment;

- (b) may, amongst others, take into account—
 - (i) the potential impact on ecological functioning and ecosystem services provided by the protected environment to society;
 - (ii) whether the protected environment is a biodiversity priority area for species; and
 - (iii) whether the protected environment is a strategic water resource area;
- (6) Despite subsection (4), the Minister may require the person who applies for the permission under subsection (1)(b), to provide any further information as he or she may deem necessary before making a decision.

Amendment of section 57 of Act 57 of 2003

39. Section 57 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the Chief Executive Officer and the Chief Financial Officer.”.

Amendment of section 89 of Act 57 of 2003, as amended by section 28 of Act 14 of 2009

40. Section 89 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A), 48(1), 48A(1), [49A(5)(b),] or 50(5) [or 55(2)(fA)].”;
- (b) by the deletion in subsection (1) of the word “or” at the end of paragraph (c);
- (c) by the substitution in subsection (1) for the fullstop at the end of paragraph (d) of a semi-colon;
- (d) by the addition in subsection (1) of the following paragraph:
 - “(e) contravenes or fails to comply with a rule made in terms of section 55(2)(fA).”;
- (e) by the substitution for subsection (2) of the following subsection:
 - “(2) A person convicted of an offence in terms of subsection (1)(a), (b), (c) or (d) is liable, in the case of a first conviction, to a fine not exceeding R5 million or 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 imprisonment for a period not exceeding ten years or in both instances to both a fine and such imprisonment.”; and
- (f) by the insertion after subsection (2) of the following subsection:
 - “(2A) A person convicted of an offence in terms of subsection (1)(e) is liable to the penalties prescribed pursuant to section 55(2)(fA).”.

Amendment of section 1 of Act 10 of 2004, as amended by section 29 of Act 14 of 2009 and section 1 of Act 14 of 2013

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

- (a) by the substitution for the definition of “control” of the following definition:
 - “‘**control**’, in relation to **[an alien or]** invasive species, means—
 - (a) **[to combat or eradicate an alien or invasive species] the systematic destruction of all specimens of invasive species from within a specified area of, or the whole of, the Republic; or**
 - (b) where such **[eradication] systematic destruction** is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of **[an alien or]** invasive species;

- (b) by the insertion after the definition of “environmental management inspector” of the following definition:
 “**‘eradicate’** means the complete removal of invasive species from within the Republic, including all living parts of that species;”; and
- (c) by the insertion after the definition of ‘vulnerable species’ of the following definition: 5
 “**‘well-being’** means a state where the living conditions of a faunal biological resource are conducive to its health;”.

Amendment of section 2 of Act 10 of 2004

42. Section 2 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph: 10

- “(ii) the use of indigenous biological resources in a **[sustainable]** manner that is ecologically sustainable, including taking into account the well-being of any faunal biological resource involved; and”.
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Amendment of section 3 of Act 10 of 2004

43. Section 3 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

- “(2) The Minister may, by notice in the *Gazette*, specify the species and the circumstances under which the State remains the custodian of faunal biological resources that escape from land under its control.”.
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Insertion of section 9A in Act 10 of 2004

44. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 9: 25

Prohibition of certain activities

9A. The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of a faunal biological resource.”.

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Amendment of section 13 of Act 10 of 2004

45. Section 13 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

- “(c) the Chief Executive Officer and Chief Financial Officer of the Institute.”.
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Amendment of section 73 of Act 10 of 2004

46. Section 73 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion in subsection (2) of paragraph (a);
- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 40
 “(b) take steps to control **[and]** or eradicate the listed invasive species **[and to prevent it from spreading]** as prescribed by the Minister; and”; and
- (c) by the insertion after subsection (2) of the following subsection: 45
 “(2A) The Minister may prescribe circumstances under which a competent authority must be notified in writing of the presence or occurrence of a listed invasive species.”.

Amendment of section 75 of Act 10 of 2004

47. Section 75 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:
 - “(1) Control **[and]** or eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.
 - (2) Any action taken to control **[and]** or eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.
 - (3) The methods employed to control **[and]** or eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.”; and
- (b) by the addition of the following subsection:
 - “(6) The Minister must provide education and awareness to local communities affected by listed invasive species.”.

Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009 and section 30 of Act 14 of 2013

48. Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

- “(aA) the well-being of a faunal biological resource;”.

Amendment of section 99 of Act 10 of 2004

49. Section 99 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister or MEC for Environmental Affairs must follow an appropriate consultative process in the circumstances.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “The Minister or MEC for Environmental Affairs, as the case may be, must, in terms of subsection (1)—”; and
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 - “(b) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the MEC for Environmental Affairs of each province that may be affected by the exercise of the power or, in the case of an MEC for Environmental Affairs, he or she must consult the Minister.”.

Amendment of section 100 of Act 10 of 2004

50. Section 100 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “The Minister or MEC for Environmental Affairs must give notice of the proposed exercise of the power referred to in section 99—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) in the Gazette or Provincial Gazette, as the case may be; and”;
- (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- “(a) invite members of the public to submit to the Minister or MEC for Environmental Affairs, within 30 days of publication of the notice in the *Gazette* or *Provincial Gazette*, as the case may be, written representations on, or objections to, the proposed exercise of the power; and”;
- (d) by the substitution for subsection (3) and (4) of the following subsections, respectively:
- “(3) The Minister or MEC for Environmental Affairs may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or MEC for Environmental Affairs or a person designated by the Minister or MEC for Environmental Affairs.
- (4) The Minister or MEC for Environmental Affairs must give due consideration to all representations or objections received or presented before exercising the power.”.

Amendment of section 13 of Act 39 of 2004, as amended by section 2 of Act 20 of 2014

51. Section 13 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister **[must]** may, by notice in the *Gazette*, establish the National Air Quality Advisory Committee in terms of this Act.”.

Substitution of section 22A of Act 39 of 2004, as inserted by section 3 of Act 20 of 2014

52. The following section is hereby substituted for section 22A of the National Environmental Management: Air Quality Act, 2004:

“Consequences of unlawful conduct of listed activity resulting in atmospheric emission

22A. (1) Upon application for an atmospheric emission licence by a person who—

- (a) operated, at any time prior to the commencement of this Act, a scheduled process in terms of the Atmospheric Pollution Prevention Act, without a provisional registration or registration certificate; or
- (b) conducted or is conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, an activity listed in terms of section 21 which results in atmospheric emission, the relevant licensing authority must fine the applicant an administrative fine which may not exceed R10 million before the application for an atmospheric emission licence may be considered.
- (2) An application contemplated in subsection (1) must be submitted in accordance with the requirements contained in section 37.
- (3) On application contemplated in subsection (1), the licensing authority must direct the applicant to—
- (a) immediately cease the activity pending a decision on the application submitted in terms of this section;
- (aA) undertake public participation, as prescribed;
- (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;
- (c) remedy any adverse effect of the activity on the environment, including the ambient air and human health;
- (d) cease, modify or control any act, activity, process or omission causing atmospheric emission;
- (e) eliminate any source of atmospheric emission;
- (f) compile a report containing—
- (i) a description of the need and desirability of the activity;
- (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity,

- including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
- (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment, including the ambient air, and human health;
 - (iv) a description of the public participation process followed during the course of compiling the report, including all comments received from the interested and affected parties and an indication of how issues raised have been addressed; and
 - (v) an environmental management programme; and
- (g) provide such other information or undertake such further studies as the licensing authority may deem necessary.
- (4) If it comes to the attention of the licensing authority that the applicant is under criminal investigation for the contravention of, or failure to comply with section 22, the licensing authority may defer a decision to issue a provisional atmospheric emission licence or an atmospheric emission licence until such time that the investigation is concluded and—
- (a) the National Prosecuting Authority has decided not to institute prosecution in respect of the contravention of, or failure to comply with, section 22;
 - (b) the applicant concerned is acquitted or found not guilty after prosecution in respect of the contravention of, or failure to comply with, section 22; or
 - (c) the applicant concerned has been convicted by a court of law of an offence in respect of the contravention of, or failure to comply with, section 22 and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.
- (5) The submission of an application or the issuing of a provisional atmospheric emission licence or an atmospheric emission licence in terms of this section, or the payment of an administrative fine in terms of subsection (1), must—
- (a) in no way derogate from the authority of the environmental management inspector or the South African Police Service, to investigate any transgression of this Act;
 - (b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; or
 - (c) not indemnify the applicant from liability in terms of section 51(1)(a)."

Amendment of section 36 of Act 39 of 2004, as amended by section 5 of Act 20 of 2014

53. Section 36 of the National Environmental Management: Air Quality Act, 2004, is hereby amended—

- (a) by the insertion after subsection (2) of the following subsection:

“(2A) A provincial organ of state must be regarded as the licensing authority if a listed activity falls within the boundaries of more than one metropolitan municipality, or within the boundaries of more than one district municipality, and the relevant municipalities agreed thereto in writing.”;
- (b) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, [or] and the Minister has been identified as the competent authority;”;
- (c) by the substitution for subsection (8) of the following subsection:

“(8) The Minister and the licensing authority contemplated in subsections (1) to (4), or the MEC and the licensing authority contemplated in subsections (1) to (5), may agree that an application for

an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister, MEC or the relevant licensing authority contemplated in subsections (1) to [(4)] (5).”.

Insertion of section 47A in Act 39 of 2004

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54. The following section is hereby inserted in the National Environmental Management: Air Quality Act, 2004, after section 47:

Revocation or suspension of atmospheric emission licences

- 47A.** (1) The licensing authority may, by written notice to the holder of an atmospheric emission licence, revoke or suspend that licence if the licensing authority has evidence that the licence holder has contravened a provision of this Act or a condition of the licence and such contravention may have, or is having, a significant detrimental effect on the environment, including health impacts. 10
- (2) The licensing authority must before exercising the power in terms of subsection (1), in writing— 15
- (a) consult organs of state whose areas of responsibility may be affected by the exercise of the power; and
 - (b) afford the holder of the atmospheric emission licence an opportunity to make a submission in respect of the intended revocation or suspension, which submission must be accompanied by an atmospheric impact report as contemplated in section 30 of this Act. 20
- (3) The licensing authority, when consulting in terms of subsection (2), must indicate the time period within which— 25
- (a) the organs of state must submit comments; and
 - (b) the holder of the atmospheric emission licence must make his or her submission to the licensing authority.

Amendment of section 53 of Act 39 of 2004, as amended by section 12 of Act 20 of 2014

55. Section 53 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the deletion of paragraph (k). 30

Amendment of section 60 of Act 24 of 2008

56. Section 60 of the National Environmental Management: Integrated Coastal Management Act, 2008, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 35

“The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure either prior to or after the commencement of this Act—”; and
 - (b) by the substitution in subsection (1) for paragraph (a), of the following paragraph: 40

“(a) has had, is having or is likely to have, an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or”.

