

COMPENDIUM OF SOUTH AFRICAN ENVIRONMENTAL LEGISLATION

(2nd edition)

Morné van der Linde
and Loretta Feris (editors)

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Compendium of South African Environmental Legislation (2nd edition)

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FOREWORD

Judges and other lawyers have in recent years become increasingly aware of the important role of the law, both at international and at national level, in freeing, as it was put in the Millenium Declaration adopted by the UN General Assembly in September 2000, 'all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs'.

At the August 2002 Global Judges Symposium held in Johannesburg, those present being members of the judiciary from across the globe, adopted a statement, now known as the Johannesburg Principles, in which they affirmed their adherence to the Rio Declaration on Environment and Development which lays down the basic principles of sustainable development. They also affirmed that 'an independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law'.

They stated that they were 'strongly of the view that there is an urgent need to strengthen the capacity of judges, prosecutors, legislators and all persons who play a critical role at national level' in the field of environmental law. They expressed their conviction that a principal cause contributing to the lack of effective implementation, development and enforcement in this field is what they described as 'the deficiency in the knowledge, relevant skills and information in regard to environmental law'. Accordingly, they reiterated the urgent need to strengthen the capacity of judges and others who play a critical role at national level in matters affecting the environment. To this end they called for a concerted and sustained programme of work focussed on education, training and dissemination of information, including judicial colloquia.

In December 2003, at a meeting of Chief Justices and senior judges from 13 countries in Southern and Central Africa, the Johannesburg Principles were reaffirmed and appreciation was expressed to the Executive Director of the United Nations Environment Programme (UNEP) for the measures he had undertaken to implement the outcome of the Global Symposium. Plans of work were developed during the meeting so as to enable the judiciaries of the different countries to contribute effectively to the development, implementation and enforcement of environmental law in their jurisdictions.

I am sure that this *Compendium* will make a significant contribution to that strengthening the capacity of judges and others working in the field of environmental law in this country, regarded so necessary by judges at the Global Symposium.

In addition to the material it contains relating to South African legislation on environmental law, a further valuable feature of work is the information it contains regarding multilateral environmental agreements, as well as the particulars it provides of the various websites which usefully may be consulted for information on the topic.

I congratulate its editor, Advocate Morné vd Linde, on the book that he has produced. May it enjoy the success it deserves.

Ian Farlam, Judge of Appeal, Supreme Court of Appeal, South Africa

FOREWORD

The importance of the interaction between environmental law and sustainable development should not be underestimated. As stated by Tommy Koh in the UNEP Magazine *Our Planet* (vol. 15, No 3), 'a country's capacity to protect its environment and its prospects of achieving sustainable development are enhanced if its adherence to the rule of law is strong'.

Based on this conviction, UNEP has been and is at the forefront in supporting the efforts of the community of nations to develop international, regional and national legal regimes to promote the goals of sustainable development and in its implementation as well as in providing material resources, technical support and expert guidance in the advancement of environmental work in several related fields including the development of environmental law and the universal principles that guide policymakers as well as lawyers and judges in the dispensation of environmental justice. This is evident in the assistance provided by UNEP for capacity building in many countries for the development, further strengthening and implementation of national environmental legislation. The conduct of national, regional and global training programmes and the wide range of UNEP publications and dissemination of environmental material and information have contributed to the work of a large number of individuals and organisations working for the advancement of environmental law and policy.

Timely, accurate and dependable information is essential for making well informed decisions by everyone engaged in the development, application and enforcement of environmental law at international and national levels. One of the major challenges that legal stakeholders in developing countries and countries with economies in transition face is getting access to relevant information and material on environmental law.

UNEP's experience, drawn from its training programmes, judicial symposia, missions and other contacts, is that government officials, judges, teachers and students, and those engaged in environment-related work in regional, national and local institutions, the private sector and civil society organisations, particularly in developing countries and countries with economies in transition, feel a serious and urgent need for easy access to environmental law materials. Although there are many reference books on international law, there is a notable dearth of such books on environmental law. Where available, such books tend to be expensive and beyond the reach of many individuals and institutions.

The *Compendium of South African Environmental Legislation* is one of the numerous environmental law publications published by UNEP in an effort to respond to the wide demand for environmental law materials. It is intended to be a handy reference book of up-to-date information on environmental legislation at the national level.

It provides a source of quick and easy reference for all those engaged in the field of environmental law and policy in governments, parliaments, judiciaries, private and public sectors, national and regional institutions, civil society organisations and the public.

It brings together South Africa's Constitutional provisions relevant to the environment and the existing framework environmental legislation as well as

sectoral legislation on environment and natural resources management. It also provides a list and brief description of selected multilateral environmental agreements to which South Africa is a party.

I hope that this *Compendium* and the other UNEP Environmental Law publications will assist those working in the area of environmental law and policy as well as its administration, and will further increase the interest in environmental law as a tool to address current and emerging environmental challenges. This publication will also represent an important contribution to the work of the legal communities in other countries who share similar legal systems with South Africa.

I wish to acknowledge the excellent work done by the Centre for Human Rights of the University of Pretoria, and especially to Advocate Morné vd Linde who edited this publication.

Bakary Kante, Director, Division of Environmental Policy Development and Law, United Nations Environment Programme, Kenya

INTRODUCTION

Historically, integrated environmental management and its enforcement, from a regulatory approach, was virtually absent and any attempt made to protect the environment or matters inherent thereto can be described as both reactive and of an *ad hoc* nature.

Although various regulatory norms relating to environmental protection and management can be traced back, as early as the 1940s, the first concerted effort to provide for environmental management in a more holistic approach, materialized through a legislative framework: The Environmental Conservation Act, Act 73 of 1989. In furtherance of the objectives of this act, the former Environmental Impact Assessment Regulations were promulgated during September 1997 which partially resulted in a more proactive approach to mitigating and managing any potential adverse impacts on the environment through developmental processes.

Despite the initial positive approaches to regulating, protecting and managing the environment, various problems remained and South African Environmental Law remained inadequate and ineffective especially when aspects such as administration, governance, norm setting, enforcement and judicial action were critically considered and evaluated.

This position, however, changed with the inclusion of section 24 (the environmental right) into the South African Constitution, Act 108 of 1996. The Constitution afforded every person with the right to an environment which is not harmful to their health and well-being. Not only was every person entitled to enjoy this right, but the Constitution also placed a constitutional mandate on government to protect the environment through reasonable legislative and other measures that prevent pollution, ecological degradation, promote conservation and secure ecological sustainable development and the use of natural resources while promoting justifiable economic and social development.

In order to give effect to the aforesaid constitutional mandate, South African environmental law has been subjected to an intense revision process since 1996. The first law that was promulgated to give effect to this constitutional mandate was the National Environmental Management Act 107 of 1998. The National Environmental Management Act can be described as one of the most progressive developments in environmental norm setting which guides individuals, institutions and government in environmental decision making. Furthermore it provides for a range of key elements such as environmental principles, co-operative governance, a duty of care, enforcement mechanisms and integrated environmental management.

In an approach to strengthen this framework law, various other specific environmental management acts have been promulgated which includes the promulgation of the National Environmental Management: Waste Act as recent as 2008. In addition to specific environmental management legislation promulgated, South African Environmental law has seen numerous positive contributions through both the revision of, and amendments to, laws regulating diverse thematic areas such as conservation, pollution, mining and water management.

The objectives of the second edition of this *Compendium* remains essentially the same in that it serves as a quick reference guide to provide counsel,

attorneys, environmental practitioners, enforcement agencies and representatives of other interrelated disciplines with a quick, easy and user friendly reference guide to laws and norms applicable to environmental management in South Africa.

A number of people were instrumental in making the first Compendium a reality and we specifically again would like to extend our appreciation and thanks to: Christof Heyns (Dean: Faculty of Law, University of Pretoria); Lizette Besaans (Pretoria University Law Press); the United Nations Environment Programme; and the Department of Environmental Affairs and Tourism (DEAT) (South Africa).

In addition, we specifically extend our appreciation and thanks to Lizette Besaans (Pretoria University Law Press) and the Department of Environmental Affairs (DEA)(South Africa) for their invaluable assistance and contributions which resulted in this *2nd edition* of the *Compendium*.

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1 CONSTITUTIONAL PROVISIONS RELEVANT TO THE ENVIRONMENT

The South African Constitution is the supreme law of the country and any law or conduct inconsistent with the Constitution is invalid (section 2). Through the inclusion of the environmental right into the Constitution, environmental law found a firm entrenchment into the South African Legal system with a sound basis and constitutional mandate for further development and improvement.

The Constitutional environmental right not only afforded every person with the entitlement to enjoy a right to an environment which is not harmful to their health and well-being, but also placed a constitutional mandate on government to protect the environment through reasonable legislative and other measures that:

1. prevent pollution and ecological degradation;
2. promote conservation; and
3. secure ecological sustainable development and the use of natural resources while promoting justifiable economic and social development.

In fulfilment of this constitutional mandate, government agencies have over the last decade revised and promulgated various laws pertaining to a range of thematic areas including environmental management; environmental impact assessment; air quality; biodiversity; waste management; mining; forestry; and water management.

Not only has this inclusion resulted in a substantive revision of our body of environmental law, but also resulted (directly or indirectly) in greater enforcement strategies, and increased public participation in environmental decision making and also the further development of environmental jurisprudence through case law.

In addition to the environmental right as contained in our Bill of Rights in the Constitution, various other constitutional provision and other human rights are relevant to the effective administration of our current environmental regulatory framework, environmental decision making and also integrated environmental management:

1. Other relevant human rights include: the right to equality (section 9); human dignity (section 10); life (section 11); property (section 25); access to housing (section 26); healthcare, food, water and social security (section 27); access to information (section 32); just administrative action (section 33); limitation of rights (section 36); enforcement of rights (section 38) and the interpretation of rights (section 38);
2. Constitutional provisions dealing with and relating to co-operative governance (chapter 3);
3. Constitutional provisions dealing with legislative requirements at various tiers of government (chapter 4 to 7);
4. Constitutional provisions relating to institutions created in support of democracy (chapter 9);
5. Constitutional provisions relating to the effective issue of public administration (chapter 10);
6. Constitutional provisions relating to application of multi-lateral environmental agreements (chapter 14); and

7. Schedules 4 and 5 of the Constitution dealing with the issue of concurrent legislative competence at national and provincial level as well as the exclusive legislative competence at provincial level.

For a detailed analysis on the construction, interpretation and implementation of the constitutional right to an environment see:

M van der Linde & E Basson *Environment* (chapter 50) in 'Constitutional Law of South Africa' edited by Woolman *et al.*

Constitution of the Republic of South Africa Act 108 of 1996

As last amended by Act 2 of 2003.

...

CHAPTER 2: Bill of Rights

24. Environment

- (1) Everyone has the right:
 - (a) to an environment that is not harmful to their health or well-being; and
 - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

25. Property

- (1) No one may be deprived of property except in terms of a law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application:
 - (a) for a public purpose or in the public interest; and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:
 - (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section:
 - (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6) and (7).

...

27. Health care, food, water and social security

(1) Everyone has the right to have access to:

- (a) health care services, including reproductive health care;
- (b) sufficient food and water; and
- (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

...

32. Access to information

(1) Everyone has the right of access to:

- (a) any information held by the state; and
- (b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

33. Just administrative action

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must:

- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
- (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
- (c) promote an efficient administration.

...

36. Limitation of rights

(1) The rights in the Bill of Rights may be limited only in terms of a law of general application to the extent that the limitation is reasonable and

justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

...

38. Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.

39. Interpretation of Bill of Rights

- (1) When interpreting the Bill of Rights, a court, tribunal or forum:
 - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - (b) must consider international law; and
 - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

CHAPTER 3: Co-operative Government

40. Government of the Republic

- (1) In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
- (2) All spheres of government must observe and adhere to the principles in this chapter and must conduct their activities within the parameters that the chapter provides.

41. Principles of co-operative government and intergovernmental relations

- (1) All spheres of government and all organs of state within each sphere must:
 - (a) preserve the peace, national unity and the indivisibility of the Republic;
 - (b) secure the well-being of the people of the Republic;
 - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
 - (d) be loyal to the Constitution, the Republic and its people;

- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
- (h) not assume any power or function except those conferred on them in terms of the Constitution;
- (i) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- (j) co-operate with one another in mutual trust and good faith by:
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.
- (2) An Act of Parliament must:
 - (a) establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and
 - (b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.
- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.
- (4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.

...

CHAPTER 4: Parliament

44. National legislative authority

- (1) The national legislative authority as vested in Parliament:
 - (a) confers on the National Assembly the power:
 - (i) to amend the Constitution;
 - (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in schedule 5; and
 - (iii) to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government; and
 - (b) confers on the National Council of Provinces the power:
 - (i) to participate in amending the Constitution in accordance with section 74;
 - (ii) to pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in schedule 4 and any other matter required by the Constitution to be passed in accordance with section 76; and
 - (iii) to consider, in accordance with section 75, any other legislation passed by the National Assembly.
- (2) Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in schedule 5, when it is necessary:
 - (a) to maintain national security;
 - (b) to maintain economic unity;
 - (c) to maintain essential national standards;

- (d) to establish minimum standards required for the rendering of services; or to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.
- (3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in schedule 4 is, for all purposes, legislation with regard to a matter listed in schedule 4.
- (4) When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution.

...

National Council of Provinces

...

68. Powers of National Council

In exercising its legislative power, the National Council of Provinces may:

- (a) consider, pass, amend, propose amendments to or reject any legislation before the Council, in accordance with this chapter; and
- (b) initiate or prepare legislation falling within a functional area listed in schedule 4 or other legislation referred to in section 76(3), but may not initiate or prepare money Bills.

...

CHAPTER 5: The President and the Executive

...

100. National supervision of provincial administration

(1) When a province cannot or does not fulfil an executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including:

- (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
- (b) assuming responsibility for the relevant obligation in that province to the extent necessary to:
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) maintain economic unity;
 - (iii) maintain national security; or
 - (iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

(2) If the national executive intervenes in a province in terms of subsection (1)(b):

- (a) notice of the intervention must be tabled in the National Council of Provinces within 14 days of its first sitting after the intervention began;
 - (b) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and
 - (c) the Council must review the intervention regularly and make any appropriate recommendations to the national executive.
- (3) National legislation may regulate the process established by this section.

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CHAPTER 6: Provinces

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Provincial legislatures

104. Legislative authority of provinces

(1) The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power:

- (a) to pass a constitution for its province or to amend any constitution passed by it in terms of sections 142 and 143; and
- (b) to pass legislation for its province with regard to:
 - (i) any matter within a functional area listed in schedule 4;
 - (ii) any matter within a functional area listed in schedule 5;
 - (iii) any matter outside those functional areas, and that is expressly assigned to the province by national legislation; and
- (iv) any matter for which a provision of the Constitution envisages the enactment of provincial legislation; and to assign any of its legislative powers to a Municipal Council in that province.

(2) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province.

(3) A provincial legislature is bound only by the Constitution and, if it has passed a constitution for its province, also by that constitution, and must act in accordance with, and within the limits of, the Constitution and that provincial constitution.

(4) Provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in schedule 4, is for all purposes legislation with regard to a matter listed in schedule 4.

(5) A provincial legislature may recommend to the National Assembly legislation concerning any matter outside the authority of that legislature, or in respect of which an Act of Parliament prevails over a provincial law.

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Provincial executives

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139. Provincial supervision of local government

(1) When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including:

- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary:
 - (i) to maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) to maintain economic unity.

(2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b):

- (a) the intervention must end unless it is approved by the Cabinet member responsible for local government affairs within 14 days of the intervention;

- (b) notice of the intervention must be tabled in the provincial legislature and in the National Council of Provinces within 14 days of their respective first sittings after the intervention began;
 - (c) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and
 - (d) the Council must review the intervention regularly and make any appropriate recommendations to the provincial executive.
- (3) National legislation may regulate the process established by this section.

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Conflicting laws

146. Conflicts between national and provincial legislation

- (1) This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in schedule 4.
- (2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:
 - (a) the national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually;
 - (b) the national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing:
 - (i) norms and standards;
 - (ii) frameworks; or
 - (iii) national policies.
 - (c) the national legislation is necessary for:
 - (i) the maintenance of national security;
 - (ii) the maintenance of economic unity;
 - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - (iv) the promotion of economic activities across provincial boundaries;
 - (v) the promotion of equal opportunity or equal access to government services; or
 - (vi) the protection of the environment.
- (3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that:
 - (a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or
 - (b) impedes the implementation of national economic policy.
- (4) When there is a dispute concerning whether national legislation is necessary for a purpose set out in subsection (2)(c) and that dispute comes before a court for resolution, the court must have due regard to the approval or the rejection of the legislation by the National Council of Provinces.
- (5) Provincial legislation prevails over national legislation if subsection (2) or (3) does not apply.
- (6) A law made in terms of an Act of Parliament or a provincial Act can prevail only if that law has been approved by the National Council of Provinces.
- (7) If the National Council of Provinces does not reach a decision within 30 days of its first sitting after a law was referred to it, that law must be considered for all purposes to have been approved by the Council.
- (8) If the National Council of Provinces does not approve a law referred to in subsection (6), it must, within 30 days of its decision, forward reasons for not approving the law to the authority that referred the law to it.