Repeal of Chapter 9 of Act 24 of 2008

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57. Chapter 9 of the National Environmental Management: Integrated Coastal Management Act, 2008, is hereby repealed.

Amendment of section 1 of Act 59 of 2008, as amended by section 38 of Act 14 of 2013 and section 1 of Act 26 of 2014

58. Section 1 of the National Environmental Management: Waste Act, 2008, is hereby amended— 50

- (a) by the substitution for the definition of “associated structures and infrastructure” of the following definition:
- “**‘associated structures and infrastructure’** [, when referred to in **Schedule 1,**] means any building or infrastructure that is necessary for the functioning of a facility or waste management activity or that is used for an ancillary service or use from the facility;”;
- (b) by the insertion after the definition of “best practicable environmental option” of the following definitions:
- “**‘building and demolition waste’** means waste, excluding hazardous waste, produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition;
- ‘business waste’** means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes;”;
- (c) by the insertion after the definition of “disposal” of the following definition:
- “**‘domestic waste’** means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential, educational, health care, sport or recreation purposes;”;
- (d) by the insertion after the definition of “*Gazette*” of the following definition:
- “**‘general waste’** means waste that does not pose an immediate hazard or threat to health or to the environment, and includes—
- (a) domestic waste;
- (b) building and demolition waste;
- (c) business waste;
- (d) inert waste; or
- (e) any waste classified as non-hazardous waste in terms of the regulations made under section 69;”;
- (e) by the insertion after the definition of “general waste” of the following definition:
- “**‘hazardous waste’** means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;”;
- (f) by the insertion after the definition of “industry waste management plan” of the following definition:
- “**‘inert waste’** means waste that—
- (a) does not undergo any significant physical, chemical or biological transformation after disposal;
- (b) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and
- (c) does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant;”;
- (g) by the substitution for the definition of “recovery” of the following definition:
- “**‘recovery’** means the controlled extraction or retrieval of [any substance,] energy, or material [or object] from waste;”;
- (h) by the insertion after the definition of “recycle” of the following definitions:
- “**‘residue deposit’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
- ‘residue stockpile’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (i) by the substitution in the definition of “waste” for paragraphs (a) and (b) of the following paragraphs:
- “(a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered [and includes all wastes as defined in Schedule 3 to this Act]; or
- (b) any other substance, material or object [that is not included in Schedule 3] that may be defined as a waste by the Minister by notice in the *Gazette*;”;

- (j) by the substitution in the definition of “waste” for subparagraph (i) of paragraph (b) of the following subparagraph:
- “(i) once an application for its re-use, recycling or recovery has been approved **[or, after such approval, once it is, or has been re-used, recycled or recovered]** and the waste or portion of waste is re-used, recycled or recovered in accordance with the conditions in the approval;”;
- (k) by the insertion in the definition of “waste” of the word “or” at the end of paragraph (b)(ii); and
- (l) by the deletion in the definition of “waste” of paragraph (b)(iii).

Amendment of section 4 of Act 59 of 2008, as amended by section 19 of Act 25 of 2014 and section 2 of Act 26 of 2014

59. Section 4 of the National Environmental Management: Waste Act, 2008, is hereby amended by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) residue deposits and residue stockpiles that are regulated under the National Environmental Management Act;”.

Amendment of section 34A of Act 59 of 2008, as inserted by section 13 of Act 26 of 2014

60. Section 34A of the National Environmental Management: Waste Act, 2008, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) An implementation Bureau dealing with waste management to be known as the “Waste Management Bureau” is hereby established, **within the Department,** as a juristic person.”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) In the event of absence of a functional **[Bureau or a Chief Executive Officer]** Board, the powers and duties of the **[Bureau]** Board revert to the **[Director-General of the Department contemplated in section 34G(1),]** Minister who, in such a case, must exercise those powers and perform those duties until the **[Bureau]** Board is functional **[or a Chief Executive Officer is appointed]** again.”.

Substitution of section 34C of Act 59 of 2008, as inserted by section 13 of Act 26 of 2014

61. The following section is hereby substituted for section 34C of the National Environmental Management: Waste Act, 2008:

“Minister’s supervisory powers

34C. (1) The Minister—

- (a) must monitor the exercise and performance by the Bureau of its powers and duties;
- (b) may set norms and standards for the exercise and performance by the Bureau of its powers and duties;
- (c) may issue directives to the Bureau on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning; and
- (d) must determine limits on fees charged by the Bureau in the exercise and performance of its powers and duties.
- (2) The Bureau must exercise its powers and perform its duties subject to the policy determined under section 34B and any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).”.

Substitution of sections 34F, 34G, 34H, 34I, 34J, 34K and 34L of Act 59 of 2008 as inserted by section 13 of Act 26 of 2014

62. The following sections are hereby substituted for sections 34F, 34G, 34H, 34I, 34J, 34K and 34L of the National Environmental Management: Waste Act, 2008:

“General powers

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34F. The Bureau may, for the purpose of performing its duties—

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| (a) | appoint its own staff, subject to section 34X; | |
| (b) | obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment; | |
| (c) | acquire, or dispose of, any right in, or to, movable or immovable property, or hire or let any property, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999); | 10 |
| (d) | open and operate its own bank accounts; | |
| (e) | invest any of its money, subject to section 34W; | |
| (f) | charge fees for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 34E; | 15 |
| (g) | collect royalties resulting from any discoveries, inventions or computer programmes; | |
| (h) | insure itself against— | 20 |
| | (i) any loss, damage or risk; or | |
| | (ii) any liability it may incur in the application of this Act; | |
| (i) | perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and | |
| (j) | <u>institute or defend any legal action.</u> | 25 |

Governing board, composition and membership

34G. (1) The Bureau is governed by a Board consisting of—

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| (a) | not fewer than seven and not more than nine members appointed in terms of section 34I; | |
| (b) | the Director-General or an official of the Department designated by the Director-General; and | 30 |
| (c) | the Chief Executive Officer of the Bureau. | |
| (2) | The Minister— | |
| (a) | must determine the number of members to be appointed in terms of subsection (1)(a); and | 35 |
| (b) | may alter the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs. | |
| (3) | The Board takes all decisions in the performance of the duties and exercise of powers of the Bureau, except— | 40 |
| (a) | those decisions taken in consequence of a delegation in terms of section 34U; or | |
| (b) | <u>where the Public Finance Management Act provides otherwise.</u> | |

Qualifications

34H. (1) A member of the Board must—

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| (a) | be a fit and proper person to hold office as a member; and | |
| (b) | have appropriate qualifications and experience in the field of waste management. | |
| (2) | The following persons are disqualified from becoming or remaining members of the Board: | 50 |
| (a) | A person holding office as a member of Parliament, a provincial legislature or a municipal council; or | |
| (b) | <u>a person who has been removed from office in terms of section 34O.</u> | |

Appointment procedure

- 34I.** (1) Whenever it is necessary to appoint members of the Board referred to in section 34G(1)(a), the Minister must—
- (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and 5
 - (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.
- (2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by— 10
- (a) the personal details of the nominee;
 - (b) the nominee's qualifications or experience; and
 - (c) any other information that may be prescribed.
- (3) The Minister must, subject to subsection (4), appoint— 15
- (a) the required number of persons from the list compiled in terms of subsection (1)(b); and
 - (b) if such list is inadequate, any suitable person.
- (4) When making appointments the Minister must— 20
- (a) consult the MECs for Environmental Affairs; and
 - (b) have regard to the need for appointing persons to promote representivity.
- (5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise in the field of waste management, and have gender representation and other categories. 25

Chairperson

- 34J.** (1) Whenever necessary, the Minister must appoint a member of the Board as the Chairperson of the Board.
- (2) The Chairperson is appointed for a period determined by the Minister which may, in the case of a member referred to in section 34K(1)(a), not extend beyond the period of his or her term as a member. 30
- (3) The Minister may appoint a member of the Board as acting chairperson of the Board if—
- (a) the Chairperson is absent for a substantial period; or
 - (b) the appointment of a Chairperson is pending. 35

Term of office

- 34K.** Members of the Board referred to in section 34G(1)(a)—
- (a) are appointed for a period of three years or, if section 34P(2) applies, for a term determined in terms of that section;
 - (b) on completion of that term, are eligible for reappointment for one additional term of three years; and 40
 - (c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.

Conditions of appointment

- 34L.** (1) The Minister must determine the conditions of employment of members of the Board referred to in section 34G(1)(a). 45
- (2) (a) The Minister may, with the concurrence of the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the government.
- (b) The remuneration and allowances of the members of the Board contemplated in paragraph (a) must be paid by the Bureau. 50
- (3) (a) Members who are in the employ of the government are not entitled to remuneration and allowances, but must be compensated for out-of-pocket expenses by the Bureau.
- (b) The members of the Board referred to in paragraph (a) are appointed on a part-time basis.”. 55

Insertion of sections 34M, 34N, 34O, 34P, 34Q, 34R, 34S, 34T, 34U, 34V, 34W, 34X, 34Y and 34Z in Act 59 of 2008

63. The following sections are hereby inserted in the National Environmental Management: Waste Act, 2008, after section 34L:

“Conduct of members

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34M. (1) A member of the Board—

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

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

Termination of membership

34N. (1) A member of the Board referred to in section 34G(1)(a) ceases to be a member when that person—

- (a) is no longer eligible in terms of section 34H to be a member;
- (b) resigns; or
- (c) is removed from office in terms of section 34O.

(2) A member may resign only by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.

Removal from office

34O. (1) The Minister may, subject to due process of law, remove a member of the Board referred to in section 34G(1)(a) from office, but only on the ground of—

- (a) misconduct, incapacity or incompetence;
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on good cause shown;
- (c) insolvency; or
- (d) conviction of a criminal offence without the option of a fine.

(2) A member of the Board may be removed from office on the grounds of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.

(3) The Minister may suspend a member under investigation in terms of this section.

Filling of vacancies

34P. (1) A vacancy in the Board is filled—

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 34J(1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section 34G(1)(a), by following the procedure set out in section 34I.

(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating Chairperson or member.

Meetings

34Q. (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a Board meeting at a time and place set out in the request.

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(2) The Chairperson presides at meetings of the Board, but if the Chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.

Procedures

34R. (1) The Board may determine its own procedures subject to the provisions of this Act.

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(2) The Board must keep records of its proceedings and of the decisions taken.

Quorum and decisions

34S. (1) A majority of the members of the Board serving at any relevant time constitutes a quorum for a meeting of the Board.

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

(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

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Committees

34T. (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.

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(2) When appointing members to a committee, the Board is not restricted to members of the Board.

(3) The Board—

- (a) must determine the duties of a committee;
- (b) must appoint a chairperson and other members of a committee;
- (c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and

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(d) must determine a working procedure of a committee.

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

(5) (a) Section 34L, read with the necessary changes as the context may require, applies to the terms and conditions of employment of committee members.

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(b) A staff member of the Bureau appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

Delegation of powers and duties

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34U. (1) When necessary for the proper performance of its duties, the Board may, subject to subsection (2), delegate any of its powers or duties to—

- (a) a member of the Board;
- (b) a committee referred to in section 34T; or
- (c) a staff member of the Bureau.

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(2) The following powers and duties may not be delegated by the Board:

- (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 34V(1) or (2);
- (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 34V(3);
- (c) the determination of an employment policy in terms of section 34X(1); and
- (d) the setting of financial limits in terms of section 34X(2)(a) or (3).

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- (3) A delegation in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions that the Board may impose;
 - (b) must be in writing;
 - (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
 - (d) does not prevent the exercise of the delegated power or the carrying out of the delegated duty by the Board.
- (4) The Board may confirm, vary, revoke or withdraw any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Appointment of Chief Executive Officer

- 34V.** (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Bureau.
- (2) The Chief Executive Officer—
- (a) is appointed for a term not exceeding five years; and
 - (b) may be reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five years.
- (3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.
- (4) The Chief Executive Officer—
- (a) must perform such duties and may exercise such powers as the Board may delegate to him or her; and
 - (b) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner as the Board may determine.
- (5) (a) The Chairperson of the Board may appoint another employee of the Bureau as acting Chief Executive Officer for a period not exceeding six months, whenever—
- (i) the Chief Executive Officer is for any reason absent or unable to perform his or her duties; or
 - (ii) there is a vacancy in the office of the Chief Executive Officer.
- (b) Whilst acting as Chief Executive Officer, such employee—
- (i) has the powers and duties of the Chief Executive Officer; and
 - (ii) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).

Employment of staff

- 34X.** (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Bureau.
- (2) The Chief Executive Officer—
- (a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Bureau; and
 - (b) may appoint persons in posts on the staff establishment.
- (3) An employee of the Bureau is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of the Bureau and within the financial limits set by the Board.
- (4) (a) A person in the service of another organ of state may be seconded to the Bureau by agreement between the Chief Executive Officer and such organ of state.
- (b) Persons seconded to the Bureau perform their duties under the supervision of the Chief Executive Officer.
- (5) A person in the service of the Bureau may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

Funding

34Y. The funds of the Bureau consist of—

- (a) income derived by the Bureau from the performance of its duties and the exercise of its powers;
- (b) money appropriated by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) income derived from investments referred to in section 34W; and
- (f) money derived from any other source, subject to the Public Finance Management Act.

Investments

34W. The Bureau may invest any of its funds not immediately required—

- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
- (b) in such a manner as the Minister may approve.

Winding up or dissolution of Bureau

34Z. (1) The Bureau may not be wound up or dissolved except in terms of an Act of Parliament.

(2) Upon its winding-up or dissolution, the Bureau must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to an equivalent Schedule 3A Public Entity contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), which has the same objectives as the Bureau.”.

Amendment of section 36 of Act 59 of 2008

64. Section 36 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) An owner of the land that is **[significantly]** likely to be contaminated, or a person who undertakes an activity that caused the land to be significantly contaminated, must notify the Minister and MEC of that contamination as soon as that person becomes aware, of that contamination.”.

Amendment of section 37 of Act 59 of 2008

65. Section 37 of the National Environmental Management: Waste Act, 2008, is hereby amended—

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

“(a) **[cause]** require a site assessment to be conducted in respect of the relevant investigation area, and submit a site assessment report and a remediation plan, if applicable, to the Minister or the MEC, as the case may be; or”;

- (b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:

“(ii) direct the person who has undertaken or is undertaking the high risk activity or activity that caused or may have caused the contamination of the investigation area, to **[cause]** require a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report and a remediation plan, if applicable, to the Minister or MEC within a period specified in the notice.”;

- (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) A site assessment report and a remediation plan, if applicable, must comply with any directions that may have been published or given by the Minister or MEC in a notice contemplated in section 36(1) or (6)

and must at least include information on whether the investigation area is contaminated.”.

Amendment of section 38 of Act 59 of 2008

66. Section 38 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“On receipt of a site assessment report and a remediation plan, if applicable, contemplated in section 37, the Minister or MEC, as the case may be, may, after consultation with the Minister **[of Water Affairs and Forestry]** responsible for water affairs and any other organ of state concerned, decide that—”. 10

Amendment of section 41 of Act 59 of 2008

67. Section 41 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

- “(1) The Minister must keep a national contaminated land register of **[investigation]** contaminated land areas that includes information on— 15
- (a) the owners and any users of **[investigation]** contaminated land areas;
 - (b) the location of **[investigation]** contaminated land areas;
 - (c) the nature and origin of the said contamination;
 - (d) whether **[an investigation]** a contaminated land area— 20
 - (i) **[is contaminated,]** presents a risk to health or the environment, and must be remediated urgently;
 - (ii) **[is contaminated,]** presents a risk to health or the environment, and must be remediated within a specified period; or
 - (iii) **[is contaminated,]** does not present an immediate risk, but measures 25 are required to address the monitoring and management of that risk; **[or]** and
 - [(iv) is not contaminated;**
 - (e) **the status of any remediation activities on investigation areas; and]**
 - (f) restrictions of use that have been imposed on the **[investigation]** contaminated land areas. 30

(2) The Minister may change the status of **[an investigation]** the contaminated land area contemplated in subsection (1)(d)(i) or (ii) as provided for in subsection (1)(d)(iii) or (iv) if a remediation order has been complied with or other circumstances eventuate that justify such a change. 35

(3) An MEC who has identified **[an investigation]** a contaminated land area must furnish the relevant information to the Minister for recording in the national contaminated land register.”.

Amendment of section 43 of Act 59 of 2008, as amended by section 21 of Act 25 of 2014 40

68. Section 43 of the National Environmental Management: Waste Act, 2008, is hereby amended—

- (a) by the substitution in subsection (1A) for paragraphs (a) and (b) of the following paragraphs, respectively: 45
 - “(a) prospecting or exploration of a mineral or petroleum resource; or
 - (b) extraction and primary processing of a mineral or petroleum resource **[; or]**.”;
- (b) by the deletion in subsection (1A) of paragraph (c);
- (c) by the substitution for subsection (1B) of the following subsection: 50
 - “(1B) The Minister responsible for mineral resources is responsible for the implementation of the **[provisions that relate to]** licensing system provided for in this Chapter in so far as the matters referred to in subsection (1A) are concerned.”;
- (d) by the substitution for subsection (3) of the following subsection: 55
 - “(3) Despite subsections (1), (1A) and (2), the Minister, the Minister responsible for mineral resources and an MEC may agree that an

application or applications for waste management licences regarding any waste management activity—

(a) referred to in subsection (1), may be dealt with by the MEC or the Minister responsible for mineral resources; [or]

(aA) referred to in subsection (1A), may be dealt with by the Minister; or 5

(b) in respect of which the MEC or the Minister responsible for mineral resources has been identified as the licensing authority, may be dealt with by the Minister.”; and

(e) by the addition of the following subsection:

“(4) (a) In accordance with section 125(2)(b) of the Constitution, 10 whenever a licensing authority, referred to in subsection (2), fails to take a decision on an application for a waste management licence within the period prescribed by this Act, the person that applied for a waste management licence may apply to the Minister to take the decision.

(b) The person referred to in paragraph (a) must notify the MEC or the Minister responsible for mineral resources, as the case may be, in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option. 15

(c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the MEC or the Minister responsible for mineral resources, as the case may be, in respect of the application for a waste management licence, in order to enable the Minister to take a decision. 20

(d) Before taking a decision contemplated in paragraph (a), the Minister must request the MEC or the Minister responsible for mineral resources, as the case may be, to provide him or her with a report within a specified period on the status and causes for the failure to make a decision in the application for waste management licence concerned. 25

(e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactory response or cooperation is received from the MEC or the Minister responsible for mineral resources, as the case may be, within the specified period, the Minister must, where appropriate— 30

(i) inform the applicant in the event that the MEC or the Minister responsible for mineral resources, as the case may be, had complied with the relevant prescripts; 35

(ii) assist the MEC or the Minister responsible for mineral resources, as the case may be, in accordance with section 125(3) of the Constitution to fulfil his or her obligations under this Act; or

(iii) direct the MEC or the Minister responsible for mineral resources, as the case may be, to take the decision and such other steps as the Minister may deem necessary within a specified period. 40

(f) In the event that the MEC or the Minister responsible for mineral resources, as the case may be, fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in paragraph (e)(iii), the Minister must take the decision within a reasonable period. 45

(g) The Minister must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament setting out the details regarding the exercise of the power referred to in this section during the previous financial year.”. 50

Repeal of section 43A of Act 59 of 2008

69. Section 43A of the National Environmental Management: Waste Act, 2008, is hereby repealed. 55

Amendment of section 52 of Act 59 of 2008

70. Section 52 National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If the environment or the rights or interests of other parties are likely to be adversely affected, the [Minister or MEC] licensing authority must, before deciding the application for transfer, request the applicant to conduct a consultation process that may be appropriate in the circumstances to bring the application for the transfer of a waste management licence to the attention of relevant organs of state, interested persons and the public.”. 5

Amendment of section 54 of Act 59 of 2008

71. Section 54 of the National Environmental Management: Waste Act, 2008, is hereby amended by the insertion after subsection (2) of the following subsection:
 “(2A) The variation of a waste management licence is subject to the payment of a prescribed processing fee.”. 10

Amendment of section 67 of Act 59 of 2008, as amended by section 23 of Act 25 of 2014

72. Section 67 of the National Environmental Management: Waste Act, 2008, is hereby amended— 15

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) contravenes or fails to comply with a provision of section 15, 16(1)(c), (d), (e) or (f), 20, 26(1), [43A,] or any order under section 38(2) or (3) or a notice under section 17(2) or 18(1);”; and 20

(b) by the insertion in subsection (1) after paragraph (f) of the following paragraph:
 “(fA) contravenes any provision in the norm or standard contemplated in paragraph (f), in which such contravention is identified as an offence, and in such case paragraph (f) does not apply;”. 25

Amendment of section 69 of Act 59 of 2008, as amended by section 24 of Act 25 of 2014

73. Section 69 of the National Environmental Management: Waste Act, 2008, is hereby amended by the deletion in subsection (1) of paragraph (iA).