147. Other conflicts

- (1) If there is a conflict between national legislation and a provision of a provincial constitution with regard to:
 - (a) a matter concerning which this Constitution specifically requires or envisages the enactment of national legislation, the national legislation prevails over the affected provision of the provincial constitution;
 - (b) national legislative intervention in terms of section 44(2), the national legislation prevails over the provision of the provincial constitution; or
 - (c) a matter within a functional area listed in schedule 4, section 146 applies as if the affected provision of the provincial constitution were provincial legislation referred to in that section.
- (2) National legislation referred to in section 44(2) prevails over provincial legislation in respect of matters within the functional areas listed in schedule 5.

148. Conflicts that cannot be resolved

If a dispute concerning a conflict cannot be resolved by a court, the national legislation prevails over the provincial legislation or provincial constitution.

149. Status of legislation that does not prevail

A decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains.

150. Interpretation of conflicts

When considering an apparent conflict between national and provincial legislation, or between national legislation and a provincial constitution, every court must prefer any reasonable interpretation of the legislation or constitution that avoids a conflict, over any alternative interpretation that results in a conflict.

CHAPTER 7: Local Government**151. Status of municipalities**

- (1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.
- (2) The executive and legislative authority of a municipality is vested in its Municipal Council.
- (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

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154. Municipalities in co-operative government

- (1) The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
- (2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

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CHAPTER 9: State Institutions Supporting Constitutional Democracy

181. Establishment and governing principles

- (1) The following state institutions strengthen constitutional democracy in the Republic:
 - (a) the Public Protector;
 - (b) the Human Rights Commission;
 - (c) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
 - (d) the Commission for Gender Equality;
 - (e) the Auditor-General; and
 - (f) the Electoral Commission.
- (2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.
- (3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.
- (4) No person or organ of state may interfere with the functioning of these institutions.
- (5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

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Human Rights Commission

184. Functions of Human Rights Commission

- (1) The Human Rights Commission must:
 - (a) promote respect for human rights and a culture of human rights;
 - (b) promote the protection, development and attainment of human rights; and
 - (c) monitor and assess the observance of human rights in the Republic.
- (2) The Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power:
 - (a) to investigate and to report on the observance of human rights;
 - (b) to take steps to secure appropriate redress where human rights have been violated;
 - (c) to carry out research; and
 - (d) to educate.
- (3) Each year, the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.
- (4) The Human Rights Commission has the additional powers and functions prescribed by national legislation.

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CHAPTER 14: General Provisions

International law

231. International agreements

- (1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

232. Customary international law

Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

233. Application of international law

When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

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Schedule 4

Functional Areas of Concurrent National and Provincial Legislative Competence

Part A

Administration of indigenous forests

Agriculture

Airports other than international and national airports

Animal control and diseases

Casinos, racing, gambling and wagering, excluding lotteries and sports pools

Consumer protection

Cultural matters

Disaster management

Education at all levels, excluding tertiary education

Environment

Health services

Housing

Indigenous law and customary law, subject to chapter 12 of the Constitution

Industrial promotion

Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence

Media services directly controlled or provided by the provincial government, subject to section 192

Nature conservation, excluding national parks, national botanical gardens and marine resources

Police to the extent that the provisions of chapter 11 of the Constitution confer upon the provincial legislatures legislative competence

Pollution control

Population development
Property transfer fees
Provincial public enterprises in respect of the functional areas in this schedule and schedule 5
Public transport
Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
Regional planning and development
Road traffic regulation
Soil conservation
Tourism
Trade
Traditional leadership, subject to chapter 12 of the Constitution
Urban and rural development
Vehicle licensing
Welfare services

Part B

The following local government matters to the extent set out in section 155(6)(a) and (7):

Air pollution
Building regulations
Child care facilities
Electricity and gas reticulation
Fire fighting services
Local tourism
Municipal airports
Municipal planning
Municipal health services
Municipal public transport
Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
Pontoon, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
Storm water management systems in built-up areas
Trading regulations
Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Schedule 5

Functional Areas of Exclusive Provincial Legislative Competence

Part A

Abattoirs
Ambulance services
Archives other than national archives
Libraries other than national libraries
Museums other than national museums
Provincial planning
Provincial cultural matters
Provincial recreation and amenities
Provincial sport
Provincial roads and traffic

Veterinary services, excluding regulation of the profession

Part B

The following local government matters to the extent set out for provinces in section 155(6)(a) and (7):

Beaches and amusement facilities

Billboards and the display of advertisements in public places

Cemeteries, funeral parlours and crematoria

Cleansing

Control of public nuisances

Control of undertakings that sell liquor to the public

Facilities for the accommodation, care and burial of animals

Fencing and fences

Licensing of dogs

Licensing and control of undertakings that sell food to the public

Local amenities

Local sport facilities

Markets

Municipal abattoirs

Municipal parks and recreation

Municipal roads

Noise pollution

Pounds

Public places Refuse removal, refuse dumps and solid waste disposal

Street trading

Street lighting

Traffic and parking

2 LEGISLATIVE FRAMEWORK PROTECTING THE ENVIRONMENT

The regulation and protection of the environment are relatively new concepts in South African law. The common law does provide a basis for the regulation of certain aspects of the environment.¹ However, legislation provides the regulatory framework for environmental law in South Africa. Although in South Africa, a multitude of statutes dealing with the environment have been promulgated, the 1996 Constitution has to some extent elevated environmental protection through the entrenchment in the Bill of Rights of the right to an environment that is not harmful.

In general, legislation forms the basis for the regulation of environmental law in South Africa. Although national legislation forms the bulk of South African environmental law, numerous provincial and local statutes have been enacted. These laws are usually limited in operation to a specific provincial administration. Provincial legislation and legislation at local government level provide a unique and complimentary regulatory framework for environmental law in South Africa.

2.1 Table of Legislation Relevant to Environmental Protection²

ALPHABETICAL LIST OF LEGISLATION					
NATIONAL LEGISLATION					
1	Agricultural Pests Act 36 of 1983	Prevents agricultural pests	2	Agricultural Product Standards Act 119 of 1990	Regulates packaging of various agricultural products in SA; also regulates inspection and appeal procedures
3	Agricultural Research Act 86 of 1990	Regulates agricultural research	4	Animal Diseases Act 35 of 1984	Provides for control measures relating to animal diseases
5	Animal Health Act 7 of 2002	Regulates animal health	6	Antarctic Treaties Act 60 of 1996	Provides for the control of land use in Antarctica
7	Astronomy Geographic Advantage Act 21 of 2007	Provides for the preservation and protection of areas uniquely suited for optical and radio astronomy	8	Atmospheric Pollution Prevention Act 45 of 1965	Controls and manages air pollution

¹ For example, the maxim *sic utere tuo ut alienum non laedas* (use your property in a way which does not harm another) still finds application in South African law.

² This table is based on an earlier version in *Road Map to Environmental Legislation* (2003), compiled by D Barnard, F Friend *et al.*

9	Aviation Act 74 of 1962	Provides for the control, regulation and encouragement of aviation activities in the Republic of South Africa	10	Basic Conditions of Employment Act 75 of 1997	Provides for control measures pertaining to employment
11	Conservation of Agricultural Resources Act 43 of 1983	Controls and regulates the conservation of agriculture	12	Constitution of the Republic of South Africa Act 108 of 1996	Introduces a Constitutional framework for post 1994 South Africa
13	Cross-Border Road Transport Act 4 of 1998	Regulates cross-border cooperation in respect of transportation	14	Cultural Institutions Act 119 of 1998	Provides a supporting system for institutions such as the zoological gardens
15	Development Facilitation Act 67 of 1995	Provides for development and planning	16	Dumping at Sea Control Act 73 of 1980	Regulates activities which might lead to dumping at sea
17	Electricity Act 41 of 1987	Regulates and controls energy supply in South Africa	18	Electricity Regulation Act 4 of 2006	Regulates the electricity supply industry
19	Environment Conservation Act 73 of 1989	Provides for the effective protection, control and utilisation of the environment	20	Explosives Act 15 of 2003	Provides for the regulation of explosives
21	Explosives Act 26 of 1956	Regulates the control, manufacture, use and sale of explosives	22	Expropriation Act 63 of 1975	Provides for matters relating to expropriation of property
23	Fencing Act 31 of 1963	Regulates all matters relating to fencing	24	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947	Regulates and prohibits the importation, sale, acquisition, disposal or use of fertilizers, farm feeds, agricultural remedies and stock remedies
25	Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972	Provides for measures for the control, manufacture, importation and sale of food	26	Game Theft Act 105 of 1991	Regulates the ownership and protection of game
27	Genetically Modified Organisms Act 15 of 1997	Controls, develops and regulates the use of Genetically Modified Organisms	28	Hazardous Substances Act 15 of 1973	Controls substances which may cause injury or ill-health to, or death of, human beings by reason of their toxic nature

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29	Health Act 63 of 1977	Regulates public health	30	Housing Act 107 of 1997	Regulates housing development
31	Human Tissue Act 65 of 1983	Regulates all matters pertaining to human tissue	32	Income Tax Act 58 of 1962	Regulates income tax in South Africa
33	International Convention for the Prevention of Pollution from Ships Amendment Act 66 of 1996	Implements the 1973 International Convention for the Prevention of Pollution from Ships	34	International Health Regulations Act 28 of 1974	Regulations relating to aspects of international health
35	Land Survey Act 8 of 1997	Regulates land surveying, beacons and other related matters	36	Local Government Transition Act 209 of 1993	Regulates the restructuring of local government
37	Local Government: Municipal Demarcation Act 27 of 1998	Establishes boundaries for local government purposes	38	Local Government: Municipal Structures Act 117 of 1998	Provides for the structuring of local government institutions
39	Local Government: Municipal Systems Act 32 of 2000	Establishes core principles, processes, and mechanisms relating to local government	40	Manufacturing Development Act 187 of 1993	Promotes development relating to manufacturing
41	Marine Living Resources Act 18 of 1998	Regulates conservation of the marine ecosystem and the long-term sustainable utilisation of marine living resources	42	Marine Pollution (Control and Civil Liability) Act 6 of 1981	Prevents pollution at sea
43	Marine Pollution (Intervention) Act 64 of 1987	Incorporates the MARPOL Convention into South African law	44	Marine Pollution (Prevention of Pollution from Ships) Act 2 of 1986	Prevents and regulates pollution from ships at sea
45	Marine Traffic Act 2 of 1981	Regulates traffic at sea	46	Maritime Zones Act 15 of 1994	Determines maritime zones
47	Meat Safety Act 40 of 2000	Regulates meat safety	48	Merchant Shipping Act 57 of 1951	Regulates merchant shipping
49	Mine Health and Safety Act 29 of 1996	Provides for the promotion of employee health and safety	50	Mineral and Petroleum Resources Royalty Act 28 of 2008	Imposes a royalty on the transfer of mineral resources

51	Mineral and Petroleum Resources Royalty (Administration) Act 29 of 2008	Provides for the administration of matters related to the imposition of a royalty on the transfer of mineral resources	52	Minerals and Petroleum Resources Development Act 28 of 2002	Provides for equitable access to and sustainable development of mineral and petroleum resources
53	Mountain Catchment Areas Act 63 of 1970	Provides for catchment conservation	54	National Building Regulations & Building Standards Act 103 of 1977	Regulates and promotes uniformity in building standards
55	National Development Agency Act 108 of 1998	Promotes public private partnerships	56	National Environmental Management Act 107 of 1998	Provides for co-operative environmental governance
57	National Environmental Management: Integrated Coastal Management Act 24 of 2008	Regulates coastal environmental management	58	National Environmental Management: Waste Act 59 of 2008	Regulates the management of waste
59	National Forests Act 84 of 1998	Reforms the law on forests	60	National Health Laboratory Service Act 37 of 2000	Establishes the National Health Laboratory Service
61	National Heritage Council Act 11 of 1999	Establishes the National Heritage Council	62	National Heritage Resources Act 25 of 1999	Provides for the protection of heritage resources
63	National Nuclear Regulator Act 47 of 1999	Establishes the National Nuclear Regulator	64	National Parks Act 57 of 1976	Regulates the control, protection and management of National Parks
65	National Radioactive Waste Disposal Institute Act 53 of 2008	Establishes a national radioactive waste disposal institute to manage the disposal of radioactive waste nationally	66	National Research Foundation Act 23 of 1998	Promotes research and establishes the National Research Foundation
67	National Road Traffic Act 93 of 1996	Regulates national road traffic	68	National Veld and Forest Fire Act 101 of 1998	Regulates veld and forest fires
69	National Water Act 36 of 1998	Regulates all matters relating to water	70	Nuclear Energy Act 46 of 1999	Establishes the South African Nuclear Energy Corporation Limited

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71	Occupational Diseases in Mines and Works Act 78 of 1973	Controls health related aspects	72	Occupational Health and Safety Act 85 of 1993	Provides for the regulation of labour, danger, environment, hazard, health, risk, safety and substance
73	Performing Animals Protection Act 24 of 1935	Protects performing animals	74	Petroleum Products Act 120 of 1977	Regulates petroleum products
75	Physical Planning Act 88 of 1967	Provides for land use planning	76	Physical Planning Act 125 of 1991	Provides land use planning
77	Promotion of Access to Information Act 2 of 2000	Promotes access to information	78	Promotion of Administrative Justice Act 3 of 2000	Provides for the promotion of administrative justice
79	Promotion of Equality / Prevention of Unfair Discrimination Act 4 of 2000	Provides for the prevention of discrimination and other related matters	80	Protected Disclosures Act 26 of 2000	Protects whistleblowers
81	Regional Services Councils Act 109 of 1985	Regulates and controls land, land usage and other related matters	82	Sea Birds & Seals Protection Act 46 of 1973	Protects sea birds and seals
83	Sea Fishery Act 12 of 1988	Conserves the marine ecosystem	84	Sectional Titles Act 95 of 1986	Regulates sectional titles including the control of land use and refuse
85	Skills Development Act 97 of 1998	Promotes the development of skills	86	SA National Roads Agency Limited and National Roads Act 7 of 1998	Establishes the South African National Roads Agency and other matter relating to the road such as controlling road-related waste disposal
87	State Land Disposal Act 48 of 1961	Regulates the disposal of State owned land	88	Subdivision of Agricultural Land Act 70 of 1970	Regulates the subdivision of agricultural land
89	Tobacco Products Control Act 83 of 1993	Controls the use of tobacco	90	Tourism Act 72 of 1993	Provides for the promotion of tourism and regulates the tourism industry
91	Water Research Act 34 of 1971	Promotes water related research	92	Water Services Act 108 of 1997	Regulates the right of access to basic water supply and basic sanitation as well as other related matters

93	World Heritage Convention Act 49 of 1999	Incorporates the World Heritage Convention into South Africa law	94	Wreck and Salvage Act 94 of 1996	Regulates the salvage of certain vessels and the application of the International Convention of Salvage(1989) in South Africa
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PROVINCIAL LEGISLATION					
EASTERN CAPE					
1	Cape Local Authorities Gas Ordinance 7 of 1912	Regulates gas and control gas related water pollution	2	Problem Animal Control Ordinance 26 of 1957	Regulates the control of problem-animal and vermin
3	Horse Racing and Betting Ordinance 34 of 1968	Controls noise, nuisance created by horse racing and betting activities	4	Public Resorts Ordinance 20 of 1971	Controls pollution at resorts
5	Nature and Environmental Conservation Ordinance 19 of 1974	Regulates various nature and environmental conservation aspects such as control animals, game and pollution	6	Municipal Ordinance 20 of 1974	Controls issues relating to pollution, sewers and other related matters
7	Divisional Councils Ordinance 18 of 1976	Provides for the regulation and control of effluents, refuse and storm water	8	Roads Ordinance 19 of 1976	Provides for litter control
9	Cape Land Use Planning Ordinance 15 of 1985	Provides for the regulation and control of land use planning	10	Ciskei Animals Protection Act 20 of 1986	Regulates and prevents animal abuse
11	Ciskei Nature Conservation Act 10 of 1987	Regulates nature conservation	12	Ciskei Historical Monuments Act 10 of 1989	Provides for matters relating to historical monuments
13	EC Tourism Board Act 9 of 1995	Regulates tourism	14	Agricultural Development Act 8 of 1999	Regulates the development of agricultural land
15	Land Disposal Act 7 of 2000	Regulates land disposal			

FREE STATE					
1	Small Holdings Ordinance 17 of 1954	Regulates all matters related to small holdings, for example the control of land use, waste management and refuse	2	Local Government Ordinance 8 of 1962	Regulates the control of refuse, sewerage and other matters
3	Nature Conservation Ordinance 8 of 1969	Regulates nature conservation	4	Boputhat-swana Nature Conservation Act 3 of 1973	Regulates nature conservation
5	QwaQwa Nature Conservation Act 5 of 1976	Regulates nature conservation	6	Dumping of Rubbish Ordinance 8 of 1976	Controls dumping, litter and rubbish
7	Boputhat-swana Prevention and Control of Littering Act 16 of 1981	Controls dumping, litter and rubbish	8	Boputhat-swana Protected Areas Act 24 of 1987	Regulates and protects various identified areas such as parks
9	Free State Land Administration Act 1 of 1998	Regulates the disposal of provincial land			

GAUTENG					
1	Local Government Ordinance 17 of 1939	Regulates nuisance pollution	2	Roads Ordinance 22 of 1957	Regulates the control over refuse
3	Public Resorts Ordinance 18 of 1969	Regulates nuisance pollution	4	Nature Conservation Ordinance 12 of 1983	Regulates nature conservation
5	Gauteng Land Administration Act 11 of 1996	Regulates the disposal of provincial land			