Repeal of section 69A of Act 59 of 2008 30

74. Section 69A of the National Environmental Management Act, 2008, is hereby repealed.

Amendment of section 71 of Act 59 of 2008

75. Section 71 of the National Environmental Management: Waste Act, 2008, is hereby amended— 35

(a) by the substitution for subsection (2) of the following subsection:
 “(2) Regulations made in terms of sections 69 and 70 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; 40
 (b) a fine not exceeding five million rand, and in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment; or
 (c) both a fine and imprisonment.”; and 45

(b) by the insertion after subsection (2) of the following subsection:
 “(2A) Regulations made in terms of sections 69 and 70 may differentiate between the penalties for the contravention of the different provisions thereof, but the maximum penalty may not exceed a penalty provided for in subsection (2).”. 50

Amendment of section 74 of Act 59 of 2008

76. Section 74 National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any person or organ of state may apply in writing for exemption from the application of a provision of this Act— 5
- (a) to the Minister [~~or~~];
- (b) where the Minister responsible for mineral resources is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the Minister responsible for mineral resources; or
- (c) where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the MEC, 10
- except the exemption from the requirement to obtain a waste management licence contemplated in Chapter 5.”.

Amendment of section 75 of Act 59 of 2008

77. Section 75 National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 15

- “(1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may request an applicant contemplated in section 74 to furnish additional information where such information is necessary for the purposes of informing the Minister, Minister responsible for mineral resources or MEC’s decision. 20
- (2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must, before deciding the application, request the applicant to— 25
- (a) bring the application to the attention of relevant organs of state, interested persons and the public by conducting a public participation process indicated by the Minister, Minister responsible for mineral resources or MEC; and
- (b) [to] submit any comments received from the public following such process to the Minister, Minister responsible for mineral resources or MEC.”. 30

Amendment of section 76 of Act 59 of 2008

78. Section 76 National Environmental Management: Waste Act, 2008, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 35
- “The Minister, Minister responsible for mineral resources or the MEC, as the case may be, may—”;
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 40
- “If an application is granted, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must issue a written exemption notice to the applicant stating—”; and
- (c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 45
- “The Minister, Minister responsible for mineral resources or the MEC, as the case may be, may by notice in the *Gazette* exempt an organ of state from a provision of this Act if—”.

Amendment of section 77 of Act 59 of 2008

79. Section 77 National Environmental Management: Waste Act, 2008, is hereby amended— 50

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “The Minister, Minister responsible for mineral resources or MEC may—”; and 55

- (b) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) Before suspending, withdrawing or amending an exemption, the Minister, Minister responsible for mineral resources or MEC must give the person to whom the exemption was granted an opportunity to comment, in writing, on the reasons for the suspension, withdrawal or amendment.” 5

(3) If an exemption has been granted in respect of a waste management activity, or part thereof, and ownership of that waste management activity is transferred, the exemption may, with the permission of the Minister, Minister responsible for mineral resources or MEC, be transferred by the holder of the exemption to the new owner of the waste management activity.”. 10

Substitution of certain expressions in Act 59 of 2008

80. The National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for the expression “Minister of Water Affairs and Forestry”, whenever it occurs, of the expression “Minister responsible for water affairs”. 15

Repeal of Schedule 3 to Act 59 of 2008, as inserted by section 18 of Act 26 of 2014

81. Schedule 3 to the National Environmental Management: Waste Act, 2008, is hereby repealed. 20

Substitution of section 12 of Act 62 of 2008, as amended by section 26 Act 25 of 2014

Transitional provisions

82. The following section is hereby substituted for section 12 of the National Environmental Management Amendment Act, 2008:

- “12. (1) Where, prior to 8 December 2014— 25
- (a) an environmental authorisation or a waste management licence was required for activities directly related to—
- (i) prospecting or exploration of a mineral or petroleum resource; or
 - (ii) extraction and primary processing of a mineral or petroleum resource, 30
- and such environmental authorisation or waste management licence has been obtained; and
- (b) a right, permit or exemption was required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) for— 35
- (i) prospecting or exploration of a mineral or petroleum resource; or
 - (ii) extraction and primary processing of a mineral or petroleum resource, 40
- and such right, permit or exemption has been obtained, and activities authorised in such environmental authorisation, waste management licence, right, permit or exemption commenced after 8 December 2014, such environmental authorisation, waste management licence, right, permit or exemption is regarded as fulfilling the requirements of the Act: Provided that where an application for an environmental authorisation or waste management licence was refused or not obtained in terms of the Act for activities directly related to prospecting, exploration or extraction of a mineral or petroleum resource, including primary processing, this subsection does not apply. 45
- (2) Despite subsection (1), the Minister responsible for mineral resources may direct the holder of a right, permit or any old order right, if he or she is of the opinion that the prospecting, mining, exploration and production operations are likely to result in unacceptable pollution, ecological 50 55

degradation or damage to the environment, to take any action to upgrade the environmental management plan or environmental management programme to address the deficiencies in the plan or programme.

(3) The Minister responsible for mineral resources must issue an environmental authorisation if he or she is satisfied that the deficiencies in the environmental management plan or environmental management programme referred to in subsection (2)

have been addressed and that the requirements contained in Chapter 5 of the National Environmental Management Act, 1998, have been met.”.

Transitional provisions for residue deposits and residue stockpiles

83. (1) Despite the repeal of the relevant provisions in relation to residue stockpiles in the National Environmental Management: Waste Act, 2008, by the National Environmental Management Laws Amendment Act, 2016, any approval granted or waste management licence issued in relation to residue deposits and residue stockpiles remain valid until it lapse or replaced under the provisions of the National Environmental Management Act, 1998.

(2) Despite the repeal of section 69(iA) of the National Environmental Management: Waste Act, 2008, the regulations pertaining to the management of residue deposits and residue stockpiles made in terms of this section, remain operational and shall be deemed to have been made under the National Environmental Management Act, 1998.

Transitional provisions for Waste Management Bureau

84. (1) Anything done under the repealed provisions in Part 7A of the National Environmental Management: Waste Act, 2008, remains valid until anything done under the provisions that substitutes the provisions in Part 7A overrides it.

(2) The Waste Management Bureau in place at the time of the commencement of the National Environmental Management Laws Amendment Act, 2017, remains in place until the members of Board are appointed in terms of section 34G of the National Environmental Management: Waste Act, 2008, (as amended by this Amendment Act).

(3) The Minister may direct that the employees or the Chief Executive Officer of the Waste Management Bureau at the time of the commencement of the National Environmental Management Laws Amendment Act, 2017, be absorbed by the new structure in the same positions.

Short title and commencement

85. This Act is called the National Environmental Management Laws Amendment Act, 2017, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2017

1. PURPOSE OF BILL

The purpose of the National Environmental Management Laws Amendment Bill, 2016 (Bill), is to amend certain provisions under the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEMPAA); the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA); the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (NEMAQA); the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEMICMA); the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA), and the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA). The main purpose of the Bill is to provide for clarity on certain matters and textual amendments.

2. OBJECTS OF BILL

The main object of the Bill is to amend the following pieces of legislation:

- National Environmental Management Act, 1998, so as to correct the citation to the definition of “Constitution”; to add new definitions of “audit”, “black”, “environmental management instrument”, “latent environmental impacts”, “municipal council”, “municipality”, “municipal manager”, “mitigate”, “rehabilitate”, “remediate”, “residual environmental impacts”; to correct the definition of “environmental mineral resources inspector”; to provide clarity to the definition of “financial provision”; to add a new environmental management principle promoting diversity in the sector; to provide clarity on what an environmental management instrument is; to use the term environmental management instrument consistently in the Act, to remove a duplicated provision for making regulations for laying down the procedures for the adoption of environmental management instruments; to provide for a register and making available the register, of all environmental management instruments adopted in terms of the Act; to provide clarity that the Minister responsible for mineral resources is responsible for activities constituting prospecting, exploration, mining and production as well as those directly related to prospecting, exploration, extraction, primary processing of a mineral or petroleum resource; to clarify that the MEC can be regarded as the competent authority for providing environmental authorisation in the event that Cabinet identifies that the Minister should be the competent authority, when there is agreement between the Minister and the relevant MEC; to provide for simultaneous submission of the National Environmental Management Act and the specific Environment Management Act applications for purposes of one environmental system in order to enable integrated environmental authorisation; to provide for a trigger for the simultaneous submission of a National Environmental Management Act or specific environmental management Act applications after acceptance of mining right; to provide clarity that a successor in title or person who controls the land may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to empower the Minister to prescribe the information that must be contained in environmental management programme; to enable an environmental assessment practitioner to undertake the consultation to be undertaken with a State Department on application for environmental authorisation; to provide clarity on what is to be audited in relation to financial provisioning; to provide the Minister with the power to prescribe instances for which financial provisioning is required; to provide clarity that an applicant or holder of an environmental authorization, holder, holder of an old order right relating to mining activities must set aside financial provision for progressive rehabilitation, mitigation, mine closure and the management of post closure environmental impacts; to identify the vehicles which must be used

when providing the financial provision; to allow the Minister responsible for water affairs access to the financial provision to undertake rehabilitation and remediation if the holder of an environmental authorisation, holder, holder of an old order right fails to do so; to make it clear that the financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure and post closure activities as prescribed; to allow for a three year review of the financial provision and to require that the review decision be published within five days; to make it a requirement for the rehabilitation which can be undertaken annually to be undertaken; to provide for the Minister responsible for mineral resources in consultation with the Minister and the Minister responsible for water affairs to allow an annual drawdown of funds as prescribed within a certain timeframe before decommissioning and closure; to require the transfer of funds provided for latent or residual environmental impacts to the Minister responsible for mineral resources on the issuing of a closure certificate; to require the Minister responsible for mineral resources to access funds provided for latent and residual impacts upon the issuing of a closure certificate; to include the holder of an environmental authorisation for a listed and specified activity for, or directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, holder, holder of an old order right, under the provisions related to environmental liability and the requirement to plan, manage and implement mine closure procedures; to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to empower Director-General of the Department responsible for mineral resources and municipal manager to issue section 28(4) directives; to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from an organ of state that executes regulatory function; to empower the Member of Executive Council to designate environmental management inspectors to undertake compliance and enforce in respect of provincial environmental legislation; to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors; to provide clarity that an environmental mineral and petroleum inspector must also undergo approved training before designation; to provide clarity on functions and general powers of environmental management inspectors when conducting investigations; to provide clarity that the conducting of a “search” is not the primary purpose of an environmental management inspector undertaking a routine inspection; to provide clarity that an environmental management inspector may detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide clarity that the Minister’s power to develop regulations on admission of guilt fines contextualizes the related provisions of the Criminal Procedure Act, 1977; to empower the Minister responsible for mineral resources, Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act; to provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority; to provide clarity on circumstances that an appeal against a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment does not automatically suspend it; to provide clarity wherean appeal against a directive must be lodged at the appropriate appeal authority; to correct references and cross references to offences and penalties, to make failure to comply with certain sections of the financial provisioning an offence and to update the list of offences and penalties;