KWA-ZULU NATAL					
1	Pietermaritzburg Sewerage Ordinance 11 of 1915	Regulates sewerage drainage	2	South Barrow Loan and Ext Powers Ordinance 12 of 1920	Regulates water pollution
3	South Shepstone Loan and Extended Powers Ordinance 20 of 1920	Regulates water pollution and other pollutants	4	Development and Services Board Ordinance 20 of 1941	Regulates health matters
5	Town Planning Ordinance 27 of 1949	Provides for the management of land use and land planning	6	Water Services Ordinance 27 of 1963	Regulates matters relating to water, water pollution and sewage
7	Kloof Loan & Ext Powers Ordinance 16 of 1967	Regulates water pollution and other pollutants	8	Roads Ordinance 10 of 1968	Regulates roads and traffic including the control of storm water
9	Nature conservation Ordinance 15 of 1974	Regulates nature conservation	10	Local authorities Ordinance 25 of 1974	Regulates the control of health, refuse and other matters
11	Umhlanga Extended Powers and Loan Ordinance 17 of 1975	Regulates water pollution within Umhlanga and surrounding areas	12	Durban Ext Powers Cons Ordinance 18 of 1976	Regulates water pollution and other pollutants
13	Prevention of Environmental Pollution Ordinance 21 of 1981	Controls the prevention of pollution	14	Pinetown Loan & Ext Powers Ordinance 9 of 1983	Controls the prevention of pollution
15	Kwa-Zulu Animal Protection Act 4 of 1987	Regulates animal abuse	16	Kwa-Zulu and Natal Joint Services Act 84 of 1990	Regulates pollution of land water and waste management
17	Kwa-Zulu Nature Conservation Act 29 of 1992	Regulates nature conservation	18	Kwa-Zulu Nature Conservation Management Act 9 of 1997	Provides for conservation and eco-tourism management
19	Kwa-Zulu Heritage Act 10 of 1997	Regulates matters concerned with heritage resources	20	Kwa-Zulu Planning & Development Act 5 of 1998	Regulates matters relating to land such as land use planning

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21	Kwa-Zulu Natal Health Act 1 of 2009	Regulates matters concerning health issues including environmental health aspects	22	Provincial Roads Act 4 of 2001	Controls road-related pollution
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MPUMALANGA					
1	Local Government Ordinance 17 of 1939	Regulates nuisance and pollution control	2	Mpumalanga Roads Act 1 of 2008	Controls measures relating to refuse and waste management
3	Public Resorts Ordinance 18 of 1969	Regulates nuisance and pollution control	4	Mpumalanga Land Administration Act 5 of 1998	Regulates land administration
5	Mpumalanga Nature Conservation Act 10 of 1998	Regulates nature conservation			

NORTH WEST					
1	Local Government Ordinance 17 of 1939	Regulates nuisance and pollution control	2	Roads Ordinance 22 of 1957	Controls measures relating to refuse and waste management pertaining to roads
3	Problem Animal Control Ordinance 26 of 1957	Controls problem animals	4	Public Resorts Ordinance 18 of 1969	Regulates nuisance and pollution control
5	Bophuthatswana Nature Conservation Act 3 of 1973	Regulates nature conservation	6	Municipal Ordinance 20 of 1974	Regulates pollution and waste management
7	Nature and Environmental Conservation Ordinance 19 of 1974	Regulates nature conservation	8	Nature Conservation Ordinance 12 of 1983	Regulates nature conservation
9	Bophuthatswana Protected Areas Act 24 of 1987	Protects specified designated areas	10	North West Tourism Council Act 7 of 1995	Regulates the tourism industry
11	Land Administration Act 4 of 2001	Regulates land and land usage			

NORTHERN CAPE					
1	Cape Local Authorities Gas Ordinance 7 of 1912	Regulates gas matters including gas related pollution	2	Problem Animal Control Ordinance 26 of 1957	Regulates the control of problem animals
3	Horse Racing and Betting Ordinance 34 of 1968	Prevents and controls pollution created by horse racing and betting activities	4	Public Resorts Ordinance 20 of 1971	Regulates nuisance and pollution control
5	Nature and Environmental Conservation Ordinance 19 of 1974	Regulates nature conservation	6	Municipal Ordinance 20 of 1974	Regulates pollution and waste management
7	Divisional Councils Ordinance 18 of 1976	Regulates the control over refuse and storm water	8	Roads Ordinance 19 of 1976	Regulates measures relating to refuse and waste management
9	Cape Land Use Planning Ordinance 15 of 1985	Regulates land use planning	10	Planning and Development Act 7 of 1998	Regulates planning and development

LIMPOPO					
1	Local Government Ordinance 17 of 1939	Regulates nuisance and pollution control and prevention	2	Roads Ordinance 22 of 1957	Regulates measures relating to refuse and waste management
3	Public Resorts Ordinance 18 of 1969	Regulates nuisance and pollution control	4	Nature Conservation Ordinance 12 of 1983	Regulates nature conservation
5	Land Administration Act 6 of 1999	Regulates land and land usage			

WESTERN CAPE					
1	Cape Local Authorities Gas Ordinance 7 of 1912	Regulates gas matters	2	Problem Animal Control Ordinance 26 of 1957	Regulates problem animals

30 Legislative framework protecting the environment

3	Public Resorts Ordinance 20 of 1971	Regulates nuisance and pollution control	4	Nature and Environmental Conservation Ordinance 19 of 1974	Regulates nature and environmental conservation
5	Municipal Ordinance 20 of 1974	Regulates pollution and waste management	6	Roads Ordinance 19 of 1976	Regulates measures relating to refuse and waste management
7	Divisional Council Ordinance 18 of 1976	Regulates refuse and storm water	8	Cape Land Use Planning Ordinance 15 of 1985	Regulates land use planning
9	Western Cape Constitution, Act 1 of 1998	Introduces a constitutional framework for the province	10	Western Cape Land Administration Act 6 of 1998	Regulates land and land usage
11	Western Cape Nature Conservation Board Act 15 of 1998	Establishes the Western Cape Nature Conservation Board and all matters relating to conservation and the board	12	Western Cape Planning and Development Act 7 of 1999	Regulates planning and development within the province

2.2 Selected South African Environmental Legislation

2.2.1 *South African Framework Environmental Legislation*

2.2.1.1 National Environmental Management Act

Description: The National Environmental Management Act (NEMA) creates the fundamental legal framework that gives effect to the environmental right guaranteed in section 24 of the Constitution of the Republic of South Africa, 108 of 1996. The Act repeals the greater part of the Environmental Conservation Act 73 of 1989. NEMA sets out the fundamental principles that apply to environmental decision making, some of which derive from international environmental law and others from the Constitution. The core environmental principle is the promotion of ecologically sustainable development. NEMA also reconfirms the State's trusteeship of the environment on behalf of the country's inhabitants.

This Act introduces cooperative governance of environmental matters by establishing the necessary governmental institutions that will ensure proper implementation of environmental protection. NEMA also makes provision for fair environmental decision-making and for conciliation and arbitration of conflicts. As part of the process of integrated environmental governance, NEMA introduces a new framework for environmental impact assessments. Based on the doctrine of strict liability, NEMA also introduces a far-reaching general duty of care to prevent, control and rehabilitate the effect of significant pollution and environmental degradation, including historic pollution and environmental degradation. It furthermore makes it a criminal offence to cause significant pollution or environmental degradation. Similarly, it dictates the duty of care to address emergency incidents of pollution. Criminal prosecution of environmental crimes, amongst other, may lead to the incarceration of managers as well as directors of companies for the conduct of such legal persons. NEMA also provides for a compliance and enforcement directorate with wide powers to enforce NEMA as well as other environmental legislation. It provides employees the right to refuse to perform environmentally hazardous work and whistle blowers are protected. NEMA reconfirms the wide standing that the Constitution provides for the protection of environmental rights and provides for standing to take a matter to court in the interest of the environment. Finally it provides for novel costs orders and remediation orders in criminal cases.

National Environmental Management Act 107 of 1998

As last amended by National Environmental Laws Amendment Act 14 of 2009.
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Preamble

WHEREAS many inhabitants of South Africa live in an environment that is harmful to their health and well-being;

everyone has the right to an environment that is not harmful to his or her health or well-being;

the State must respect, protect, promote and fulfill the social, economic and environmental rights of

everyone and strive to meet the basic needs of previously disadvantaged communities;

inequality in the distribution of wealth and resources, and the resultant poverty, are among the important causes as well as the results of environmentally harmful practices;

sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations; everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:

- prevent pollution and ecological degradation;
 - promote conservation; and
- secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

the environment is a functional area of concurrent national and provincial legislative competence, and all spheres of government and all organs of state must co-operate with, consult and support one another;

AND WHEREAS it is desirable:

that the law develops a framework for integrating good environmental management into all development activities;

that the law should promote certainty with regard to decision-making by organs of state on matters affecting the environment;

that the law should establish principles guiding the exercise of functions affecting the environment;

that the law should ensure that organs of state maintain the principles guiding the exercise of functions affecting the environment;

that the law should establish procedures and institutions to facilitate and promote co-operative government and inter-governmental relations;

that the law should establish procedures and institutions to facilitate and promote public participation in environmental governance;

that the law should be enforced by the State and that the law should facilitate the enforcement of environmental laws by civil society:

1. Definitions

(1) In this Act, unless the context requires otherwise:

‘activities’, when used in chapter 5, means policies, programmes, processes, plans and projects;

‘Agenda 21’ means the document by that name adopted at the United Nations Conference of Environment and Development held in Rio de Janeiro, Brazil in June 1992;

'aircraft' means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;

'applicant' means a person who has submitted:

- (a) or who intends to submit an application for an environmental authorisation; or
- (b) an application for an environmental authorisation simultaneously with his or her application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;

'assessment', when used in chapter 5, means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to decision-making;

'best practicable environmental option' means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term;

'commence', when used in chapter 5, means the start of any physical activity, including site preparation and any other activity on the site in furtherance of a listed activity or specified activity, but does not include any activity required for the purposes of an investigation or feasibility study as long as such investigation or feasibility study does not constitute a listed activity or specified activity;

'commercially confidential information' means commercial information, the disclosure of which would prejudice to an unreasonable degree the commercial interests of the holder: Provided that details of emission levels and waste products must not be considered to be commercially confidential notwithstanding any provision of this Act or any other law;

'community':

- (a) means any group of persons or a part of such a group who share common interests, and who regard themselves as a community; and
- (b) in relation to environmental matters pertaining to prospecting, mining, exploration, production or related activity on a prospecting, mining, exploration or production area, means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that where as a consequence of the provisions of this Act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by prospecting, mining, exploration or production on land occupied by such members or part of the community;

'competent authority', in respect of a listed activity or specified activity, means the organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, with granting or refusing an environmental authorisation in respect of that activity;

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'delegation', in relation to a duty, includes an instruction to perform the duty;

'Department' means the Department of Environmental Affairs and Tourism;

'development footprint', in respect of land, means any evidence of its physical transformation as a result of the undertaking of any activity;

'Director-General' means the Director-General of Environmental Affairs and Tourism;

'ecosystem' means a dynamic system of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

'environment' means the surroundings within which humans exist and that are made up of:

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

'environmental assessment practitioner', when used in chapter 5, means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management plans or any other appropriate environmental instruments introduced through regulations;

'environmental authorisation', when used in chapter 5, means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a specific environmental management Act;

'environmental implementation plan' means an implementation plan referred to in section 11;

'environmental management co-operation agreement' means an agreement referred to in section 35(1);

'environmental management inspector' means a person designated as an environmental management inspector in terms of section 31B or 31C;

'environmental management plan' means a management plan referred to in section 11;

'environmental management programme' means a programme required in terms of section 24;

'evaluation', when used in chapter 5, means the process of ascertaining the relative importance or significance of information, in the light of people's values, preferences and judgements, in order to make a decision;

'exploration area' has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

'financial year' means a period commencing on 1 April of any year and ending on 31 March of the following year;

'hazard' means a source of or exposure to danger;

'holder' has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

'holder of an old order right' has the meaning assigned to *'holder'* in item 1 of Schedule II to the Minerals and Petroleum Resources Development Act, 2002;

'integrated environmental authorisation' means an authorisation granted in terms of section 24L;

'interested and affected party', for the purposes of chapter 5 and in relation to the assessment of the environmental impact of a listed activity or related activity, means an interested and affected party contemplated in section 24 (4)(a)(v), and which includes:

- (a) any person, group of persons or organisation interested in or affected by such operation or activity; and
- (b) any organ of state that may have jurisdiction over any aspect of the operation or activity;

'international environmental instrument' means any international agreement, declaration, resolution, convention or protocol which relates to the management of the environment;

'listed activity', when used in chapter 5, means an activity identified in terms of section 24(2)(a) and (d);

'listed area', when used in chapter 5, means a geographical area identified in terms of section 24(2)(b) and (c);

'MEC' means the Member of the Executive Council to whom the Premier has assigned responsibility for environmental affairs;

'mine' has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

'Mineral and Petroleum Resources Development Act, 2002' means the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

'mining area' has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

'Minister', in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, means the Minister of Environmental Affairs and Tourism;

'Minister of Minerals and Energy' means the Minister responsible for the implementation of environmental matters relating to prospecting, mining, exploration, production and related activities within a mining, prospecting, exploration or production area;

'national department' means a department of State within the national sphere of government;

'norms and standards' when used in chapter 5, means any norm or standard contemplated in section 24(10);

'organ of state' means organ of state as defined in the Constitution;

'owner of works' has the meaning contemplated in paragraph (b) of the definition of *'owner'* in section 102 of the Mine Health and Safety Act, 1996 (Act 29 of 1996);

'person' includes a juristic person;

'pollution' means any change in the environment caused by:

- (i) substances;
- (ii) radio-active or other waves; or
- (iii) noise, odours, dust or heat,

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

'prescribe' means prescribe by regulation in the *Gazette*;

'production area' has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

'prospecting area' has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

'provincial head of department' means the head of the provincial department responsible for environmental affairs;

'public participation process', in relation to the assessment of the environmental impact of any application for an environmental authorisation, means a process by which potential interested and affected parties are given opportunity to comment on, or raise issues relevant to, the application;

'Regional Mining Development and Environmental Committee' has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

'regulation' means a regulation made under this Act;

'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;

'review', when used in chapter 5, means the process of determining whether an assessment has been carried out correctly or whether the resulting information is adequate in order to make a decision;

'spatial development tool', when used in chapter 5, means a spatial description of environmental attributes, developmental activities and developmental patterns and their relation to each other;

'specific environmental management Act' means:

- (a) the Environment Conservation Act, 1989 (Act 73 of 1989);
- (b) the National Water Act, 1998 (Act 36 of 1998);
- (c) the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003);
- (d) the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004); or
- (e) the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004);

and includes any regulation or other subordinate legislation made in terms of any of those Acts.

'specified activity', when used in chapter 5, means an activity as specified within a listed geographical area in terms of section 24(2)(b) and (c);

'state land' means land which vests in the national or a provincial government, and includes land below the high water mark and the Admiralty Reserve, but excludes land belonging to a local authority;

'sustainable development' means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations;

'this Act' includes the schedules, and regulations and any notice issued under the Act;

'vessel' means any waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transporting anything by water.

(2) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.

(3) A reasonable interpretation of a provision which is consistent with the purpose of this Act must be preferred over an alternative interpretation which is not consistent with the purpose of this Act.

(4) Neither:

- (a) a reference to a duty to consult specific persons or authorities, nor
- (b) the absence of any reference in this Act to a duty to consult or give a hearing, exempts the official or authority exercising a power or performing a function from the duty to act fairly.

(5) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), unless otherwise provided for in this Act.

CHAPTER 1: National Environmental Management Principles

2. Principles

(1) The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and:

- (a) shall apply alongside all other appropriate and relevant considerations, including the State's responsibility to respect, protect, promote and fulfil the social and economic rights in chapter 2 of the Constitution and

- in particular the basic needs of categories of persons disadvantaged by unfair discrimination;
- (b) serve as the general framework within which environmental management and implementation plans must be formulated;
- (c) serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment;
- (d) serve as principles by reference to which a conciliator appointed under this Act must make recommendations; and
- (e) guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment.
- (2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
- (3) Development must be socially, environmentally and economically sustainable.
- (4)(a) Sustainable development requires the consideration of all relevant factors including the following:
 - (i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
 - (ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
 - (iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;
 - (iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
 - (v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
 - (vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
 - (vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
 - (viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.
- (b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.
- (c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.
- (d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.

- (e) Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.
- (f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
- (g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.
- (h) Community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.
- (i) The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
- (j) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.
- (k) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
- (l) There must be inter-governmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.
- (m) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.
- (n) Global and international responsibilities relating to the environment must be discharged in the national interest.
- (o) The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.
- (p) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.
- (q) The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.
- (r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

CHAPTER 2: Institutions

...

3. ...

3A. Establishment of fora or advisory committees

The Minister may by notice in the Gazette:

- (a) establish any forum or advisory committee;
- (b) determine its composition and functions; and

- (c) determine, in consultation with the Minister of Finance, the basis and extent of the remuneration and payment of expenses of any member of such forum or committee.
- 4. ...
- 5. ...
- 6. ...
- 7. ...
- 8. ...
- 9. ...
- 10. ...