- National Environmental Management: Protected Areas Act, 2003 so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the Board; to provide for the criteria under which a section 48 permission may be issued or rejected; to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences;

- National Environmental Management: Biodiversity Act, 2004, so as to provide clarity on definition of “control” and to insert definitions of “eradicate” and “well-being”; to ensure that indigenous biological resources are used in an ecologically sustainable manner; to ensure that certain species remain in State custody despite their escape from land under the State’s control; to empower the Minister to prohibit certain activities that may negatively impact on the well-being of faunal biological resources; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the board; to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species; to ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act;
- National Environmental Management: Air Quality Act, 2004, so as to provide the Minister with discretion to establish the National Air Quality Advisory Committee; to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial department responsible for environmental affairs is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality; to provide for textual amendment to section 36(5)(d); to provide for revocation or suspension of atmospheric emission licence;
- National Environmental Management: Integrated Coastal Management Act, 2008, so as to allow for the removal of structures erected prior to commencement of the Act; to repeal Chapter 9 in order to align appeals with section 43 of the National Environmental Management Act, 1998;
- National Environmental Management: Waste Act, 2008, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of “residue deposits” and “residue stockpiles” and “waste”; to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act; to provide for the Waste Management Bureau to be established as a public entity; to provide for the simultaneous submission of the site assessment report and remediation plan relating to contaminated land; to provide clarity that the Minister must keep a national register of all contaminated land; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of a processing fee for the variation of a waste management licence; to increase the fines that could be imposed in terms of regulations made under the Act; to provide clarity that there will be no exemptions provided from obtaining a waste management licence; to repeal Schedule 3;
- National Environmental Management Amendment Act, 2008, so as to clarify that an environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014 is valid under the National Environmental Management Act; to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act;
- To provide for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the National Environmental Management: Waste Act, 2008; to provide for transitional provisions regarding the continuation of the Waste Management Bureau and to provide for matters connected therewith.

3. LEGISLATIVE ANALYSIS

3.1. National Environmental Management Act, 1998

3.1.1 Clause 1

Clause 1 of the Bill seeks to amend the definitions of the “Constitution” to correct the citation of the Act and “environmental mineral resource inspector” to include “petroleum” in the designation. The clause also amends the definition of “financial provision” in section 1 of the NEMA to clarify that the definition applies to an applicant for environmental authorisation, a holder of an environmental authorisation or a holder of a right or permit granted in terms of the Mineral and Petroleum Resources Development Act. Clause 1 further add new definition of “black” relevant to the new NEMA principle promoting full participation of black professionals in the environmental management sector, and a new definition of environmental management instrument is also added. The new definitions of “audit”, “latent environmental impacts”, “mitigate”, “rehabilitate”, “remediate”, “residual environmental impacts” are applicable to the revised section 24P. Consequential definitions of “municipal council”, “municipality” and “municipal manager” are applicable to the revised section 28.

3.1.2 Clause 2

This clause provides an additional NEMA principle, namely that the environment sector must advance and promote the full participation of black professionals.

3.1.3 Clause 3

This clause seeks to amend section 24(2)(b) and (c) of the NEMA has been amended to facilitate more flexibility in the use of environmental management instruments and how they cater for the impact management.

Section 24(2A)(b)(i) has been amended to align the subparagraph with the rest of the section as it has to apply to both prohibitions and restrictions.

The clause amends section 24(5)(bA), (bB) and inserts a new subsection (5A) in NEMA to provide clarity that the Minister responsible for environmental affairs or an MEC may develop regulations setting out the procedure to be followed for the preparation, evaluation and adoption of environmental management instruments. The clause also requires the Minister responsible for environmental affairs to keep a national register of all environmental management instruments adopted in terms of the NEMA and make it publicly available.

3.1.4 Clause 4

This clause provides clarity that the Minister responsible for mineral resources is the competent authority for listed or specified activities that are directly related to prospecting or exploration of a mineral or petroleum resource or primary processing of a mineral or petroleum resource.

The clause also inserts new subsections to provide for the simultaneous submission of environmental authorisation application and any other related licence or permit required under any of the specific environmental management Act. Where the competent authority or

licensing authority is the same authority for the NEMA and specific environmental management Act (SEMA) applications, an integrated decision must be issued. This can still take the form of multiple decisions, but it will force the process of reaching that decision to be consolidated and used to its full extent, namely using one process for information gathering to inform all decisions related to that proposed development.

3.1.5 Clause 5

Section 24G of the NEMA provides for consequences of unlawful commencement of listed or specified activities. However, there is currently no provision to enable a person who has taken ownership or control of property on which an unlawful structure or development has been built to have such structure or development legalised and also for a person who has commenced, undertaken or conducted a waste management activity without a waste management licence. This clause amends section 24G of the NEMA to allow a successor in title or person in control of the land to lodge a section 24G application for such structure or development. The clause further makes it mandatory for the Minister or MEC to direct an applicant to undertake certain actions, including undertaking public participation as prescribed under the environmental impact assessment regulations. The clause further increases the administrative fine to a maximum of R10 million.

3.1.6 Clause 6

Section 24N(2) of the NEMA lists the information that must be contained in the environmental management programme. This clause amends section 24N(2) to provide clarity that such information must be prescribed through regulations.

3.1.7 Clause 7

Section 24O(2) of the NEMA requires the Minister responsible for environmental affairs, Minister responsible for mineral resources or an MEC to consult every State department that administers a law relating to a matter affecting the environment when processing an application for an environmental authorisation. This clause seeks to amend section 24O(2) to also enable an environmental assessment practitioner to consult such State department.

3.1.8 Clause 8

Clause 8 seeks to amend section 24P to provide clarify that an applicant, a holder of an environmental authorization, a holder, holder of an old order right or a holder of an environmental authorisation relating to listed or specified activities for or directly related to mining activities must set aside financial provision for progressive rehabilitation, decommissioning, closure and post closure activities. The clause also set out the financial provisioning vehicles. The clause further provides for financial provision to only be utilised for progressive rehabilitation, decommissioning, closure, post closure.

3.1.9 Clause 9

Clause 9 of the Bill inserts a new section 24PA providing for financial provision for mining. The clause require a holder of an environmental authorisation relating to listed or specified activities for or directly related to mining activities, a holder or holder of an old order right to maintain and retain financial provision for progressive rehabilitation, decommissioning, closure and post closure activities; to review their environmental liability and adjust their financial provision every three

years; and to submit an audit report every five years to the Minister responsible for mineral resources. This clause also empowers the Minister responsible mineral resources in consultation with the Minister responsible for water affairs to approve an annual drawdown of the financial provision subject to certain requirements. The clause further empowers the Minister responsible for mineral resources to access the financial provision on issuing of closure certificate if the financial provisioning vehicle used is an insurance. The Minister responsible for mineral resources or Minister responsible for water affairs is also empowered to use the financial provision to rehabilitate or manage the environmental impacts, if a holder of an environmental authorisation relating to mining activities fails to mitigate, remediate and rehabilitate environmental impacts.

3.1.10 Clause 10

Section 24R(2) of the NEMA allows the Minister responsible for mineral resources to retain such portion of the funds set aside for any latent and or residual environmental impact that may become known in the future. A similar provision is also contained in section 24P of the NEMA. This clause repeals section 24R(2). The clause further ensures that a holder of environmental authorization related to mining activities remains responsible for environmental liability notwithstanding the issuing of a closure certificate, and that such a holder must plan, manage and implement such procedures and requirements in respect of the closure of the mine.

3.1.11 Clause 11

Clause 11 of the Bill repeals section 24S of the NEMA which provides that residue stockpiles and residue deposits must be managed in terms of the provisions of the NEMWA. In this regard, the residue stockpiles and deposits will be managed in terms of the provisions of the NEMA.

3.1.12 Clause 12

Clause 12 of the Bill amends section 28 of the NEMA.

The scope of person on whom a section 28(4) of the NEMA directive can be issued currently does not include those persons listed in section 28(2) (“an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which any activity or process is or was performed or undertaken; or any other situation exists, which causes, has caused or is likely to cause significant pollution or degradation of the environment”). These persons however, are required to comply with the duty of care. There may be circumstances where the environmental authority may have to issue a section 28(4) directive on these categories of persons. This clause ensures that those persons are included in the categories of persons that a section 28(4) directive may be issued by the environmental authorities. The clause also amends section 28(7), (8), (9) and (12) to empower a municipal manager of a municipality to also issue a section 28(4) directive and to implement the provisions of section 28.

The clause further insert a new subsection (4A) to ensure that the person to be issued with a section 28(4) directive is consulted and provided with an opportunity to make any representation before a final section 28(4) directive is issued.

3.1.13 Clause 13

Clause 13 of the Bill amends section 31B to empower the Minister responsible for environmental affairs to designate as an environmental management inspector any staff member of any organ of state, but only if it executes a regulatory function.

3.1.14 Clause 14

This clause amends section 31BA to empower the Minister responsible for water affairs to designate as an environmental management inspector any staff member of any organ of state, but only if it executes a regulatory function.

3.1.15 Clause 15

Section 31BB of the NEMA only empowers the Minister responsible for mineral resources to designate as an environmental mineral and petroleum inspector, any staff member of the Department of Mineral Resources. This clause amends section 31BB to further empower the Minister responsible for mineral resources to designate as an environmental mineral and petroleum inspector any staff member of the Department of Mineral Resources or any organ of state, but only if it executes a regulatory function.

3.1.16 Clause 16

Clause 16 amends section 31C to empower MECs to designate as an environmental management inspector any staff member of any other provincial organ of state, but only if it executes a regulatory function.

3.1.17 Clause 17

Section 31D of the NEMA requires environmental management inspectors as well as environmental mineral resource inspectors to perform their powers within their respective mandates. This clause amends section 31D to empower environmental management inspectors to monitor compliance and enforce any provincial environmental management legislation. The clause also insert a new subsection (3A) to provide clarity that environmental management inspectors and environmental mineral resource inspectors must exercise their respective powers in accordance with any applicable duty. The clause further amend subsections (4), (7) and (8) to empower the Minister of Environmental Affairs, after consultation with the Minister responsible for mineral resources, to support or undertake compliance monitoring and enforcement measures

It if it necessary to address significant harm to the environment caused by prospecting and mining activities.

3.1.18 Clause 18

Clause 18 amends section 31E of the NEMA, which sets out the regulatory power of the Minister to approve training for environmental management inspectors before designation. The current provisions do not cater for same with respect to environmental mineral and petroleum inspectors. This clause amends section 31E to ensure that the environmental mineral and petroleum inspectors will receive the same standard of approved training as is received by the environmental management inspectors before designation. The clause also add subsection (3) to empower the Minister responsible for environmental affairs to prescribe through regulations the Code of Conduct applicable to environmental management inspectors and environmental mineral and petroleum inspectors.