CHAPTER 3: Procedures for Co-operative Governance

11. Environmental implementation plans and management plans

(1) Every national department listed in Schedule 1 as exercising functions which may affect the environment and every province must prepare an environmental implementation plan within one year of the promulgation of this Act and at least every four years thereafter.

(2) Every national department listed in Schedule 2 as exercising functions involving the management of the environment must prepare an environmental management plan within one year of the promulgation of this Act and at least every four years thereafter.

(3) Every national department that is listed in both Schedule 1 and Schedule 2 may prepare a consolidated environmental implementation and management plan.

(4) Every organ of state referred to in subsections (1) and (2) must, in its preparation of an environmental implementation plan or environmental management plan, and before submitting such plan take into consideration every other environmental implementation plan and environmental management plan already adopted with a view to achieving consistency among such plans.

(5) The Minister may by notice in the *Gazette*:

- (a) extend the date for the submission of any environmental implementation plans and environmental management plans for periods not exceeding 12 months;
- (b) on application by any organ of state, or on his or her own initiative with the agreement of the relevant Minister where it concerns a national department, amend Schedules 1 and 2.

(6) The Director-General must, at the request of a national department or province assist with the preparation of an environmental implementation plan.

(7) The preparation of environmental implementation plans and environmental management plans may consist of the assembly of information or plans compiled for other purposes and may form part of any other process or procedure.

(8) The Minister may issue guidelines to assist provinces and national departments in the preparation of environmental implementation and environmental management plans.

12. Purpose and objects of environmental implementation plans and environmental management plans

The purpose of environmental implementation and management plans is to:

- (a) co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment or are entrusted

with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, and of provincial and local spheres of government, in order to:

- (i) minimise the duplication of procedures and functions; and
- (ii) promote consistency in the exercise of functions that may affect the environment;
- (b) give effect to the principle of co-operative government in chapter 3 of the Constitution;
- (c) secure the protection of the environment across the country as a whole;
- (d) prevent unreasonable actions by provinces in respect of the environment that are prejudicial to the economic or health interests of other provinces or the country as a whole; and
- (e) enable the Minister to monitor the achievement, promotion, and protection of a sustainable environment.

13. Content of environmental implementation plans

- (1) Every environmental implementation plan must contain:
 - (a) a description of policies, plans and programmes that may significantly affect the environment;
 - (b) a description of the manner in which the relevant national department or province will ensure that the policies, plans and programmes referred to in paragraph (a) will comply with the principles set out in section 2 as well as any national norms and standards as envisaged under section 146(2)(b)(i) of the Constitution and set out by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of the environment;
 - (c) a description of the manner in which the relevant national department or province will ensure that its functions are exercised so as to ensure compliance with relevant legislative provisions, including the principles set out in section 2, and any national norms and standards envisaged under section 146(2)(b)(i) of the Constitution and set out by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of the environment; and
 - (d) recommendations for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in chapter 5.
- (2) The Minister may make regulations for the purpose of giving effect to subsection (1)(b) and (c).

14. Content of environmental management plans

Every environmental management plan must contain:

- (a) a description of the functions exercised by the relevant department in respect of the environment;
- (b) a description of environmental norms and standards, including norms and standards contemplated in section 146(2)(b)(i) of the Constitution, set or applied by the relevant department;
- (c) a description of the policies, plans and programmes of the relevant department that are designed to ensure compliance with its policies by other organs of state and persons;
- (d) a description of priorities regarding compliance with the relevant department's policies by other organs of state and persons;
- (e) a description of the extent of compliance with the relevant department's policies by other organs of state and persons;
- (f) a description of arrangements for co-operation with other national departments and spheres of government, including any existing or

proposed memoranda of understanding entered into, or delegation or assignment of powers to other organs of state, with a bearing on environmental management; and

- (g) proposals for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in chapter 5.

15. Submission, scrutiny and adoption of environmental implementation plans and environmental management plans

- (1) Every environmental implementation plan and every environmental management plan must be submitted for approval to the Minister or MEC, as the case may be.

- (2) ...

- (3) ...

- (4) ...

- (5) A national department which has submitted an environmental management plan must adopt and publish its plan in the *Gazette* within 90 days of such submission and the plan becomes effective from the date of such publication.

- (6) The exercise of functions by organs of state may not be delayed or postponed on account of:

- (a) the failure of any organ of state to submit an environmental implementation plan;

...

- (d) any difference or disagreement regarding any environmental implementation plan and the resolution of that difference or disagreement; or

- (e) the failure of any organ of state to adopt and publish its environmental implementation or management plan.

16. Compliance with environmental implementation plans and environmental management plans

- (1)(a) Every organ of state must exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the environmental implementation plan or the environmental management plan prepared, submitted and adopted by that organ of state in accordance with this chapter: Provided that any substantial deviation from an environmental management plan or environmental implementation plan must be reported forthwith to the Director-General;

- (b) every organ of state must report annually within four months of the end of its financial year on the implementation of its adopted environmental management plan or environmental implementation plan to the Director-General; and

- (c) the Minister may recommend to any organ of state which has not submitted and adopted an environmental implementation plan or environmental management plan, that it comply with a specified provision of an adopted environmental implementation plan or submitted environmental management plan.

- (2) The Director-General monitors compliance with environmental implementation plans and environmental management plans and may:

- (a) take any steps or make any inquiries he or she deems fit in order to determine if environmental implementation plans and environmental management plans are being complied with by organs of state; and

- (b) if, as a result of any steps taken or inquiry made under paragraph (a), he or she is of the opinion that an environmental implementation plan and an environmental management plan is not substantially being complied with, serve a written notice on the organ of state concerned, calling on it to take such specified steps as the Director-General considers necessary to remedy the failure of compliance.
- (3)(a) Within 30 days of the receipt of a notice contemplated in subsection (2) (b), an organ of state must respond to the notice in writing setting out any:
 - (i) objections to the notice;
 - (ii) steps that will be taken to remedy failures of compliance; or
 - (iii) other information that the organ of state considers relevant to the notice.
- (b) After considering the representations from the organ of state and any other relevant information, the Director-General must within 30 days of receiving a response referred to in paragraph (a) issue a final notice:
 - (i) confirming, amending or cancelling the notice referred to in subsection (2)(b);
 - (ii) specify steps and a time period within which steps must be taken to remedy the failure of compliance.
- (c) If, after compliance with the provisions of paragraphs (a) and (b) there still remains a difference or disagreement between the organs of state and the Director-General, the organ of state may request the Minister to refer any difference or disagreement between itself and the Director-General regarding compliance with an environmental implementation plan, or the steps necessary to remedy a failure of compliance, to conciliation in accordance with chapter 4.
- (d) Where an organ of state does not submit any difference or disagreement to conciliation in accordance with paragraph (c), or if conciliation fails to resolve the matter, the Director-General may within 60 days of the final notice referred to in paragraph (b) if the matter has not been submitted to conciliation, or within 30 days of the date of conciliation, as the case may be:
 - (i) where the organ of state belongs to the provincial sphere of government, request the Minister to intervene in accordance with section 100 of the Constitution: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41(2) of the Constitution once promulgated;
 - (ii) where the organ of state belongs to the local sphere of government, request the MEC to intervene in accordance with section 139 of the Constitution: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41(2) of the Constitution once promulgated; or
 - (iii) where the organ of state belongs to the national sphere of government refer the matter for determination by the Minister in consultation with the Ministers responsible for the Department of Land Affairs, Department of Water Affairs and Forestry, Department of Minerals and Energy and Department of Constitutional Development.
- (4) Each provincial government must ensure that:
 - (a) the relevant provincial environmental implementation plan is complied with by each municipality within its province and for this purpose the provisions of subsections (2) and (3) must apply with the necessary changes; and
 - (b) municipalities adhere to the relevant environmental implementation and management plans, and the principles contained in section 2 in the preparation of any policy, programme or plan, including the

establishment of integrated development plans and land development objectives.

(5) The Director-General must keep a record of all environmental implementation plans and environmental management plans, relevant agreements between organs of state and any reports submitted under subsection (1)(b); and such plans, reports and agreements must be available for inspection by the public.

CHAPTER 4: Fair Decision making and Conflict Management

17. Reference to conciliation

- (1) Any Minister, MEC or Municipal Council:
 - (a) where a difference or disagreement arises concerning the exercise of any of its functions which may significantly affect the environment, or
 - (b) before whom an appeal arising from a difference or disagreement regarding the protection of the environment is brought under any law, may, before reaching a decision, consider the desirability of first referring the matter to conciliation and:
 - (i) must if he, she or it considers conciliation appropriate either:
 - (aa) refer the matter to the Director-General for conciliation under this Act; or
 - (bb) appoint a conciliator on the conditions, including timelimits, that he, she or it may determine; or
 - (cc) where a conciliation or mediation process is provided for under any other relevant law administered by such Minister, MEC or Municipal Council, refer the matter for mediation or conciliation under such other law; or
 - (ii) if he, she or it considers conciliation inappropriate or if conciliation has failed, make a decision: Provided that the provisions of section 4 of the Development Facilitation Act, 1995 (Act 67 of 1995), shall prevail in respect of decisions in terms of that Act and laws contemplated in subsection 1 (c) thereof.
- (2) Anyone may request the Minister, a MEC or Municipal Council to appoint a facilitator to call and conduct meetings of interested and affected parties with the purpose of reaching agreement to refer a difference or disagreement to conciliation in terms of this Act, and the Minister, MEC or Municipal Council may, subject to section 22, appoint a facilitator and determine the manner in which the facilitator must carry out his or her tasks, including timelimits.
- (3) A court or tribunal hearing a dispute regarding the protection of the environment may order the parties to submit the dispute to a conciliator appointed by the Director-General in terms of this Act and suspend the proceedings pending the outcome of the conciliation.

18. Conciliation

- (1) Where a matter has been referred to conciliation in terms of this Act, the Director-General may, on the conditions, including timelimits, that he or she may determine, appoint a conciliator acceptable to the parties to assist in resolving a difference or disagreement: Provided that if the parties to the difference or disagreement do not reach agreement on the person to be appointed, the Director-General may appoint a person who has adequate experience in or knowledge of conciliation of environmental disputes.
- (2) A conciliator appointed in terms of this Act must attempt to resolve the matter:
 - (a) by obtaining such information whether documentary or oral as is relevant to the resolution of the difference or disagreement;
 - (b) by mediating the difference or disagreement;

- (c) by making recommendations to the parties to the difference or disagreement; or
- (d) in any other manner that he or she considers appropriate.
- (3) In carrying out his or her functions, a conciliator appointed in terms of this Act must take into account the principles contained in section 2.
- (4) A conciliator may keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of all or part of the proceedings relating to the conciliation of a matter.
- (5) Where such record has been kept, any member of the public may obtain a readable copy of the record upon payment of a fee as approved by Treasury.
- (6) Where conciliation does not resolve the matter, a conciliator may enquire of the parties whether they wish to refer the matter to arbitration and may with their concurrence endeavour to draft terms of reference for such arbitration.
- (7)(a) The conciliator must submit a report to the Director-General, the parties and the person who referred the matter for conciliation, setting out the result of his or her conciliation, and indicating whether or not an agreement has been reached.
- (b) In the event of no agreement having been reached, the report may contain his or her recommendations and reasons therefor.
- (c) Where relevant, the report must contain the conciliator's comments on the conduct of the parties.
- (d) The report and any agreement reached as a result of the conciliation must be available for inspection by the public and any member of the public may obtain a copy thereof upon payment of a fee as approved by Treasury.
- (8) The Director-General may from time to time with the concurrence of the Minister of Finance, appoint persons or organisations with relevant knowledge or expertise to provide conciliation and mediation services.

19. Arbitration

- (1) A difference or disagreement regarding the protection of the environment may be referred to arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965).
- (2) Where a dispute or disagreement referred to in subsection (1) is referred to arbitration the parties thereto may appoint as arbitrator a person from the panel of arbitrators established in terms of section 21.

20. Investigation

The Minister may at any time appoint one or more persons to assist either him or her or, after consultation with a Municipal Council or MEC or another national Minister, to assist such a Municipal Council or MEC or another national Minister in the evaluation of a matter relating to the protection of the environment by obtaining such information, whether documentary or oral, as is relevant to such evaluation and to that end:

- (a) the Minister may by notice in the *Gazette* give such person or persons the powers of a Commission of Inquiry under the Commissions Act, 1947 (Act 8 of 1947);
- (b) the Minister may make rules by notice in the *Gazette* for the conduct of the inquiry: Provided that the decision of the inquiry and the reasons therefor must be reduced to writing;
- (c) the Director-General must designate, subject to the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994), as many officers and employees of the Department as may be necessary to assist such person and any work may be performed by a person other than such officer or employee at the remuneration and allowances which the

Minister with the concurrence of the Minister of Finance may determine.

21. Appointment of panel and remuneration

(1) The Minister may, with the concurrence of the Minister of Finance, determine remuneration and allowances, either in general or in any particular case, to be paid from money appropriated by Parliament for that purpose to any person or persons appointed in terms of this Act to render facilitation, conciliation, arbitration or investigation services, who are not in the full-time employment of the State.

(2) The Minister may create a panel or panels of persons from which appointment of facilitators and arbitrators in terms of this Act may be made, or contracts entered into in terms of this Act.

(3) The Minister may, pending the establishment of a panel or panels in terms of subsection (2), adopt the panel established in terms of section 31(1) of the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996).

22. Relevant considerations, report and designated officer

(1) Decisions under this Act concerning the reference of a difference or disagreement to conciliation, the appointment of a conciliator, the appointment of a facilitator, the appointment of persons to conduct investigations, and the conditions of such appointment, must be made taking into account:

- (a) the desirability of resolving differences and disagreements speedily and cheaply;
- (b) the desirability of giving indigent persons access to conflict resolution measures in the interest of the protection of the environment;
- (c) the desirability of improving the quality of decision-making by giving interested and affected persons the opportunity to bring relevant information to the decision-making process;
- (d) any representations made by persons interested in the matter; and
- (e) such other considerations relating to the public interest as may be relevant.

(2)(a) ...

(b) ...

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

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

CHAPTER 5: Integrated Environmental Management

23. General objectives

(1) The purpose of this chapter is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities.

(2) The general objective of integrated environmental management is to:

- (a) promote the integration of the principles of environmental management set out in section 2 into the making of all decisions which may have a significant effect on the environment;
- (b) identify, predict and evaluate the actual and potential impact on the environment, socioeconomic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising

- benefits, and promoting compliance with the principles of environmental management set out in section 2;
 - (c) ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them;
 - (d) ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment;
 - (e) ensure the consideration of environmental attributes in management and decision-making which may have a significant effect on the environment; and
 - (f) identify and employ the modes of environmental management best suited to ensuring that a particular activity is pursued in accordance with the principles of environmental management set out in section 2.
- (3) The Director-General must co-ordinate the activities of organs of state referred to in section 24(1) and assist them in giving effect to the objectives of this section and such assistance may include training, the publication of manuals and guidelines and the co-ordination of procedures.

24. Environmental authorisations

- (1) In order to give effect to the general objectives of integrated environmental management laid down in this chapter, the potential consequences for or impacts on the environment of listed activities or specified activities must be considered, investigated, assessed and reported on to the competent authority or the Minister of Minerals and Energy, as the case may be, except in respect of those activities that may commence without having to obtain an environmental authorisation in terms of this Act.
- (1A) Every applicant must comply with the requirements prescribed in terms of this Act in relation to:
- (a) steps to be taken before submitting an application, where applicable;
 - (b) any prescribed report;
 - (c) any procedure relating to public consultation and information gathering;
 - (d) any environmental management programme;
 - (e) the submission of an application for an environmental authorisation and any other relevant information; and
 - (f) the undertaking of any specialist report, where applicable.
- (2) The Minister, or an MEC with the concurrence of the Minister, may identify:
- (a) activities which may not commence without environmental authorisation from the competent authority;
 - (b) geographical areas based on environmental attributes, and as specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may not commence without environmental authorisation from the competent authority;
 - (c) geographical areas based on environmental attributes, and specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may be excluded from authorisation by the competent authority;
 - (d) activities contemplated in paragraphs (a) and (b) that may commence without an environmental authorisation, but that must comply with prescribed norms or standards: Provided that where an activity falls under the jurisdiction of another Minister or MEC; a decision in respect of paragraphs (a) to (d) must be taken after consultation with such other Minister or MEC.

(3) The Minister, or an MEC with the concurrence of the Minister, may compile information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority.

(4) Procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment:

- (a) must ensure, with respect to every application for an environmental authorisation:
 - (i) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;
 - (ii) that the findings and recommendations flowing from an investigation, the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to any proposed policy, programme, process, plan or project;
 - (iii) that a description of the environment likely to be significantly affected by the proposed activity is contained in such application;
 - (iv) investigation of the potential consequences for or impacts on the environment of the activity and assessment of the significance of those potential consequences or impacts; and
 - (v) public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in those information and participation procedures; and
- (b) must include, with respect to every application for an environmental authorisation and where applicable:
 - (i) investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity;
 - (ii) investigation of mitigation measures to keep adverse consequences or impacts to a minimum;
 - (iii) investigation, assessment and evaluation of the impact of any proposed listed or specified activity on any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act 25 of 1999), excluding the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act;
 - (iv) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
 - (v) investigation and formulation of arrangements for the monitoring and management of consequences for or impacts on the environment, and the assessment of the effectiveness of such arrangements after their implementation;
 - (vi) consideration of environmental attributes identified in the compilation of information and maps contemplated in subsection (3); and
 - (vii) provision for the adherence to requirements that are prescribed in a specific environmental management Act relevant to the listed or specified activity in question.
- (4A) Where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, subsection (4)(b) is applicable.

- (5) The Minister, or an MEC with the concurrence of the Minister, may make regulations consistent with subsection (4):
 - (a) laying down the procedure to be followed in applying for, the issuing of, and monitoring compliance with, environmental authorisations;
 - (b) laying down the procedure to be followed in respect of:
 - (i) the efficient administration and processing of environmental authorisations;
 - (ii) fair decision-making and conflict management in the consideration and processing of applications for environmental authorisations;
- (Editorial note: Numbering as per *Government Gazette*.)
- (iv) applications to the competent authority by any person to be exempted from the provisions of any regulation in respect of a specific activity;
- (v) appeals against decisions of competent authorities;
- (vi) the management and control of residue stock piles and deposits on a prospecting, mining, exploration and production area;
- (vii) consultation with land owners, lawful occupiers and other interested or affected parties;
- (viii) mine closure requirements and procedures, the apportionment of liability for mine closure and the sustainable closure of mines with an interconnected or integrated impact resulting in a cumulative impact;
- (ix) financial provision; and
- (x) monitoring and environmental management programme performance assessments;
- (bA) laying down the procedure to be followed for the preparation, evaluation and adoption of prescribed environmental management instruments, including:
 - (i) environmental management frameworks;
 - (ii) strategic environmental assessments;
 - (iii) environmental impact assessments;
 - (iv) environmental management programmes;
 - (v) environmental risk assessments;
 - (vi) environmental feasibility assessments;
 - (vii) norms or standards;
 - (viii) spatial development tools; or
 - (ix) any other relevant environmental management instrument that may be developed in time;
- (c) prescribing fees, after consultation with the Minister of Finance, to be paid for:
 - (i) the consideration and processing of applications for environmental authorisations; and
 - (ii) the review of documents, processes and procedures by specialists on behalf of the competent authority;
- (d) requiring, after consultation with the Minister of Finance, the provision of financial or other security to cover the risks to the State and the environment of non-compliance with conditions attached to environmental authorisations;
- (e) specifying that specified tasks performed in connection with an application for an environmental authorisation may only be performed by an environmental assessment practitioner registered in accordance with the prescribed procedures;
- (f) requiring that competent authorities maintain a registry of applications for, and records of decisions in respect of, environmental authorisations;
- (g) specifying that a contravention of a specified regulation is an offence and prescribing penalties for the contravention of that regulation;

- (h) prescribing minimum criteria for the report content for each type of report and for each process that is contemplated in terms of the regulations in order to ensure a consistent quality and to facilitate efficient evaluation of reports;
 - (i) prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in, the review process; and
 - (j) prescribing any other matter necessary for dealing with and evaluating applications for environmental authorisations.
- (6) An MEC may make regulations in terms of subsection (5) only in respect of listed activities and specified activities or areas in respect of which the MEC is the competent authority.
- (7) Compliance with the procedures laid down by the Minister or an MEC in terms of subsection (4) does not absolve a person from complying with any other statutory requirement to obtain authorisation from any organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity in question.
- (8)(a) Authorisations obtained under any other law for an activity listed or specified in terms of this Act does not absolve the applicant from obtaining authorisation under this Act unless an authorisation has been granted in the manner contemplated in section 24L.
- (b) Authorisations obtained after any investigation, assessment and communication of the potential impacts or consequences of activities, including an exemption granted in terms of section 24M or permits obtained under any law for a listed activity or specified activity in terms of this Act, may be considered by the competent authority as sufficient for the purposes of section 24(4), provided that such investigation, assessment and communication comply with the requirements of section 24(4)(a) and, where applicable, comply with section 24(4)(b).
- (9) Only the Minister may make regulations in accordance with subsection (5) stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential consequences for or impacts on the environment by activities, for the purpose of complying with subsection (1), where the activity:
- (a) has a development footprint that falls within the boundaries of more than one province or traverses international boundaries; or
 - (b) will affect compliance with obligations resting on the Republic under customary international law or a convention.
- (10)(a) The Minister, or an MEC with the concurrence of the Minister, may—
- (i) develop or adopt norms or standards for activities, or for any part of an activity or for a combination of activities, contemplated in terms of subsection (2)(d);
 - (ii) prescribe the use of the developed or adopted norms or standards in order to meet the requirements of this Act;
 - (iii) prescribe reporting and monitoring requirements; and
 - (iv) prescribe procedures and criteria to be used by the competent authority for the monitoring of such activities in order to determine compliance with the prescribed norms or standards.
- (b) Norms or standards contemplated in paragraph (a) must provide for rules, guidelines or characteristics:
- (i) that may commonly and repeatedly be used; and
 - (ii) against which the performance of activities or the results of those activities may be measured for the purposes of achieving the objects of this Act.
- (c) The process of developing norms or standards contemplated in paragraph (a) must, as a minimum, include:

- (i) publication of the draft norms or standards for comment in the relevant *Gazette*;
- (ii) consideration of comments received; and
- (iii) publication of the norms or standards to be prescribed.
- (d) The process of adopting norms or standards contemplated in paragraph (a) must, as a minimum, include:
 - (i) publication of the intention to adopt existing norms or standards in order to meet the requirements of this Act for comment in the relevant *Gazette*;
 - (ii) consideration of comments received; and
 - (iii) publication of the norms or standards to be prescribed.

24A. Procedure for listing activity or area

Before identifying any activity or area in terms of section 24(2), the Minister or MEC, as the case may be, must publish a notice in the relevant *Gazette*:

- (a) specifying, through description, a map or any other appropriate manner, the activity or area that it is proposing to list;
- (b) inviting interested parties to submit written comments on the proposed listing within a period specified in the notice.

24B. Procedure for delisting of activities or areas

- (1) The Minister may delist an activity or area identified by the Minister in terms of section 24(2).
- (2) An MEC may, with the concurrence of the Minister, delist an activity or area identified by the MEC in terms of section 24(2).
- (3) The Minister or MEC, as the case may be, must comply with section 24A, read with the changes required by the context, before delisting an activity or area in terms of this section.

24C. Procedure for identifying competent authority

- (1) When listing or specifying activities in terms of section 24 (2) the Minister, or an MEC with the concurrence of the Minister, must identify the competent authority responsible for granting environmental authorisations in respect of those activities.
- (2) The Minister must be identified as the competent authority in terms of subsection (1) if the activity:
 - (a) has implications for international environmental commitments or relations;
 - (b) will take place within an area protected by means of an international environmental instrument, other than:
 - (i) any area falling within the sea-shore or within 150 meters seawards from the high-water mark, whichever is the greater;
 - (ii) a conservancy;
 - (iii) a protected natural environment;
 - (iv) a proclaimed private nature reserve;
 - (v) a natural heritage site;
 - (vi) the buffer zone or transitional area of a biosphere reserve; or
 - (vii) the buffer zone or transitional area of a world heritage site;
 - (c) has a development footprint that falls within the boundaries of more than one province or traverses international boundaries;
 - (d) is undertaken, or is to be undertaken, by:
 - (i) a national department;
 - (ii) a provincial department responsible for environmental affairs or any other organ of state performing a regulatory function and reporting to the MEC; or

- (iii) a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government; or
- (e) will take place within a national proclaimed protected area or other conservation area under control of a national authority.
- (2A) The Minister of Minerals and Energy must be identified as the competent authority in terms of subsection (1) where the activity constitutes prospecting, mining, exploration, production or a related activity occurring within a prospecting, mining, exploration or production area.
- (3) The Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities:
 - (a) contemplated in subsection (2) may be dealt with by the MEC;
 - (b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister.

24D. Publication of list

- (1) The Minister or MEC concerned, as the case may be, must publish in the relevant *Gazette* a notice containing a list of:
 - (a) activities or areas identified in terms of section 24 (2); and
 - (b) competent authorities identified in terms of section 24C.
- (2) The notice referred to in subsection (1) must specify the date on which the list is to come into effect.

24E. Minimum conditions attached to environmental authorisations

Every environmental authorisation must as a minimum ensure that:

- (a) adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity;
- (b) the property, site or area is specified; and
- (c) provision is made for the transfer of rights and obligations when there is a change of ownership in the property.

24F. Offences relating to commencement or continuation of listed activity

- (1) Notwithstanding any other Act, no person may:
 - (a) commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority or the Minister of Minerals and Energy, as the case may be, has granted an environmental authorisation for the activity; or
 - (b) commence and continue an activity listed in terms of section 24(2)(d) unless it is done in terms of an applicable norm or standard.
- (2) It is an offence for any person to fail to comply with or to contravene:
 - (a) subsection (1)(a);
 - (b) subsection (1)(b);
 - (c) the conditions applicable to any environmental authorisation granted for a listed activity or specified activity;
 - (d) any condition applicable to an exemption granted in terms of section 24M; or
 - (e) an approved environmental management programme.
- (3) It is a defence to a charge in terms of subsection (2) to show that the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment.
- (4) A person convicted of an offence in terms of subsection (2) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

24G. Rectification of unlawful commencement of activity

(1) On application by a person who has committed an offence in terms of section 24F(2)(a) the Minister, Minister of Minerals and Energy or MEC concerned, as the case may be, may direct the applicant to:

- (a) compile a report containing:
 - (i) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects;
 - (ii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;
 - (iii) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;
 - (iv) an environmental management programme; and
 - (b) provide such other information or undertake such further studies as the Minister or MEC, as the case may be, may deem necessary.

(2) The Minister or MEC concerned must consider any reports or information submitted in terms of subsection (1) and thereafter may:

- (a) direct the person to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and subject to such conditions as the Minister or MEC may deem necessary; or
- (b) issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.

(2A) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R1 million and which must be determined by the competent authority, before the Minister or MEC concerned may act in terms of subsection (2)(a) or (b).

(3) A person who fails to comply with a directive contemplated in subsection (2)(a) or who contravenes or fails to comply with a condition contemplated in subsection (2)(b) is guilty of an offence and liable on conviction to a penalty contemplated in section 24F(4).

24H. Registration authorities

(1) An association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in such manner as the Minister may prescribe.

(2) The application must contain:

- (a) the constitution of the association;
- (b) a list of the members of the association;
- (c) a description of the criteria and process to be used to register environmental assessment practitioners;
- (d) a list of the qualifications of the members of the association responsible for the assessment of applicants for registration;
- (e) a code of conduct regulating the ethical and professional conduct of members of the association; and
- (f) any other prescribed requirements.

(3) After considering an application, and any other additional information that the Minister may require, the Minister may:

- (a) by notice in the *Gazette*, appoint the association as a registration authority; or
- (b) in writing addressed to the association, refuse the application, giving reasons for such refusal.

(4) The Minister may, for good cause and in writing addressed to the association, terminate the appointment of an association as a registration authority.

(5) The Minister must maintain a register of all associations appointed as registration authorities in terms of this section.

(6) The Minister may appoint as registration authorities such number of associations as are required for the purposes of this Act and may, if circumstances so require, limit the number of registration authorities to a single registration authority.

24I. Appointment of external specialist to review assessment

(1) The Minister or MEC may appoint an external specialist reviewer, and may recover costs from the applicant, in instances where:

- (a) the technical knowledge required to review any aspect of an assessment is not readily available within the competent authority;
- (b) a high level of objectivity is required which is not apparent in the documents submitted, in order to ascertain whether the information contained in such documents is adequate for decisionmaking or whether it requires amendment.

24J. Implementation guidelines

The Minister or an MEC, with the concurrence of the Minister, may publish guidelines regarding:

- (a) listed activities or specified activities; or
- (b) the implementation, administration and institutional arrangements of regulations made in terms of section 24 (5).

24K. Consultation between competent authorities and consideration of legislative compliance requirements of other organs of state having jurisdiction

(1) The Minister or an MEC may consult with any organ of state responsible for administering the legislation relating to any aspect of an activity that also requires environmental authorisation under this Act in order to coordinate the respective requirements of such legislation and to avoid duplication.

(2) The Minister or an MEC, in giving effect to chapter 3 of the Constitution and section 24(4)(a)(i) of this Act, may after consultation with the organ of state contemplated in subsection (1) enter into a written agreement with the organ of state in order to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires environmental authorisation under this Act.

(3) The Minister or an MEC may:

- (a) after having concluded an agreement contemplated in subsection (2), consider the relevance and application of such agreement on applications for environmental authorisations; and
- (b) when he or she considers an application for environmental authorisation that also requires authorisation in terms of other legislation take account of, either in part or in full and as far as specific areas of expertise are concerned, any process authorised under that legislation as adequate for meeting the requirements of chapter 5 of this Act, whether such processes are concluded or not and provided that section 24(4)(a) and, where applicable, section 24(4)(b) are given effect to in such process.

24L. Alignment of environmental authorisations

(1) If the carrying out of a listed activity or specified activity contemplated in section 24 is also regulated in terms of another law or a specific environmental management Act, the authority empowered under that other law or specific environmental management Act to authorise that activity and the competent authority empowered under chapter 5 to issue an environmental authorisation in respect of that activity may exercise their respective powers jointly by issuing:

- (a) separate authorisations; or
- (b) an integrated environmental authorisation.

(2) An integrated environmental authorisation contemplated in subsection (1)(b) may be issued only if:

- (a) the relevant provisions of this Act and the other law or specific environmental management Act have been complied with; and
- (b) the environmental authorisation specifies the:
 - (i) provisions in terms of which it has been issued; and
 - (ii) relevant authority or authorities that have issued it.

(3) A competent authority empowered under chapter 5 to issue an environmental authorisation in respect of a listed activity or specified activity may regard such authorisation as a sufficient basis for the granting or refusing of an authorisation, a permit or a licence under a specific environmental management Act if that specific environmental management Act is also administered by that competent authority.

(4) A competent authority empowered under chapter 5 to issue an environmental authorisation may regard an authorisation in terms of any other legislation that meets all the requirements stipulated in section 24(4)(a) and, where applicable, section 24(4)(b) to be an environmental authorisation in terms of that chapter.

24M. Exemptions from application of certain provisions

(1) The Minister or an MEC, as the case may be, may grant an exemption from any provision of this Act, except from a provision of section 24(4)(a).

(2) The Minister of Minerals and Energy may grant an exemption from any matter contemplated in section 24(4)(b).

(3) The Minister or an MEC, as the case may be, must prescribe the process to be followed for the lodging and processing of an application for exemption in terms of this section.

(4) The Minister, the Minister of Minerals and Energy or MEC may only grant an exemption contemplated in subsection (1) or (2), as the case may be, if:

- (a) the granting of the exemption is unlikely to result in significant detrimental consequences for or impacts on the environment;
- (b) the provision cannot be implemented in practice in the case of the application in question; or
- (c) the exemption is unlikely to adversely affect the rights of interested or affected parties.

24N. Environmental management programme

(1) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may require the submission of an environmental management programme before considering an application for an environmental authorisation.

(1A) Where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, or where such application relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, the Minister, the

Minister of Minerals and Energy, an MEC or identified competent authority must require the submission of an environmental management programme before considering an application for an environmental authorisation.

(2) The environmental management programme must contain:

- (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 24(1A), including environmental impacts or objectives in respect of:
 - (i) planning and design;
 - (ii) pre-construction and construction activities;
 - (iii) the operation or undertaking of the activity in question;
 - (iv) the rehabilitation of the environment; and
 - (v) closure, if applicable;
- (b) details of:
 - (i) the person who prepared the environmental management programme; and
 - (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;
- (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;
- (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
- (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
 - (iii) comply with any prescribed environmental management standards or practices.
- (3) The environmental management programme must, where appropriate:
 - (a) set out time periods within which the measures contemplated in the environmental management programme must be implemented;
 - (b) contain measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting area or mining area in question; and
 - (c) develop an environmental awareness plan describing the manner in which:
 - (i) the applicant intends to inform his or her employees of any environmental risk which may result from their work; and
 - (ii) risks must be dealt with in order to avoid pollution or the degradation of the environment.
- (4) The Minister of Minerals and Energy may not grant an environmental authorisation, unless he or she has considered any recommendation by the Regional Mining Development and Environmental Committee.

(5) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may call for additional information and may direct that the environmental management programme in question must be adjusted in such a way as the Minister, the Minister of Minerals and Energy or the MEC may require.

(6) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may at any time after he or she has approved an application for an environmental authorisation approve an amended environmental management programme.

(7) The holder and any person issued with an environmental authorisation:

- (a) must at all times give effect to the general objectives of integrated environmental management laid down in section 23;
- (b) must consider, investigate, assess and communicate the impact of his or her prospecting or mining on the environment;
- (c) must manage all environmental impacts:
 - (i) in accordance with his or her approved environmental management programme, where appropriate; and
 - (ii) as an integral part of the reconnaissance, prospecting or mining, exploration or production operation, unless the Minister of Minerals and Energy directs otherwise;
- (d) must monitor and audit compliance with the requirements of the environmental management programme;
- (e) must, as far as is reasonably practicable, rehabilitate the environment affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and
- (f) is responsible for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of his or her prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting or mining area to which such right or permit relates.