3.1.19 Clause 19

Clause 19 clarifies that environmental management inspectors who exercise powers and perform duties in terms of the NEMA are issued, and on request produce, identity cards as proof of their designation. The amendment seeks to include environmental mineral and petroleum inspectors as well as provincial legislation in the exercise of powers and performance of duties.

3.1.20 Clause 20

Section 31G(1)(a) of the NEMA deals with the functions of the environmental management inspectors. The current section allows the environmental management inspectors to undertake an investigation on reasonable suspicion of an offence, breach of a law or term or condition of a permit or authorisation. The section does not explicitly provide for environmental management inspectors to undertake inspections, including responding to complaints of non-compliance. The amendment to section 31G(1)(a) allows them to do so.

3.1.21 Clause 21

Section 31H of the NEMA deals with the general powers of the environmental management inspectors. This clause amends section 31H(1)(a) to allow the environmental management inspectors to pose question to persons without the requirement of a reasonable suspicion. This is required in order to allow the inspectors to gather information of an alleged non-compliance through the asking of relevant questions prior to a reasonable suspicion being formed. The clause also amends section 31H(1)(c)(ii) to ensure that environmental management inspectors are also empowered to monitor compliance and enforce not only national pieces of environmental legislation, but also any provincial environmental management legislation. The clause further amends section 31H to empower environmental management inspectors to issue lawful instructions.

3.1.22 Clause 22

Section 31I of the NEMA deals with seizure of items.

Clause 22 is a consequential amendments to ensure that environmental management inspectors allow them to issue lawful instructions, rather than mere requests, in accordance with the provisions of the NEMA.

3.1.23 Clause 23

Section 31J of the NEMA deals with environmental management inspectors powers to stop, enter and search vehicles, vessels and aircraft.

Clause 23 is a consequential amendment to ensure that environmental management inspectors are also empowered to monitor compliance and enforce any provincial environmental management legislation.

3.1.24 Clause 24

Clause 24 amends section 31K of the NEMA, which provides for routine inspections, without a warrant, by environmental management inspectors, and certain powers that may be executed during routine inspections. The clause amends section 31K to provide clarity that the conducting of a “search” is not the primary purpose of undertaking a routine inspection, but rather the entry onto certain premises for the purposes of ascertaining compliance.

In addition, the amendment extends the power to environmental mineral and petroleum inspectors to apply for a warrant to enter residential premises for the purposes of conducting an inspection.

In addition, an environmental management inspector is often required to detain an item for a temporary period of time in order to conduct further analysis or verification as to whether or not such item complies with the relevant legal requirements. For example, a consignment of plant or animal specimens or any derivatives thereof being shipped in a container through a national port of entry or exit. An environmental management inspector may be required to detain the container in order to verify the exact nature and scope of the consignment.

3.1.25 Clause 25

Section 31L of the NEMA deals with the environmental management inspector's power to issue compliance notices.

This clause amends section 31L(1) to clarify that an environmental management inspector as well as an environmental mineral and petroleum inspector must issue a compliance notice which substantially comply with the prescribed form.

3.1.26 Clause 26

Section 31M of the NEMA deals with objections to compliance notice.

Clause 26 is a consequential amendment to clarify that a person who wants to object to a compliance notice may do so, by making representations, to the relevant objection authority, namely, the Minister responsible for environmental affairs, the Minister responsible for mineral resources, the Minister responsible for water affairs or a municipal council, depending on which government department issued the compliance notice.

3.1.27 Clause 27

Section 31O of the NEMA provides the environmental management inspector powers of the South African Police Services'.

Clause 27 is a consequential amendment to ensure that the members of the South African Police Services are also empowered to monitor compliance and enforce any provincial environmental management legislation.

3.1.28 Clause 28

Section 31P of the NEMA imposes a duty on a holder of a permit, licence, permission, certificate, authorisation or any other document to produce such documents as and when requested by the environmental management inspector.

Clause 28 amends section 31P to clarify that such a person must produce such documents on the lawful instruction by the environmental management inspector and an environmental mineral and petroleum inspector. The documentations include those issued in terms of provincial environmental management legislation.

3.1.29 Clause 29

Section 31Q of the NEMA deals with confidentiality of information.

Clause 29 is a consequential amendment to clarify that the confidentiality is also applicable to provincial environmental management legislation.

3.1.30 Clause 30

Section 34E of the NEMA deals with the treatment of seized live specimens.

Clause 30 amends section 34E to provide that live specimens “may”, instead of “must”, be deposited with a suitable institution, rescue centre or facility; as the circumstances require. It further provides clarity that seized live specimens may be disposed of in terms of section 30(a) of the Criminal Procedure Act, 1977. The latter section of the Criminal Procedure Act provides legal mechanisms on how to dispose of a seized perishable item.

3.1.31 Clause 31

Clause 31 of the Bill amends section 34G of the NEMA, which sets out regulatory power of the Minister responsible for environmental affairs to specify offences and prescribe the amount for purposes of admission of guilt fines. The clause amends section 34G to ensure that Minister’s regulatory power contextualizes section 57(5) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

3.1.32 Clause 32

Section 42B of the NEMA deals with the delegation by Minister of mineral resources.

Clause 32 amends section 42B to provide clarity that the Minister of mineral resources may also delegate to his or her powers under NEMA to an organ of state subject to an agreement between the Minister responsible for mineral resources and that organ of state. The clause further provides clarity that the delegation may be subdelegated and also withdrawn. It further provides that the Minister responsible for mineral resources may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation, subject to any rights that may have accrued to a person as a result of the decision.

3.1.33 Clause 33

Clause 33 of the Bill inserts new sections 42C and 42D to the NEMA. These new sections empower the Minister responsible for water affairs and municipal manager of a municipality to delegate his or her powers under the NEMA to an official in the Department responsible for water affairs or municipality, respectively.

3.1.34 Clause 34

Clause 34 of the Bill amends section 43 of the NEMA, which allows any person to appeal against an environmental decision issued by national or provincial departments responsible for environmental affairs. Section 43 do not appear to allow for a person to lodge an appeal in a situation where the power to issue a section 28(4) directive was delegated by the Director General or head of department to an official within their respective departments. This clause amends section 43 to ensure that a person may also appeal a section 28(4) directive issued by a delegated official. The amendment further clarifies that the submission of an appeal will not automatically suspend a section 28(4) directive or other administrative enforcement

notice that is aimed at addressing significant harm to the environment, unless there is good cause shown to the satisfaction of the Minister.

3.1.35 Clause 35

This clause provides that where a norm and standard specifically provides for a provision to be an offence, then those specific provisions will be considered to be offences, rather than the generic clause current provided in section 49A(1)(b). In terms of section 49A(1)(p) of NEMA, it is a criminal offence not to comply with a request of an environmental management inspector. However, the dictionary meaning of a request is “*an instance of asking for something, especially in a polite or formal manner*” — this implies that being requested has a discretion whether or not to meet the request. The dictionary definition of “instruction” on the other hand means “*A making known to a person what he is required to do; a direction, an order, a mandate*”. In the context of Chapter 7 of NEMA and the powers of environmental management inspectors, section 49A(1)(o) and (p) meant to refer to instruction rather than a request. The clause further creates new offences on non-compliance with sections 24P(3), (4), (5), (6) or (10) and 24PA(1) and (2) (i.e. failure by a holder of an environmental authorisation, holder of an old order right or holder of an environmental authorisation for mining activities to provide financial provision for progressive rehabilitation, decommissioning, closure and post closure activities.

3.1.36 Clause 36

Section 49B(3) of NEMA provides that a person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment. The fact that the monetary penalty is not specified makes the provision subject to the Adjustment of Fines Act, which in effect provides for a ratio of 1 year of imprisonment to R20 000. Some of the offences could be serious, for example, failing to comply with a condition of an exemption, hindering or interfering with an EMI in the execution of their duties etc. It is therefore proposed that the maximum monetary penalty for these offences be specified as R1 million, as is the standard ratio in NEMA and SEMAs. The clause also provides for penalties relating to the non-compliance with sections 24P(3), (4), (5), (6) or (10) and 24PA(1) and (2).

3.1.37 Clause 37

Section 34 read with Schedule 3 provides a legal framework for the State to request a court of law to enquire and assess the monetary value of any loss or damage caused to the environment as a consequence of the offence committed. The assessment may result in a court order either awarding damages or compensation or a fine equal to the amount so assessed, or remedial measures to be undertaken by a convicted person. This clause amends Schedule 3 to provide for textual amendments to ensure the citation of appropriate offences listed in certain national and provincial legislation.

3.2 National Environmental Management: Protected Areas Act, 2003

3.2.1 Clause 38

Section 48(1)(a) and (c) prohibit commercial prospecting, mining, exploration, production or related activities in national park, special nature reserve or nature reserve. However, section 48(1)(b) allows commercial mining in a protected environment provided the Minister issues a written permission. The clause further amends subsection (4)

to provide for the criteria under which the written permission contemplated in section 48(1)(b) may be issued by the Minister.

The Minister may require any further information that he or she may deem necessary before making a decision.

3.2.2 Clause 39

Currently, section 57 of the NEMPAA only allows for the Chief Executive Officer of the South African National Parks to be on its Board. However, in line with the recommendations of the third Report on Governance in South Africa, 2009 (King III), the Chief Financial Officer should also be on the board. The amendment to section 57 is intended to provide clarity that the Chief Financial Officer must be a member of the board.

3.2.3 Clause 40

Section 48A of the NEMPAA restricts certain activities in a marine protected area. However, section 89 of the NEMPAA, which provides for offences and penalties, does not make it an offence where a person undertakes a restricted activity in contravention of NEMPAA. The clause amends section 89 to insert section 89(1)(e) and (2A), and thus creating an offence for any person to undertake a restricted activity in contravention of NEMPAA. The clause also rectifies incorrect references to offences within NEMPAA.

3.3. National Environmental Management: Biodiversity Act, 2004

3.3.1 Clause 41

This clause amends the definition of “control”, and inserts a new definition of “eradicate” in order to provide clarity on the actions, measures or methods to be undertaken when dealing with listed invasive species. The clause also inserts a new definition of “well-being” in order to provide clarity on the meaning of the expression.

3.3.2 Clause 42

The clause amends section 2 which provides from the objects of the Act. The clause seeks to amend section 2(a)(ii) to extend the scope of the objects of the Act to clarify that the object of the Act is to provide that the use of indigenous biological resources in a manner that is ecologically sustainable, including taking into account the well-being of any faunal biological resource.