240. Criteria to be taken into account by competent authorities when considering applications

(1) If the Minister, the Minister of Minerals and Energy, an MEC or identified competent authority considers an application for an environmental authorisation, the Minister, Minister of Minerals and Energy, MEC or competent authority must:

- (a) comply with this Act;
- (b) take into account all relevant factors, which may include:
 - (i) any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused;
 - (ii) measures that may be taken:
 - (aa) to protect the environment from harm as a result of the activity which is the subject of the application; and
 - (bb) to prevent, control, abate or mitigate any pollution, substantially detrimental environmental impacts or environmental degradation;
 - (iii) the ability of the applicant to implement mitigation measures and to comply with any conditions subject to which the application may be granted;
 - (iv) where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment;
 - (v) any information and maps compiled in terms of section 24 (3), including any prescribed environmental management frame-works, to the extent

- that such information, maps and frame-works are relevant to the application;
- (vi) information contained in the application form, reports, comments, representations and other documents submitted in terms of this Act to the Minister, Minister of Minerals and Energy, MEC or competent authority in connection with the application;
 - (vii) any comments received from organs of state that have jurisdiction over any aspect of the activity which is the subject of the application; and
 - (viii) any guidelines, departmental policies and decision making instruments that have been developed or any other information in the possession of the competent authority that are relevant to the application; and
- (c) take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.
- (2) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority must consult with every State department that administers a law relating to a matter affecting the environment when he or she considers an application for an environmental authorisation.
- (3) A State department consulted in terms of subsection (2) must submit comment within 40 days from the date on which the Minister, Minister of Minerals and Energy, MEC or identified competent authority requests such State department in writing to submit comment.
- (4) If any State department contemplated in subsection (2) objects to the contents of an application for prospecting, mining, exploration, production or related activities in a prospecting, mining, exploration or production area, the Minister of Minerals and Energy must refer the objection to the Regional Mining Development and Environmental Committee for consideration and recommendation.
- (5) The Regional Mining Development and Environmental Committee must, within 45 days after the date of receiving such an objection, consider the objection and must make recommendations to the Minister of Minerals and Energy for a final decision.

24P. Financial provision for remediation of environmental damage

- (1) An applicant for an environmental authorisation relating to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area must make the prescribed financial provision for the rehabilitation, management and closure of environmental impacts, before the Minister of Minerals and Energy issues the environmental authorisation.
- (2) If any holder or any holder of an old order right fails to rehabilitate or to manage any impact on the environment, or is unable to undertake such rehabilitation or to manage such impact, the Minister of Minerals and Energy may, upon written notice to such holder, use all or part of the financial provision contemplated in subsection (1) to rehabilitate or manage the environmental impact in question.
- (3) Every holder must annually assess his or her environmental liability and, if circumstances so require, must adjust his or her financial provision to the satisfaction of the Minister of Minerals and Energy.
- (4)(a) If the Minister of Minerals and Energy is not satisfied with the assessment and financial provision contemplated in this section, the Minister of Minerals and Energy may appoint an independent assessor to conduct the assessment and determine the financial provision.
- (b) Any cost in respect of such assessment must be borne by the holder in question.

(5) The requirement to maintain and retain the financial provision contemplated in this section remains in force until the Minister of Minerals and Energy issues a certificate to such holder, but the Minister of Minerals and Energy may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent or residual environmental impacts.

(6) The Insolvency Act, 1936 (Act 24 of 1936), does not apply to any form of financial provision contemplated in subsection (1) and all amounts arising from that provision.

(7) The Minister, or an MEC in concurrence with the Minister, may in writing make subsections (1) to (6) with the changes required by the context applicable to any other application in terms of this Act.

24Q. Monitoring and performance assessment

As part of the general terms and conditions for an environmental authorisation and in order to:

- (a) ensure compliance with the conditions of the environmental authorisation; and
- (b) in order to assess the continued appropriateness and adequacy of the environmental management programme, every holder and every holder of an old order right must conduct such monitoring and such performance assessment of the approved environmental management programme as may be prescribed.

24R. Mine closure on environmental authorisation

(1) Every holder, 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 extraneous water, the management and sustainable closure thereof until the Minister of Minerals and Energy has issued a closure certificate in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned.

(2) When the Minister of Minerals and Energy issues a closure certificate, he or she must return such portion of the financial provision contemplated in section 24P as the Minister may deem appropriate to the holder concerned, but may retain a portion of such financial provision for any latent and or residual environmental impact that may become known in the future.

(3) Every holder, 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.

(4) The Minister may, in consultation with the Minister of Minerals and Energy and by notice in the *Gazette*, identify areas where mines are interconnected or their impacts are integrated to such an extent that the interconnection results in a cumulative impact.

(5) The Minister may, by notice in the *Gazette*, publish strategies in order to facilitate mine closure where mines are interconnected, have an integrated impact or pose a cumulative impact.

CHAPTER 6: International Obligations and Agreements

25. Incorporation of international environmental instruments

(1) Where the Republic is not yet bound by an international environmental instrument, the Minister may make a recommendation to Cabinet and Parliament regarding accession to and ratification of an international environmental instrument, which may deal with the following:

- (a) Available resources to ensure implementation;

- (b) views of interested and affected parties;
 - (c) benefits to the Republic;
 - (d) disadvantages to the Republic;
 - (e) the estimated date when the instrument is to come into effect;
 - (f) the estimated date when the instrument will become binding on the Republic;
 - (g) the minimum number of states required to sign the instrument in order for it to come into effect;
 - (h) the respective responsibilities of all national departments involved;
 - (i) the potential impact of accession on national parties;
 - (j) reservations to be made, if any; and
 - (k) any other matter which in the opinion of the Minister is relevant.
- (2) Where the Republic is a party to an international environmental instrument the Minister, after compliance with the provisions of section 231 (2) and (3) of the Constitution, may publish the provisions of the international environmental instrument in the *Gazette* and any amendment or addition to such instrument.
- (3) The Minister may introduce legislation in Parliament or make such regulations as may be necessary for giving effect to an international environmental instrument to which the Republic is a party, and such legislation and regulations may deal with *inter alia* the following:
- (a) the co-ordination of the implementation of the instrument;
 - (b) the allocation of responsibilities in terms of the instrument, including those of other organs of state;
 - (c) the gathering of information, including for the purposes of compiling and updating reports required in terms of the instrument and for submission to Parliament;
 - (d) the dissemination of information related to the instrument and reports from international meetings;
 - (e) initiatives and steps regarding research, education, training, awareness raising and capacity building;
 - (f) ensuring public participation;
 - (g) implementation of and compliance with the provisions of the instrument, including the creation of offences and the prescription of penalties where applicable; and
 - (h) any other matter necessary to give effect to the instrument.
- (4) The Minister may prior to a recommendation referred to in subsection (1), publish a notice in the *Gazette*, stating his or her intention to make such recommendation and inviting written comments.

26. Reports

- (1) The Minister must report to Parliament once a year regarding international environmental instruments for which he or she is responsible and such report may include details on:
- (a) participation in international meetings concerning international environmental instruments;
 - (b) progress in implementing international environmental instruments to which the Republic is a party;
 - (c) preparations undertaken in respect of international instruments to which the Republic is likely to become a party;
 - (d) initiatives and negotiations within the region of Southern Africa;
 - (e) the efficacy of co-ordination mechanisms; and
 - (f) legislative measures that have been taken and the time frames within which it is envisaged that their objectives will be achieved.

- (2)(a) The Minister must initiate an Annual Performance Report on Sustainable Development to meet the government's commitment to Agenda 21.
- (b)(i) The Annual Performance Report must cover all relevant activities of all national departments and spheres of government.
- (ii) All relevant organs of state must provide information to the Minister by a date to be determined by the Minister for the purposes of the report referred to in paragraph (a) and this may consist of an assembly of information compiled for other purposes.
- (c) The Minister may appoint persons as he or she considers necessary to act as a Secretariat to ensure preparation of the report.
- (d) The purpose of the report shall be to:
 - (i) provide an audit and a report of the government's performance in respect of Agenda 21;
 - (ii) review procedures for co-ordinating policies and budgets to meet the objectives of Agenda 21; and
 - (iii) review progress on a public educational programme to support the objectives of Agenda 21.

27. Application

- (1) This chapter applies to any international environmental instrument whether the Republic became a party to it before or after the coming into force of this Act.
- (2) The provisions of any international environmental instrument published in accordance with this section are evidence of the contents of the international environmental instrument in any proceedings or matter in which the provisions of the instrument come into question.

CHAPTER 7: Compliance, Enforcement and Protection

Part 1: Environmental hazards, access to information and protection of whistleblowers

28. Duty of care and remediation of environmental damage

- (1) Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.
- (1A) Subsection (1) also applies to a significant pollution or degradation that:
 - (a) occurred before the commencement of this Act;
 - (b) arises or is likely to arise at a different time from the actual activity that caused the contamination; or
 - (c) arises through an act or activity of a person that results in a change to pre-existing contamination.
- (2) Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures, include 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:
 - (a) any activity or process is or was performed or undertaken; or
 - (b) any other situation exists, which causes, has caused or is likely to cause significant pollution or degradation of the environment.

- (3) The measures required in terms of subsection (1) may include measures to:
- (a) investigate, assess and evaluate the impact on the environment;
 - (b) inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
 - (c) cease, modify or control any act, activity or process causing the pollution or degradation;
 - (d) contain or prevent the movement of pollutants or the causant of degradation;
 - (e) eliminate any source of the pollution or degradation; or
 - (f) remedy the effects of the pollution or degradation.
- (4) The Director-General or a provincial head of department may, after consultation with any other organ of state concerned and after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who fails to take the measures required under subsection (1) to:
- (a) investigate, evaluate and assess the impact of specific activities and report thereon;
 - (b) commence taking specific reasonable measures before a given date;
 - (c) diligently continue with those measures; and
 - (d) complete them before a specified reasonable date:
- 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.
- (5) The Director-General or a provincial head of department, when considering any measure or time period envisaged in subsection (4), must have regard to the following:
- (a) the principles set out in section 2;
 - (b) the provisions of any adopted environmental management plan or environmental implementation plan;
 - (c) the severity of any impact on the environment and the costs of the measures being considered;
 - (d) any measures proposed by the person on whom measures are to be imposed;
 - (e) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people;
 - (f) any other relevant factors.
- (6) If a person required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to, use of or a limitation on use of that land in order to effect rehabilitation or remedial work, but is unable to acquire it on reasonable terms, the Minister may:
- (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and
 - (b) recover from the person for whose benefit the expropriation was effected all costs incurred.
- (7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General or provincial head of department responsible for environmental affairs may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.
- (8) Subject to subsection (9), the Director-General or provincial head of department may recover costs for reasonable remedial measures to be

undertaken under subsection (7), before such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons:

- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;
- (b) the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner's successor in title;
- (c) the person in control of the land or any person who has or had a right to use the land at the time when:
 - (i) the activity or the process is or was performed or undertaken; or
 - (ii) the situation came about; or
- (d) any person who negligently failed to prevent:
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about:

Provided that such person failed to take the measures required of him or her under subsection (1).
- (9) The Director-General or provincial head of department may in respect of the recovery of costs under subsection (8), claim proportionally from any other person who benefited from the measures undertaken under subsection (7).
- (10) The costs claimed under subsections (6), (8) and (9) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.
- (11) If more than one person is liable under subsection (8), the liability must be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (4).
- (12) Any person may, after giving the Director-General or provincial head of department 30 days' notice, apply to a competent court for an order directing the Director-General or any provincial head of department to take any of the steps listed in subsection (4) if the Director-General or provincial head of department fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps, and the provisions of section 32(2) and (3) shall apply to such proceedings with the necessary changes.
- (13) When considering any application in terms of subsection (12), the court must take into account the factors set out in subsection (5).
- (14) No person may:
 - (a) unlawfully and intentionally or negligently commit any act or omission which causes significant or is likely to cause significant pollution or degradation of the environment;
 - (b) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect the environment in a significant manner; or
 - (c) refuse to comply with a directive issued under this section.
- (15) Any person who contravenes or fails to comply with subsection (14) is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

29. Protection of workers refusing to do environmentally hazardous work

- (1) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having refused to perform any work if the person in good faith and reasonably believed at the time of the refusal that the performance of the work would result in an imminent and serious threat to the environment.
- (2) An employee who has refused to perform work in terms of subsection (1) must as soon thereafter as is reasonably practicable notify the employer either personally or through a representative that he or she has refused to perform work and give the reason for the refusal.
- (3) Subsection (1) applies whether or not the person refusing to work has used or exhausted any other applicable external or internal procedure or otherwise remedied the matter concerned.
- (4) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (1).
- (5) No person may threaten to take any action contemplated by subsection (1) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (1).

30. Control of emergency incidents

- (1) In this section:
 - (a) '*incident*' means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed;
 - (b) '*responsible person*' includes any person who:
 - (i) is responsible for the incident;
 - (ii) owns any hazardous substance involved in the incident; or
 - (iii) was in control of any hazardous substance involved in the incident at the time of the incident;
 - (c) '*relevant authority*' means:
 - (i) a municipality with jurisdiction over the area in which an incident occurs;
 - (ii) a provincial head of department or any other provincial official designated for that purpose by the MEC in a province in which an incident occurs;
 - (iii) the Director-General;
 - (iv) any other Director-General of a national department.
- (2) Where this section authorises a relevant authority to take any steps, such steps may only be taken by:
 - (a) the person referred to in subsection (1)(c)(iv) if no steps have been taken by any of the other persons listed in subsection (1)(c);
 - (b) the person referred to in subsection (1)(c)(iii) if no steps have been taken by any of the persons listed in subsection (1)(c)(i) and (c)(ii);
 - (c) the person referred to in subsection (1)(c)(ii) if no steps have been taken by the person listed in subsection (1)(c)(i):
 Provided that any relevant authority may nevertheless take such steps if it is necessary to do so in the circumstances and no other person referred to in subsection (1)(c) has yet taken such steps.
- (3) The responsible person or, where the incident occurred in the course of that person's employment, his or her employer must forthwith after knowledge of the incident, report through the most effective means reasonably available:
 - (a) the nature of the incident;
 - (b) any risks posed by the incident to public health, safety and property;

- (c) the toxicity of substances or by-products released by the incident; and
- (d) any steps that should be taken in order to avoid or minimise the effects of the incident on public health and the environment to:
 - (i) the Director-General;
 - (ii) the South African Police Services and the relevant fire prevention service;
 - (iii) the relevant provincial head of department or municipality; and
 - (iv) all persons whose health may be affected by the incident.
- (4) The responsible person or, where the incident occurred in the course of that person's employment, his or her employer, must, as soon as reasonably practicable after knowledge of the incident:
 - (a) take all reasonable measures to contain and minimise the effects of the incident, including its effects on the environment and any risks posed by the incident to the health, safety and property of persons;
 - (b) undertake cleanup procedures;
 - (c) remedy the effects of the incident;
 - (d) assess the immediate and long-term effects of the incident on the environment and public health.
- (5) The responsible person or, where the incident occurred in the course of that person's employment, his or her employer, must, within 14 days of the incident, report to the Director-General, provincial head of department and municipality such information as is available to enable an initial evaluation of the incident, including:
 - (a) the nature of the incident;
 - (b) the substances involved and an estimation of the quantity released and their possible acute effect on persons and the environment and data needed to assess these effects;
 - (c) initial measures taken to minimise impacts;
 - (d) causes of the incident, whether direct or indirect, including equipment, technology, system, or management failure; and
 - (e) measures taken and to be taken to avoid a recurrence of such incident.
- (6) A relevant authority may direct the responsible person to undertake specific measures within a specific time to fulfil his or her obligations under subsections (4) and (5): Provided that the relevant authority must, when considering any such measure or time period, have regard to the following:
 - (a) the principles set out in section 2;
 - (b) the severity of any impact on the environment as a result of the incident and the costs of the measures being considered;
 - (c) any measures already taken or proposed by the person on whom measures are to be imposed, if applicable;
 - (d) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people;
 - (e) any other relevant factors.
- (7) A verbal directive must be confirmed in writing at the earliest opportunity, which must be within seven days.
- (8) Should:
 - (a) the responsible person fail to comply, or inadequately comply with a directive under subsection (6);
 - (b) there be uncertainty as to who the responsible person is; or
 - (c) there be an immediate risk of serious danger to the public or potentially serious detriment to the environment, a relevant authority may take the measures it considers necessary to:
 - (i) contain and minimise the effects of the incident;
 - (ii) undertake cleanup procedures; and
 - (iii) remedy the effects of the incident.

(9) A relevant authority may claim reimbursement of all reasonable costs incurred by it in terms of subsection (8) from every responsible person jointly and severally.

(10) A relevant authority which has taken steps under subsections (6) or (8) must, as soon as reasonably practicable, prepare comprehensive reports on the incident, which reports must be made available through the most effective means reasonably available to:

- (a) the public;
- (b) the Director-General;
- (c) the South African Police Services and the relevant fire prevention service;
- (d) the relevant provincial head of department or municipality; and
- (e) all persons who may be affected by the incident.

(11) A person who contravenes or fails to comply with subsection (3), (4), (5) or (6) is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year, or to both such a fine and such imprisonment.

31. Access to environmental information and protection of whistle-blowers

(1) ...

(2) ...

(3) ...

(4) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of an environmental risk and the disclosure was made in accordance with subsection (5).

(5) Subsection (4) applies only if the person concerned:

- (a) disclosed the information concerned to:
 - (i) a committee of Parliament or of a provincial legislature;
 - (ii) an organ of state responsible for protecting any aspect of the environment or emergency services;
 - (iii) the Public Protector;
 - (iv) the Human Rights Commission;
 - (v) any attorney-general or his or her successor;
 - (vi) more than one of the bodies or persons referred to in subparagraphs (i) to (v);
- (b) disclosed the information concerned to one or more news media and on clear and convincing grounds believed at the time of the disclosure:
 - (i) that the disclosure was necessary to avert an imminent and serious threat to the environment, to ensure that the threat to the environment was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
 - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure;
- (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure, other than the procedure contemplated in paragraph (a) or (b), for reporting or otherwise remedying the matter concerned; or
- (d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.

(6) Subsection (4) applies whether or not the person disclosing the information concerned has used or exhausted any other applicable external or internal procedure to report or otherwise remedy the matter concerned.

(7) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (4).

(8) No person may threaten to take any action contemplated by subsection (4) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (4).

Part 2: Application and enforcement of Act and any specific environmental management Act

31A. Application

(1) This Part applies to the enforcement of this Act and any specific environmental management Act.

(2) In this Part, unless inconsistent with the context, a word or expression to which a meaning has been assigned in a specific environmental management Act has, in relation to the administration or enforcement of that Act, the meaning assigned to it in that Act.

(3) For the purposes of this Part, Schedule 1 to the Criminal Procedure Act, 1977 (Act 51 of 1977), is deemed to include an offence committed in terms of this Act or a specific environmental management Act.

31B. Designation of environmental management inspectors by Minister

(1) The Minister may:

(a) designate as an environmental management inspector, any staff member of:

- (i) the Department; or
- (ii) any other organ of state; and

(b) at any time withdraw a designation made in terms of paragraph (a).

(2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister and the relevant organ of state.

31BA. Designation of environmental management inspectors by Minister of Water Affairs and Forestry

(1) The Minister of Water Affairs and Forestry may:

(a) designate as an environmental management inspector, any staff member of:

- (i) the Department of Water Affairs and Forestry; or
- (ii) any other organ of state; and

(b) at any time withdraw a designation made in terms of paragraph (a).

(2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister of Water Affairs and Forestry and the relevant organ of state.

31C. Designation of environmental management inspectors by MEC

(1) An MEC may:

(a) designate as an environmental management inspector, any staff member of:

- (i) the department responsible for environmental management in the province;
- (ii) any other provincial organ of state; or
- (iii) any municipality in the province; and

(b) at any time withdraw a designation made in terms of paragraph (a).

(2) A designation in terms of subsection (1)(a)(ii) or (iii) may only be made by agreement between the relevant MEC and the relevant provincial organ of state or municipality.

31D. Mandates

(1) When designating a person as an environmental management inspector, the Minister, the Minister of Water Affairs and Forestry or MEC, as the case may be, must, subject to subsection (2), determine whether the person concerned is designated for the enforcement of:

- (a) this Act;
- (b) a specific environmental management Act;
- (c) specific provisions of this Act or a specific environmental management Act;
- (d) this Act and all specific environmental management Acts; or
- (e) any combination of those Acts or provisions of those Acts.

(2) 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:

- (a) which are administered by the MEC or a provincial organ of state; or
- (b) in respect of which the MEC or a provincial organ of state exercises or performs assigned or delegated powers or duties.

(3) A person designated as an environmental management inspector may exercise any of the powers given to environmental management inspectors in terms of this Act that are necessary for the inspector's mandate in terms of subsection (1) and that may be specified by the Minister, the Minister of Water Affairs and Forestry or MEC by notice in writing to the inspector.

31E. Prescribed standards

(1) The Minister may prescribe:

- (a) qualification criteria for environmental management inspectors; and
- (b) training that must be completed by environmental management inspectors.

(2) The Minister may only prescribe criteria and training in terms of subsection (1) after consultation with the Minister responsible for safety and security.

31F. Proof of designation

(1) When exercising any powers or performing any duties in terms of this Act or a specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card referred to in subsection (1).

(2) When exercising any powers or performing any duties in terms of this Act or a specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card referred to in subsection (1).

31G. Functions of inspectors

(1) An environmental management inspector within his or her mandate in terms of section 31D:

- (a) must monitor and enforce compliance with a law for which he or she has been designated in terms of that section;
- (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute:
 - (i) an offence in terms of such law;
 - (ii) a breach of such law; or

- (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.
- (2) An environmental management inspector:
 - (a) must carry out his or her duties and exercise his or her powers:
 - (i) in accordance with any instructions issued by the Minister or MEC, as the case may be; and
 - (ii) subject to any limitations and in accordance with any procedures that may be prescribed; and
 - (b) may be accompanied by an interpreter or any other person whose assistance may reasonably be required;
 - (c) must exercise his or her powers in a way that minimises any damage to, loss or deterioration of any premises or thing.

31H. General powers

- (1) An environmental management inspector, within his or her mandate in terms of section 31D, may:
 - (a) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute:
 - (i) an offence in terms of a law for which that inspector has been designated in terms of that section;
 - (ii) a breach of such law; or
 - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;
 - (b) 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;
 - (c) inspect, or question a person about, any document, book or record or any written or electronic information:
 - (i) which may be relevant for the purpose of paragraph (a); or
 - (ii) to which this Act or a specific environmental management Act relates;
 - (d) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph (c), or remove such document, book, record or written or electronic information in order to make copies or extracts;
 - (e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;
 - (f) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in:
 - (i) committing an offence in terms of the law for which that inspector has been designated in terms of section 31D;
 - (ii) breaching such law; or
 - (iii) breaching a term or condition of a permit, authorisation or other instrument issued in terms of such law;
 - (g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection;
 - (h) dig or bore into the soil;
 - (i) take samples;
 - (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

- (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.
- (2) A written notice issued in terms of subsection (1)(b) must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.
- (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.
- (4) An environmental management inspector must:
 - (a) provide a receipt for:
 - (i) any document, book, record or written or electronic information removed in terms of subsection (1)(d); or
 - (ii) any specimen, article, substance or other item removed in terms of subsection (1)(f); and
 - (b) return anything removed within a reasonable period or, subject to section 34D, at the conclusion of any relevant criminal proceedings.
- (5) In addition to the powers set out in this Part, an environmental management inspector must be regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act 51 of 1977):
 - (a) to comply with his or her mandate in terms of section 31D; and
 - (b) within the area of jurisdiction for which he or she has been designated.

311. Seizure of items

- (1) The provisions of sections 30 to 34 of the Criminal Procedure Act, 1977, apply to the disposal of anything seized in terms of this Part, subject to such modifications as the context may require.
- (2) When an item is seized in terms of this Part, the environmental management inspector may request 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.
- (3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management inspector may immobilise it by removing a part.
- (4) An item seized in terms of this section, including a part of a vehicle, vessel or aircraft referred to in subsection (3), must be kept in such a way that it is secured against damage.
- (5) An environmental management inspector may:
 - (a) in the case of a specimen of a threatened or protected species or alien species being imported into the Republic, at the port of entry, request 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 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.

31J. Powers to stop, enter and search vehicles, vessels and aircraft

(1) An environmental management inspector, within his or her mandate in terms of section 31D, may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal:

- (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit:
 - (i) an offence in terms of the law for which that inspector has been designated in terms of section 31D; or
 - (ii) a breach of such law or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or
- (b) contains or conveys a thing which may serve as evidence of such offence or breach.

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

(3) The provisions of section 31I apply to anything seized in terms of subsection (2), subject to such modifications as the context may require.

(4) An environmental management inspector may, for the purpose of implementing subsection (1), at any time, and without a warrant:

- (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or
- (b) if necessary and possible, force the driver or pilot to stop or land, as the case may be.

(5) An environmental management inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in section 31H.

(6) An environmental management inspector may apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13(8) of the South African Police Service Act, 1995 (Act 68 of 1995), to establish a roadblock or a checkpoint.

(7) An environmental management inspector has, within his or her mandate in terms of section 31D, all the powers of a member of the South African Police Service in terms of section 13(8) of the South African Police Service Act, 1995.

31K. Routine inspections

(1) An environmental management 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:

- (a) the legislation for which that inspector has been designated in terms of section 31D; or
- (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.

(2) An environmental management inspector, within his or her mandate in terms of section 31D, may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any residential premises for the purposes of ascertaining compliance with:

- (a) the legislation for which that inspector has been designated in terms of section 31D; or
- (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.

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

(4) An environmental management inspector may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if:

- (a) the person in control of the premises consents to the entry and inspection; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.

(5) While carrying out a routine inspection, an environmental management 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.

(6) The provisions of section 31I apply to anything seized in terms of subsection (5), subject to such modifications as the context may require.

(7) An environmental management inspector may exercise on such building, land, premises, vehicle, vessel, aircraft, pack-animals, container, bag, box, item and the like any of the powers mentioned in section 31H.

31L. Power to issue compliance notices

(1) An environmental management inspector, within his or her mandate in terms of section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied:

- (a) with a provision of the law for which that inspector has been designated in terms of section 31D; or
- (b) with a term or condition of a permit, authorisation or other instrument issued in terms of such law.

(2) A compliance notice must set out:

- (a) details of the conduct constituting non-compliance;
- (b) any steps the person must take and the period within which those steps must be taken;
- (c) any thing which the person may not do, and the period during which the person may not do it; and
- (d) the procedure to be followed in lodging an objection to the compliance notice with the Minister or MEC, as the case may be.

(3) An environmental management inspector may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.

(4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance notice in terms of subsection (5).

(5) A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M may make representations to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.

31M. Objections to compliance notice

- (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 MEC, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister or MEC may determine.
- (2) After considering any representations made in terms of subsection (1) and any other relevant information, the Minister or MEC, as the case may be:
 - (a) may confirm, modify or cancel a notice or any part of a notice; and
 - (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.
- (3) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding five million rand or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

31N. Failure to comply with compliance notice

- (1) A person who fails to comply with a compliance notice commits an offence.
- (2) If a person fails to comply with a compliance notice, the environmental management inspector must report the non-compliance to the Minister or MEC, as the case may be, and the Minister or MEC may:
 - (a) revoke or vary the relevant permit, authorisation or other instrument which is the subject of the compliance notice;
 - (b) take any necessary steps and recover the costs of doing so from the person who failed to comply.
- (3) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding five million rand or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

31O. Powers of South African Police Service members

- (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, 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.
- (2) Notwithstanding subsection (1), the Minister or MEC, as the case may be, may, with the concurrence of the Minister responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 31K to 31O.

31P. Duty to produce documents

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, must produce that document at the request of an environmental management inspector.

31Q. Confidentiality

- (1) 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, except:
 - (a) if the information is disclosed in compliance with the provisions of any law;
 - (b) if the person is ordered to disclose the information by a court;

- (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
- (d) for the purposes of the administration of justice.
- (1A) Subsection (1) does not apply to information that pertains to:
 - (a) environmental quality or the state of the environment;
 - (b) any risks posed to the environment, public safety and the health and well-being of people; or
 - (c) compliance with or contraventions of any environmental legislation by any person.
- (2) A person convicted of an offence in terms of this section is liable to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

Part 3: Judicial matters

32. Legal standing to enforce environmental laws

- (1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources:
 - (a) in that person's or group of person's own interest;
 - (b) in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;
 - (c) in the interest of or on behalf of a group or class of persons whose interests are affected;
 - (d) in the public interest; and
 - (e) in the interest of protecting the environment.
- (2) A court may decide not to award costs against a person who, or group of persons which, fails to secure the relief sought in respect of any breach or threatened breach of any provision of this Act, including a principle contained in chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources, if the court is of the opinion that the person or group of persons acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought.
- (3) Where a person or group of persons secures the relief sought in respect of any breach or threatened breach of any provision of this Act, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment, a court may on application:
 - (a) award costs on an appropriate scale to any person or persons entitled to practice as advocate or attorney in the Republic who provided free legal assistance or representation to such person or group in the preparation for or conduct of the proceedings; and
 - (b) order that the party against whom the relief is granted .

33. Private prosecution

- (1) Any person may:
 - (a) in the public interest; or
 - (b) in the interest of the protection of the environment,
 institute and conduct a prosecution in respect of any breach or threatened breach of any duty, other than a public duty resting on an organ of state, in

any national or provincial legislation or municipal by-law, or any regulation, licence, permission or authorisation issued in terms of such legislation, where that duty is concerned with the protection of the environment and the breach of that duty is an offence.

(2) The provisions of sections 9 to 17 of the Criminal Procedure Act, 1977 (Act 51 of 1977) applicable to a prosecution instituted and conducted under section 8 of that Act must apply to a prosecution instituted and conducted under subsection (1): Provided that if:

- (a) the person prosecuting privately does so through a person entitled to practice as an advocate or an attorney in the Republic;
- (b) the person prosecuting privately has given written notice to the appropriate public prosecutor that he or she intends to do so; and
- (c) the public prosecutor has not, within 28 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence,
- (i) the person prosecuting privately shall not be required to produce a certificate issued by the Attorney-General stating that he or she has refused to prosecute the accused; and
- (ii) the person prosecuting privately shall not be required to provide security for such action.

(3) The court may order a person convicted upon a private prosecution brought under subsection (1) to pay the costs and expenses of the prosecution, including the costs of any appeal against such conviction or any sentence.

(4) The accused may be granted an order for costs against the person prosecuting privately, if the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal and the court finds either:

- (a) that the person instituting and conducting the private prosecution did not act out of a concern for the public interest or the protection of the environment; or
- (b) that such prosecution was unfounded, trivial or vexatious.

(5) When a private prosecution is instituted in accordance with the provisions of this Act, the Attorney-General is barred from prosecuting except with the leave of the court concerned.

34. Criminal proceedings

(1) Whenever any person is convicted of an offence under any provision listed in Schedule 3 and it appears that such person has by that offence caused loss or damage to any organ of state or other person, including the cost incurred or likely to be incurred by an organ of state in rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.

(2) Upon proof of such amount, the court may give judgment therefor in favour of the organ of state or other person concerned against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court.

(3) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order:

- (a) the award of damages or compensation or a fine equal to the amount so assessed; or
- (b) that such remedial measures as the court may determine must be undertaken by the convicted person.
- (4) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may, upon application by the public prosecutor or another organ of state, order such person to pay the reasonable costs incurred by the public prosecutor and the organ of state concerned in the investigation and prosecution of the offence.
- (5) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, and the act or omission of the manager, agent or employee occurred because the employer failed to take all reasonable steps to prevent the act or omission in question, then the employer shall be guilty of the said offence and, save that no penalty other than a fine may be imposed if a conviction is based on this subsection, liable on conviction to the penalty specified in the relevant law, including an order under subsections (2), (3) and (4), and proof of such act or omission by a manager, agent or employee shall constitute prima facie evidence that the employer is guilty under this subsection.
- (6) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, he or she shall be liable to be convicted and sentenced in respect thereof as if he or she were the employer.
- (7) Any person who is or was a director of a firm at the time of the commission by that firm of an offence under any provision listed in Schedule 3 shall himself or herself be guilty of the said offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (2), (3) and (4), if the offence in question resulted from the failure of the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence: Provided that proof of the said offence by the firm shall constitute prima facie evidence that the director is guilty under this subsection.
- (8) Any such manager, agent, employee or director may be so convicted and sentenced in addition to the employer or firm.
- (9) In subsection (7) and (8):
 - (a) 'firm' shall mean a body incorporated by or in terms of any law as well as a partnership; and
 - (b) 'director' shall mean a member of the board, executive committee, or other managing body of a corporate body and, in the case of a close corporation, a member of that close corporation or in the case of a partnership, a member of that partnership.
- (10)(a) The Minister may amend Part (a) of Schedule 3 by regulation.
- (b) An MEC may amend Part (b) of Schedule 3 in respect of the province of his or her jurisdiction by regulation.

34A. Offences relating to environmental management inspectors

- (1) A person is guilty of an offence if that person:
 - (a) hinders or interferes with an environmental management inspector in the execution of that inspector's official duties;
 - (b) pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector;

- (c) furnishes false or misleading information when complying with a request of an environmental management inspector; or
 - (d) fails to comply with a request of an environmental management inspector.
- (2) A person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

34B. Award of part of fine recovered to informant

- (1) A court which imposes a fine for an offence in terms of this Act or a specific environmental management Act may order that a sum of not more than one-fourth of the fine be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.
- (2) A person in the service of an organ of state or engaged in the implementation of this Act or a specific environmental management Act is not entitled to such an award.

34C. Cancellation of permits

- (1) The court convicting a person of an offence in terms of this Act or a specific environmental management Act may:
- (a) withdraw any permit or other authorisation issued in terms of this Act or a specific environmental management Act to that person, if the rights conferred by the permit or authorisation were abused by that person;
 - (b) disqualify that person from obtaining a permit or other authorisation for a period not exceeding five years;
 - (c) issue an order that all competent authorities authorised to issue permits or other authorisations be notified of any disqualification in terms of paragraph (b).

34D. Forfeiture of items

- (1) The court convicting a person of an offence in terms of this Act or any of the specific environmental Acts may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of, or in connection with, the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.
- (2) The provisions of section 35 of the Criminal Procedure Act, 1977 (Act 51 of 1977), apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.
- (3) The Minister must ensure that any specimen forfeited to the State in terms of subsection (1) is:
- (a) repatriated to the country of export or origin as appropriate, at the expense of the person convicted of the offence involving that specimen;
 - (b) deposited in an appropriate institution, collection or museum, if:
 - (i) the specimen is clearly marked as a seized specimen; and
 - (ii) the person convicted of the offence does not benefit or gain from such deposit; or
 - (c) otherwise disposed of in an appropriate manner.