3.3.3 Clause 43

Clause 43 amends section 3 which provides for the State’s trusteeship of biological diversity. In terms of common law, all wild animals are regarded as *res nullius*, meaning it belongs to everybody but belongs to nobody in particular. The implication of this common law principle is that, once a wild animal escapes from the land on which it occurred, the owner of such land loses ownership of the wild animal that has escaped. The Game Theft Act, 1991 (Act No. 105 of 1991), changed the common law status of wild animals, in that it makes provision for a person to retain ownership of a wild animal that escapes from land that it adequately fenced, and in respect of which a certificate of adequate enclosure has been issued by the Premier of the province in which the land is situated. However, the provisions of the Game Theft Act only apply to land where game is kept for hunting or commercial purposes — it does not apply to land where wild animals are kept for

conservation purposes. The implication is that where wild animals escape from state-owned land, the state is no longer the custodian of those animals.

This clause seeks to address this anomaly and clarify that in order for the state to give full effect to section 24 of the Constitution of the Republic of South Africa, 1996, the State must be in a position to remain the custodian of wild animals that escape from land under its control. The proposed amendment also gives effect to the judgement in *Eastern Cape and Tourism Agency v Medbury (Pty) t/a Crown River Safari and Another (1466/2012) [2016] ZAECGHC 26*, in which the High Court held that this issue must be legislated and not be relied on by developing the common law by way of jurisprudence.

3.3.4 Clause 44

This clause inserts a new section 9A to empower the Minister to prohibit, by notice in the *Gazette*, any activity that may negatively impact on the well-being of a faunal biological resource. Such a prohibition will be subject to such conditions as the Minister may specify in the notice. A public participation process must be undertaken before the Minister publish the final notice.

3.3.5 Clause 45

Currently, section 13 of the NEMBA only allows for the Chief Executive Officer of the South African National Biodiversity Institute to be on its Board. However, in line with the recommendations of King III, the Chief Financial Officer should also be on the Board. The amendment to section 13 is intended to provide clarity that the Chief Financial Officer must be a member of the Board.

3.3.6 Clauses 46 and 47

These clauses contain consequential amendments to the revised definitions of 'control' and 'eradicate'. It also empowers the Minister to prescribe measures to control or eradicate listed invasive species. Categorisation of species in the regulations is not taken into account. All species are treated the same. This amendment allows the Minister to determine measures suitable for the different species. In addition, it remedies an impractical provision which requires every land owner or controller to know whether or not they have invasive species on their land. Potentially most people may have some or other invasive plant in their gardens and not know it. However, the more dangerous invasive species (from a health or environmental perspective) should be addressed and the Minister is given the power to prescribe the circumstances in which give written notification of invasive species on land or is necessary. Clause 47 also inserts a new subsection (6) in section 75 empowering the Minister to provide education and awareness to local communities affected by listed invasive species.

3.3.7 Clauses 48

Clause 48 amends section 97 which provides for the power of the Minister to make regulations. The clause extends the power of the Minister to provide that the Minister may make regulations in relation to the well-being of a faunal biological resource.

3.3.8 Clauses 49 and 50

Clauses 49 and 50 of the Bill amend sections 99 and 100 of the NEMBA, respectively. These clauses provide clarity that the MEC for

environmental affairs in each province must also follow the consultative process set out in sections 99 and 100 of the NEMBA when exercising a power under the Act.

3.4. National Environmental Management: Air Quality Act, 2004

3.4.1 Clause 51

Section 13 of the NEMAQA deals with the establishment of the National Air Quality Advisory Committee. This clause amends section 13 of the NEMAQA to provide the Minister with a discretion to establish a National Air Quality Advisory Committee.

3.4.2 Clause 52

Clause 53 of the Bill amends section 22A of the NEMAQA. This clause substitute section 22A to provide for the consequences of unlawful conducting of listed activities. The clause will address two scenarios, namely, to provide for those activities that were operated without the registration certificate under the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965), and those activities that have an environmental authorisation under the Environmental Impact Assessment Regulations, 2014, but no atmospheric emission licence under NEMAQA. This clause provides for the process and procedures to be followed in addressing the non-compliance with the law. The clause further empowers the Minister to direct an applicant to undertake certain action, including undertaking public participation as prescribed under the environmental impact assessment regulations. The clause sets the administrative fine to a maximum of R10 million.

3.4.3 Clause 53

The clause amends section 36 to provide clarity that a province must be regarded as a licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality. Section 36(5) identifies the Minister as the licensing authority, in five instances, to issue atmospheric emission licences for air quality activities. Section 36(5)(d) is intended to facilitate the issuing of an integrated environmental authorisation where the Minister is also a competent authority for the environmental impact assessment activities, and licensing authority for the waste management activities. The current provision appears to suggest that the Minister will always be the licensing authority, whereas the intention is to provide that the Minister is only the licensing authority if the Minister is also identified as such in terms of NEMA and NEMWA. The clause amends section 36(5)(d) to provide for textual amendments to clarify that the Minister is only the licensing authority if the Minister is identified as such in terms of NEMA, NEMWA and NEMAQA. Section 36(8) has been amended to extend the scope to also allow for co-operative agreement to be reached between the Municipality, MEC and the Minister on who the licensing authority will be on any application.

3.4.4 Clause 54

Clause 54 inserts a new section 47A to provide the licensing authority with the legal power to revoke or suspend an atmospheric emission licence subject to the legal requirements set out in the section. The clause also sets out the process and procedure to be followed before a licensing authority may revoke or suspend the licence.

3.4.5 Clause 55

Section 53(*k*) of the NEMAQA appears to limit Minister's scope to the development of appeal regulations to process appeals against decisions of officials in the performance of their functions in terms of regulations. Most of the decisions are taken in terms of the Act itself or in terms of subordinate legislation other than regulations. Whereas the empowering provision for the development of appeal regulations under section 43 of the NEMA appears to be wider (appeals against a decision taken by any person acting under a power delegated by the Minister or MEC under NEMA or a SEMA). This clause deletes paragraph (*k*) in section 53 to ensure that appeal regulations developed under section 43 of NEMA are also applicable to appeals against air quality decisions.

3.5. National Environmental Management: Integrated Coastal Management Act, 2008

3.5.1 Clause 56

Section 60 of the NEMICMA has been amended to allow for the issuing of notices for the removal of structures that were erected prior to the commencement of the Act. This amendment clarifies the retrospective effect of section 60. Currently retrospectively is implied, and its application may leave some doubt. This is also in line with section 59 of the Act and section 28 of NEMA, which expressly enables retrospective application.

3.5.2 Clause 57

Chapter 9 of the NEMICMA deals with appeals under this Act. It is the only Specific Environmental Management Act (SEMA) under the umbrella NEMA that has its own appeal provisions, despite the NEMA appeal provisions, specifically apply to all SEMAs. To streamline and avoid duplication, the Appeal chapter in the NEMICMA is being repealed.

3.6. National Environmental Management: Waste Act, 2008

3.6.1 Clause 58

The clause inserts the definitions of "building and demolition waste", "business waste", "domestic waste", "general waste", "hazardous waste", "inert waste" that were contained in Schedule 3 to the Act. These definitions are removed from Schedule 3 and inserted in section 1 of the Act. This clause also inserts new definitions of "primary processing", "residue deposit" and "residue stockpile" in alignment with NEMA and the Mineral and Petroleum Resources Development Act, 2002. The clause provides for textual amendments to the definition of "waste" so as to provide legal clarity on the interpretations and to prevent unintended consequences.

3.6.2 Clauses 59

This clause provides clarity that residue stockpiles and residue deposits are no longer regulated under NEMWA, but under NEMA.

3.6.3 Clause 60

This clause provide clarity that the Waste Management Bureau is established as a juristic person with a Board, and that in absence of a functional board, the powers and duties of the Board revert to the Minister responsible for environmental affairs.

3.6.4 Clause 61

Clause 61 substitutes section 34C of the NEMWA and sets out the Minister's supervisory powers.

3.6.5 Clause 62

This clause amends sections 34F, 34G, 34H, 34I, 34J, 34K and 34L of the NEMWA. The clause sets out the general powers of the Waste Management Bureau, governing Board of the Waste Management Bureau, composition and membership, qualifications for members of the governing Board, appointment procedure for members of the governing Board, term of office of members of the Board and conditions of appointment of members of the governing Board.

3.6.6 Clause 63

This clause inserts new sections 34M-34Z. These sections set out the governance matters of the Board.

3.6.7 Clause 64

Clause 64 amends section 36(5) to provide clarity that an owner of the land that is likely to be contaminated has a legal obligation to notify the Minister of such contamination as soon as that owner becomes aware.

3.6.8 Clauses 65 and 66

These clauses amend sections 37 and 38 to provide clarity that a site assessment report must be submitted together with a remediation plan.

3.6.9 Clauses 67

This clause amends section 41 of the NEMWA. This clause provides clarity that the Minister must only keep a national register of all contaminated land.

3.6.10 Clause 68

Section 43 of the NEMWA identifies the licensing authorities for different waste management licences. The Minister responsible for mineral resources is identified as one of the licensing authorities to issue waste management licences in so far as the waste management activities is directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource. This clause amends subsection (1B) to ensure that the Minister responsible for mineral resources as the identified licensing authority is responsible for the implementation of the waste management licensing system in so far as the waste management activities is directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource. The clause also amends subsection (3) to facilitate an agreement between the licensing authorities on the implementation of the licensing system. The amendment also seeks to add new subsection (4) to section 43. The addition propose that in instances where the MEC responsible for environmental affairs fails to take a decision to issue a waste management licence within prescribed timeframes, an applicant may request the Minister to take the decision. The intention of this amendment is therefore to make provision for exceptional circumstance in instances where the MEC unreasonably fails to take a decision within the prescribed timeframes. When considering this

amendment the Department was mindful of sections 125(2)(b) of the Constitution of the Republic of South Africa, 1996, which provides that the Premier, together with other members of the Executive Council has the power to implement all national legislation within the functional areas listed in Schedule 4 or 5 of the Constitution, except where the Constitution or an Act of Parliament provides otherwise.

3.6.11 Clause 69

This is a consequential amendment. This clause repeals section 43A of the NEMWA to provide clarity that residue stockpiles and residue deposits are no longer regulated under NEMWA, but under NEMA.

3.6.12 Clause 70

The NEMWA was amended to include the Minister responsible for mineral resources as one of the licensing authorities. The term licensing authority, collectively, include the Minister, Minister responsible for mineral resources and MECs. This clause provides for the consequential textual amendment in section 52(5).

3.6.13 Clause 71

Currently, the variation of a waste management licence is not subject to the payment of a prescribed processing fee. Practically, it has been established that the variation of a waste management licence involves a lot of work. This clause provides for the payment of processing fee for the variation of a waste management licence.

3.6.14 Clause 72

This clause is a consequential amendment deleting the offence regarding residue stockpiles and residue deposits. These stockpiles and deposits are no longer regulated under NEMWA, but under NEMA. The clause also creates an offence if a person contravenes a provision of a norm or standard.

3.6.15 Clause 73

This clause is also a consequential amendment deleting the Minister's power to develop regulations. Residue stockpiles and residue deposits are no longer regulated under NEMWA, but under NEMA.

3.6.16 Clause 74

Section 69A has been repealed as it is no longer necessary for the Minister to make regulations pertaining to the Waste Management Bureau as it will now be a fully-fledged public entity.

3.6.17 Clause 75

The fines that can be imposed in terms of regulations under this Act have been amended to be in line with fines that can be imposed in terms of the National Environmental Management Act, 1998 and the other specific environmental management Acts.

3.6.18 Clauses 76, 77, 78 and 79

The provisions of section 74 do not provide the Minister responsible for mineral resources with legal power to issue exemptions in so far such exemptions relate to provisions administered by the Minister responsible for mineral resources. The scope for exemption applications also appears to be wide.

Clauses 76, 77, 78 and 79 amend sections 74, 75, 76 and 77 provide for the consequential textual amendment empowering the Minister responsible for mineral resources to issue an exemption in so far such an exemption relate to a provision administered by the Minister responsible for mineral resources. The clauses also provide clarity that there will be no exemptions provided from obtaining a waste management licence.

3.6.19 Clause 80

The clause replaces the expression of the “Minister of Water Affairs and Forestry” with the Minister responsible for water affairs.

3.6.20 Clause 81

Schedule 3 provides for sources of waste and is read with the definition of “waste” contained in section 1 of the Act. This clause repeals Schedule 3 in order to provide clarity of what is waste. The revised definition of “waste” provides such clarity on what is waste.

3.7 National Environmental Management Amendment Act, 2008

Clause 82

It appears that there is legal uncertainty whether an environmental management plan or environmental management programme approved and issued in terms of the Mineral and Petroleum Resources Development Act, prior to the implementation of the One Environmental System on 8 December 2014 is deemed an environmental authorisation under the National Environmental Management Act, 1998. The clause amends section 12 to provide legal clarity that an environmental management plan or programme applied for and approved in terms of the Mineral and Petroleum Resources Development Act, 2002, on or before 8 December 2014, is deemed to have been approved and issued in terms of National Environmental Management Act, 1998. The clause also provides clarity that environmental management plan or programme approved under the Mineral and Petroleum Resources Development Act, 2002 after 8 December 2014, if the application for the exploration, prospecting, or mining right, permits or licence was received before that date, is deemed to have been approved and an environmental authorisation issued under the National Environmental Management Act, 1998. This clause further provides clarity that an environmental appeal lodged in terms of a decision made under the Mineral and Petroleum Resources Development Act, must be finalised in terms of the Mineral and Petroleum Resources Development Act, regardless whether the decision was made before or after 8 December 2014.

3.8 Clause 83

3.8.1 Clause 83 provides for transitional provisions regarding residue stockpiles and residue deposits approvals issued in terms of the National Environmental Management: Waste Act, 2008. The clause provides for clarity that the residue stockpiles and residue deposits approvals or waste management licences issued in terms of the National Environmental Management: Waste Act, 2008, remain valid until they lapse or are replaced under National Environmental Management Act, 1998.

3.8.2 The clause further provide clarity that the regulations pertaining to the management and control of residue stockpiles and residue deposits from a prospecting, mining, exploration or production operation developed under the National Environmental Management: Waste Act, 2008 remain valid and regarded as being developed under NEMA.

3.9 Clause 84

Clause 84 provides for transitional provisions for the Waste Management Bureau. The clause provides clarity that anything done by the Waste Management Bureau under the repealed Part 7A of the National Environmental Management: Waste Act, 2008 remains valid until any subsequent new provisions overrides it.

4. DEPARTMENTS CONSULTED

The following national and provincial Departments were consulted:

- Mineral Resources;
- National Treasury; and
- all provincial departments responsible for environmental affairs through Environment MINMEC.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will create financial liability for the state, but will be funded through the levies on waste streams collected by SARS.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Constitution prescribes the procedure for the classification of Bills. Therefore a Bill must be correctly classified otherwise it will be constitutionally out of order.
- 6.2 The State Law Advisers have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 6.3 The established test for the classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content.
- 6.4 Therefore the issue to be determined is whether the proposed amendments of the various Acts of Parliament, contained in the Bill, in substantial measure, fall within a functional area listed in schedule 4 to the Constitution.
- 6.5 The stated general purpose of the Bill is to address practical challenges which have been identified in the application of the various Acts that are sought to be amended. In this respect the Bill seeks to amend the following Acts of Parliament—
 - National Environmental Management Act, 1998, so as to correct the citation to the definition of “Constitution”; to add new definitions of “audit”, “black”, “environmental management instrument”, “latent environmental impacts”, “municipal council”, “municipality”, “municipal manager”, “mitigate”, “rehabilitate”, “remediate”, “residual environmental impacts”; to correct the definition of “environmental mineral resources inspector”; to provide clarity to the definition of “financial provision”; to add a new environmental management principle promoting diversity in sector; to provide clarity on what an environmental manage-

ment instrument is; to use the term environmental management instrument consistently in the Act, to remove a duplication provision for making regulations for laying down the procedures for the adoption of environmental management instruments; to provide for a register and making available the register, of all environmental management instruments adopted in terms of the Act; to provide clarity that the Minister responsible for mineral resources is responsible for activities constituting prospecting, exploration, mining and production as well as those directly related to prospecting, exploration, extraction, primary processing of a mineral or petroleum resource; to clarify that the MEC can be regarded as the competent authority for providing environmental authorisation in the event that Cabinet identify that the Minister should be the competent authority, when there is agreement between the Minister and the relevant MEC; to provide for simultaneous submission of the National Environmental Management Act and the specific Environment Management Act applications for purposes of one environmental system; to provide for simultaneous submission of National Environmental Management Act and specific environmental management Act applications in order to enable integrated environmental authorisation; to provide for a trigger for the simultaneous submission of a National Environmental Management Act or specific environmental management Act applications after acceptance of mining right; to provide clarity that a successor in title or person who controls the land may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to empower the Minister to prescribe the information that must be contained in environmental management programme; to enable an environmental assessment practitioner to undertake the consultation to be undertaken with a State Department on application for environmental authorisation; to provide clarity on what is to be audited in relation to financial provisioning; to provide the Minister with the power to prescribe instances for which financial provisioning is required; to provide clarity that an applicant or holder of an environmental authorization, holder, holder of an old order right relating to mining activities must set aside financial provision for progressive rehabilitation, mitigation, mine closure and the management of post closure environmental impacts; to identify the vehicles which must be used when providing the financial provision; to allow the Minister responsible for water affairs access to the financial provision to undertake rehabilitation and remediation if the holder of an environmental authorisation, holder, holder of an old order right fails to do so; to make it clear that the financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure and post closure activities as prescribed; to allow for a three year review of the financial provision and to require that the review decision be published within five days; to make it a requirement for the rehabilitation which can be undertaken annually to be undertaken; to provide for the Minister responsible for mineral resources in consultation with the Minister and the Minister responsible for water affairs to allow an annual drawdown of funds as prescribed within a certain timeframe before decommissioning and closure; to require the transfer of funds provided for latent or residual environmental impacts to the Minister responsible for mineral resources on the issuing of a closure certificate; to require the Minister responsible for mineral resources to access funds provided for latent and residual impacts where the vehicle is insurance on the issuing of a closure certificate; to include the holder of an environmental authorisation for a listed and specified activity for, or directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, holder, holder of an old order right, under the provisions related to environmental liability and the requirement to plan, manage and implement mine closure procedures; to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to empower Director-

General of the Department responsible for mineral resources and municipal manager to issue section 28(4) directives; to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from an organ of state that executes regulatory function; to empower the Member of Executive Council to designate environmental management inspectors to undertake compliance and enforce in respect of provincial environmental legislation; to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors; to provide clarity that an environmental mineral and petroleum inspector must also undergo approved training before designation; to provide clarity on functions and general powers of environmental management inspectors when conducting investigations; to provide clarity that the conducting of a “search” is not the primary purpose of an environmental management inspector undertaking a routine inspection; to provide clarity that an environmental management inspector may detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide clarity that the Minister’s power to develop regulations on admission of guilt fines contextualizes the related provisions of the Criminal Procedure Act, 1977; to empower the Minister responsible for mineral resources; Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act; to provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority; to provide clarity on circumstances that an appeal against a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment does not automatically suspend it; to provide clarity that an appeal against a directive must be lodged at the appropriate appeal authority; to correct references and cross references to offences and penalties, to make failure to comply with certain sections of the financial provisioning an offence and to update list of offences and penalties;

- National Environmental Management: Protected Areas Act, 2003 so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the Board; to provide for the criteria under which a section 48 permission may be issued or rejected; to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences;
- National Environmental Management: Biodiversity Act, 2004, so as to provide clarity on definition of “control” and to insert definitions of “eradicate” and “well-being”; to ensure that indigenous biological resources are used in an ecologically sustainable manner; to ensure that certain species remain in State custody despite their escape from land under the State’s control; to empower the Minister to prohibit certain activities that may negatively impact on well-being of faunal biological resources; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the board; to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species; to ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act;
- National Environmental Management: Air Quality Act, 2004, so as to provide the Minister with discretion to establish the National Air Quality Advisory Committee; to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial department responsible for environmental affairs is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality; to provide for textual amendment to section 36(5)(d); to provide for revocation or suspension of atmospheric emission licence;

- National Environmental Management: Integrated Coastal Management Act, 2008, so as to allow for the removal of structures erected prior to commencement of the Act; to repeal Chapter 9 in order to align appeals with section 43 of the National Environmental Management Act, 1998;
 - National Environmental Management: Waste Act, 2008, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of “residue deposits” and “residue stockpiles” and “waste”; to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act; to provide for the Waste Management Bureau to be established as a public entity; to provide for the simultaneous submission of the site assessment report and remediation plan relating to a contaminated land; to provide clarity that the Minister must keep a national register of all contaminated land; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of processing fee for the variation of a waste management licence; to increase the fines that could be imposed in terms of regulations made under the Act; to provide clarity that there will be no exemptions provided from obtaining a waste management licence; to repeal Schedule 3;
 - National Environmental Management Amendment Act, 2008, so as to clarify that an environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014 is valid under National Environmental Management Act; to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act;
 - To provide for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the National Environmental Management: Waste Act, 2008; to provide for transitional provisions regarding the continuation of the Waste Management Bureau and to provide for matters connected therewith.
- 6.6 Each of the proposed amendments that are contained in the various Acts have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 6.7 In our view the subject matter of the Bill falls within the functional areas listed in Schedule 4, namely “environment”, and it affects provinces. We are therefore of the opinion that this Bill must be dealt with in accordance with the procedure set out in section 76 of the Constitution.
- 6.8 The State Law Advisers are also 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.