34E. Treatment of seized live specimens

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

be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

34F. Security for release of vehicles, vessels or aircraft

- (1) If a vehicle, vessel or aircraft is seized in terms of this Act and is kept for the purposes of criminal proceedings, the owner or agent of the owner may at any time apply to a court for the release of the vehicle, vessel or aircraft.
- (2) A court may order the release of the vehicle, vessel or aircraft on the provision of security determined by the court.
- (3) The amount of the security must at least be equal to the sum of:
 - (a) the market value of the vehicle, vessel or aircraft;
 - (b) the maximum fine that a court may impose for the alleged offence; and
 - (c) costs and expenses incurred or reasonably foreseen to be incurred by the State in connection with prosecuting the offence and recoverable in terms of this Act.
- (4) If the court is satisfied that there are circumstances which warrant a lesser amount of security, it may order the release of the vehicle, vessel or aircraft subject to the provision of security for such lesser amount.

34G. Admission of guilt fines

- (1) 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.
- (2) An environmental management inspector who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue to the alleged offender a written notice referred to in section 56 of the Criminal Procedure Act, 1977 (Act 51 of 1977).
- (3) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount:
 - (a) prescribed for the offence; and
 - (b) which a court would presumably have imposed in the circumstances.
- (4) The provisions of sections 56, 57 and 57A of the Criminal Procedure Act, 1977, apply, subject to such modifications as the context may require, to written notices and admission of guilt fines referred to in this section.

34H. Jurisdiction

Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act or any specific Environmental Management Acts.

CHAPTER 8: Environmental Management Co-operation Agreements

35. Conclusion of agreements

- (1) The Minister and every MEC and municipality, may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act.
- (2) Environmental management co-operation agreements must:
 - (a) only be entered into with the agreement of:
 - (i) every organ of state which has jurisdiction over any activity to which such environmental management co-operation agreement relates;
 - (ii) the Minister and the MEC concerned;
 - (b) only be entered into after compliance with such procedures for public participation as may be prescribed by the Minister; and

- (c) comply with such regulations as may be prescribed under section 45.
- (3) Environmental management co-operation agreements may contain—
 - (a) an undertaking by the person or community concerned to improve on the standards laid down by law for the protection of the environment which are applicable to the subject matter of the agreement;
 - (b) a set of measurable targets for fulfilling the undertaking in (a), including dates for the achievement of such targets; and
 - (c) provision for:
 - (i) periodic monitoring and reporting of performance against targets;
 - (ii) independent verification of reports;
 - (iii) regular independent monitoring and inspections;
 - (iv) verifiable indicators of compliance with any targets, norms and standards laid down in the agreement as well as any obligations laid down by law;
 - (d) the measures to be taken in the event of non-compliance with commitments in the agreement, including where appropriate penalties for non-compliance and the provision of incentives to the person or community.

CHAPTER 9: Administration of Act and Specific Environmental Management Acts

36. Expropriation

- (1) The Minister may purchase or, subject to compensation, expropriate any property for environmental or any other purpose under this Act, if that purpose is a public purpose or is in the public interest.
- (2) The Expropriation Act, 1975 (Act 63 of 1975) applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriation.
- (3) Notwithstanding the provisions of subsection (2), the amount of compensation and the time and manner of payment must be determined in accordance with section 25 (3) of the Constitution, and the owner of the property in question must be given a hearing before any property is expropriated.

37. Reservation

The Minister may reserve State land with the consent of the Minister authorised to dispose of the land, and after consultation with any other Minister concerned, for environmental or other purposes in terms of this Act, if that purpose is a public purpose or is in the public interest.

38. Intervention in litigation

The Minister may intervene in litigation before a court in any matter under this Act.

39. Agreements

The Director-General may enter into agreements with organs of state in order to fulfil his or her responsibilities.

40. Appointment of employees on contract

- (1) The Director-General may appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), when this is necessary to carry out the functions of the Department.

- (2) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees.
- (3) Such employees must be remunerated from money appropriated for that purpose by Parliament.

41. Assignment of powers

- (1) In this section 'assignment' means an assignment as contemplated in section 99 of the Constitution.
- (2) The Minister must record all assignments referred to in subsection (1) in a Schedule to this Act and may amend that Schedule.

42. Delegation of powers and duties by Minister and Director-General

- (1) The Minister may delegate a power or duty vested in him or her in terms of this Act or a specific environmental management Act to:
 - (a) the Director-General;
 - (b) an MEC, by agreement with the MEC;
 - (c) the management authority of a protected area; or
 - (d) any organ of state, by agreement with that organ of state.
- (2) A delegation referred to in subsection (1):
 - (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) does not prevent the exercise of the power or the performance of the duty by the Minister himself or herself;
 - (d) may include the power to subdelegate; and
 - (e) may be withdrawn by the Minister.
- (2A) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, the management authority of a protected area or an organ of state.
- (2B) The Minister 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.
- (2C) The Minister may not delegate a power or duty vested in the Minister in terms of this Act or a specific environmental management Act:
 - (a) to make regulations;
 - (b) to publish notices in the *Gazette*;
 - (c) to appoint a member of a board or committee; or
 - (d) to expropriate private land.
- (3) The Director-General may delegate a power or duty vested in him or her by or under this Act or a specific environmental management Act to:
 - (a) the holder of an office in the Department; or
 - (b) after consultation with a provincial head of department, an officer in a provincial administration or municipality.
- (4) The Director-General may permit a person to whom a power or duty has been delegated by the Director-General to delegate further that power or duty.
- (5) A delegation referred to in subsection (3) and the permission referred to in subsection (4):
 - (a) must be in writing;
 - (b) may be subject to conditions;
 - (c) do not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself; and
 - (d) may be withdrawn by the Director-General.

42A. Delegation of powers by MEC

(1) The MEC of a province may delegate a power or duty vested in or delegated to the MEC in terms of this Act or a specific environmental management Act to:

- (a) the head of that MEC's department;
- (b) the management authority of a provincial or local protected area;
- (c) a municipality, by agreement with the municipality; or
- (d) any provincial organ of state, by agreement with that organ of state.

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

- (a) must be in writing;
- (b) may be made subject to conditions;
- (c) does not prevent the exercise of the power or the performance of the duty by the MEC personally;
- (d) may include the power to subdelegate; and
- (e) may be withdrawn by the MEC.

(3) The MEC 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.

(4) The MEC may not delegate a power or duty vested in the MEC in terms of this Act or a specific environmental management Act:

- (a) to make regulations;
- (b) to publish notices in the Gazette;
- (c) to appoint a member of a board or committee; or
- (d) to expropriate private land.

42B. Delegation by Minister of Minerals and Energy

(1) The Minister of Minerals and Energy 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
- (b) any officer in the Department of Minerals and Energy.

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

- (a) must be in writing;
- (b) may be made subject to any condition;
- (c) does not prevent the performance of the function by the Minister himself or herself; and
- (d) may be withdrawn by the Minister.

43. Appeals

(1) Any person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.

(1B) Any person may appeal to the Minister of Minerals and Energy against a process related decision taken by a person to whom a function has been delegated by that Minister in terms of section 42B.

(2) Any person may appeal to an MEC against a decision taken by any person acting under a power delegated by that MEC under this Act or a specific environmental management Act.

(3) ...

(4) An appeal under subsection (1), (1A), (1B) or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

(5) The Minister or an MEC, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.

(6) The Minister or an MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any

other appropriate decision, including a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(7) An appeal under this section does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or any directive, unless the Minister or an MEC directs otherwise.

44. Regulations in general

(1) The Minister may make regulations:

(a) dealing with any matter which under this Act must be dealt with by regulation;

(aA) prohibiting, restricting or controlling activities which are likely to have a detrimental effect on the environment; and

(b) generally, to carry out the purposes and the provisions of this Act.

(2) The Minister may make different regulations under this Act in respect of different activities, provinces, geographical areas and owners or classes of owners of land.

(3) The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe penalties for such offences.

45. Regulations for management co-operation agreements

(1) The Minister may make regulations concerning:

(a) procedures for the conclusion of environmental management co-operation agreements, which must include procedures for public participation;

(b) the duration of agreements;

(c) requirements relating to the furnishing of information;

(d) general conditions and prohibitions;

(e) reporting procedures;

(f) monitoring and inspection.

(2) An MEC or municipal council may substitute his or her or its own regulations or by-laws, as the case may be, for the regulations issued by the Minister under subsection (1) above: Provided that such provincial regulations or municipal by-laws must cover the matters enumerated in subsection (1), and comply with the principles laid down in this Act.

46. Model environmental management by-laws

(1) The Minister may make model by-laws aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of a municipality, which may be adopted by a municipality as municipal by-laws.

(2) Any municipality may request the Director-General to assist it with the preparation of by-laws on matters affecting the environment and the Director-General may not unreasonably refuse such a request.

(3) The Director-General may institute programmes to assist municipalities with the preparation of by-laws for the purposes of implementing this Act.

(4) The purpose of the model by-laws referred to in subsection (1) must be to:

(a) mitigate adverse environmental impacts;

(b) facilitate the implementation of decisions taken, and conditions imposed as a result of the authorisation of new activities and developments, or through the setting of norms and standards in respect of existing activities and developments; and

(c) ensure effective environmental management and conservation of resources and impacts within the jurisdiction of a municipality in co-operation with other organs of state.

(5) The model by-laws referred to in subsection (1) must include measures for environmental management, which may include:

- (a) auditing, monitoring and ensuring compliance; and
- (b) reporting requirements and the furnishing of information.

47. Procedure for making regulations

(1) Before making any regulations under this Act, a Minister or MEC must:

- (a) publish a notice in the relevant *Gazette*:
 - (i) setting out the draft regulations; and
 - (ii) inviting written comments to be submitted on the proposed regulations within a specified period mentioned in the notice; and
- (b) consider all comments received in accordance with paragraph (a) (ii).

(2) The Minister must, within 30 days after promulgating and publishing any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces, and an MEC must so table the regulations in the relevant provincial legislature or, if Parliament or the provincial legislature is then not in session, within 30 days after the beginning of the next ensuing session of Parliament or the provincial legislature.

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

- (4) ...
- (5) ...
- (6) ...

47A. Regulations, legal documents and steps valid under certain circumstances

(1) A regulation or notice, or an authorisation, permit or other document, made or issued in terms of this Act or a specific environmental management Act:

- (a) but which does not comply with any procedural requirement of the relevant Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person;
- (b) may be amended or replaced without following a procedural requirement of the relevant Act if:
 - (i) the purpose is to correct an error; and
 - (ii) the correction does not change the rights and duties of any person materially.

(2) The failure to take any steps in terms of this Act or a specific environmental management Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure:

- (a) is not material;
- (b) does not prejudice any person; and
- (c) is not procedurally unfair.

47B. Consultation

When in terms of this Act or a specific environmental management Act the Minister or an MEC is required to consult any person or organ of state, such consultation is regarded as having been satisfied if a formal written notification of intention to act has been made to that person or organ of state and no response has been received within a reasonable time.

47C. Extension of time periods

The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period which binds the Minister or MEC.

47D. Delivery of documents

(1) A notice or other document in terms of this Act or a specific environmental management Act may be issued to a person:

- (a) by delivering it by hand;
- (b) by sending it by registered mail:
 - (i) to that person's business or residential address; or
 - (ii) in the case of a juristic person, to its registered address or principal place of business; or
- (c) where an address is unknown despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.

(2) A notice or other document issued in terms of subsection (1)(b) or (c) must be regarded as having come to the notice of the person, unless the contrary is proved.

CHAPTER 10: General and Transitional Provisions**48. State bound**

This Act is binding on the State except in so far as any criminal liability is concerned.

49. Limitation of liability

Neither the State nor any other person is liable for any damage or loss caused by:

- (a) the exercise of any power or the performance of any duty under this Act or any specific environmental management Act; or
- (b) the failure to exercise any power, or perform any duty under this Act or any specific environmental management Act,

unless the exercise of or failure to exercise the power, or performance of or failure to perform the duty was unlawful, negligent or in bad faith.

50. Repeal of laws

(1) Repeals sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A, 14B, 14C, 15, 27A and 38 of the Environment Conservation Act, No. 73 of 1989.

(2) Sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act 73 of 1989) and the notices and regulations issued pursuant to sections 21 and 22 and in force on the commencement date of this Act are repealed with effect from a date to be published by the Minister in the *Gazette*, which date may not be earlier than the date on which regulations or notices made or issued under section 24 of this Act are promulgated and the Minister is satisfied that the regulations and notices under sections 21 and 22 have become redundant.

(3) Any application made in terms of section 21, 22 or 26 of the Environment Conservation Act, 1989 (Act 73 of 1989), that has been submitted but not finalised when those sections are repealed, must be finalised as if those sections had not been repealed.

(4) In order to ensure that the transition between the legal requirements of sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act 73 of 1989), and the requirements of this Act is efficient, the Minister may by notice in the *Gazette* list activities included in Government Notice R.1182 of 5 September 1997 that will remain valid until such time as an MEC promulgates a list of activities for that province.

51. Savings

Anything done or deemed to have been done under a provision repealed by this Act:

- (a) remains valid to the extent that it is consistent with this Act until anything done under this Act overrides it; and
- (b) subject to paragraph (a) is considered to be an action under the corresponding provision of this Act.

52. Short title

This Act is called the National Environmental Management Act, 1998.

53. Commencement

This Act comes into operation on a date fixed by the President in the *Gazette*.

Schedule 1: - Section 11(1)

National departments exercising functions which may affect the environment

- Department of Environmental Affairs and Tourism
- Department of Land Affairs
- Department of Agriculture
- Department of Housing
- Department of Trade and Industry
- Department of Water Affairs and Forestry
- Department of Transport
- Department of Defence

Schedule 2: - Section 11(2)

National departments exercising functions that involve the management of the environment

- Department of Environmental Affairs and Tourism
- Department of Water Affairs and Forestry
- Department of Minerals and Energy
- Department of Land Affairs
- Department of Health
- Department of Labour

Schedule 3: - Section (34)
Part (a): National Legislation

No. and year of law	Short title	Relevant provisions
Act 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947	Section 18(1)(l) in so far as it relates to contraventions of sections 7 and 7bis
Act 71 of 1962	Animal Protection Act, 1962	Sections 2(1) and 2A
Act 45 of 1965	Atmospheric Pollution Prevention Act, 1965	Sections 7(2)(a) to (d), 9(1)(a) to (c), 14A, 15(1)(a) and (b), 15(2), 17(4), 19(5), 20(11), 23(3), 24(2), 28(3), 29(4), 31(6), 32(2), 34(4), 37(4), 40(4) and 41(2)
Act 63 of 1970	Mountain Catchment Areas Act, 1970	Section 14 in so far as it relates to conventions of section 3
Act 15 of 1973	Hazardous Substances Act, 1973	Section 19(1)(a) and (b) in so far as it relates to contraventions of sections 3 and 3A
Act 63 of 1977	Health Act, 1977	Section 27
Act 73 of 1980	Dumping at Sea Control Act, 1980	Sections 2(1)(a) and (b)
Act 6 of 1981	Marine Pollution (Control and Civil Liability) Act, 1981	Section 2(1)
Act 43 of 1983	Conservation of Agricultural Resources Act, 1983	Sections 6 and 7
Act 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	Section 3A
Act 73 of 1989	Environment Conservation Act, 1989	Sections 19(1) and 19A read with 29(3), 20(1) and (9) read with section 29(4), 29(2)(a), 31A and 41A read with 29(3)
Act 18 of 1998	Marine Living Resources Act, 1998	Section 58(1) in so far as it relates to contraventions of sections 43(2), 45, and 47, and section 58(2) in so far as it relates to contraventions of international conservation and management measures
Act 36 of 1998	National Water Act, 1998	Section 151(1)(i) and (j)
Act 84 of 1998	National Forests Act	Sections 4(8), 7(1), 10(1), 11(2)(b), 15(1)(a) and (b), 17(3) and (4), 20(3), 21(2), 21(5), 24(8), 63(1)(a), (d), (e) and (f), 63(2)(a) and (b), 63(3) to (5), 64(1) and (2)

Act 101 of 1998	National Veld and Forest Fire Act	Sections 10(2), 12(1), 12(2)(b), 12(14)(a), (4), 17(1), 18(1)(a), 18(2), 18(3)(b), 18(4), 18(4)(b), 25(2)(a) to (e), 25(5), (6) and (7)
Act 107 of 1998	National Environment Management Act, 1998	Sections 24F(1) and (2), 24G(3), 28(14), 30(11), 31N(1) and 34A(a), (b) and (c)
Act 25 of 1999	National Heritage Resources Act	Sections 27(18) and (22), (23)(b), 28(3), 29(10), 32(13), (15), (16), (17) (19) and (20), 33(1) and (2), 34(1), 35(3), (4), (6) and (7)(a), 36(3), 44(2) and (3), 50(5) and (12) and 51(8)
Act 57 of 2003	National Environmental Management: Protected Areas Act	Sections 45(1), 46(1), 47(2), 47(3), 48(1) 50(5), read with sections 89(1), 89(1)(b), (c) and (d) and 50A
Act 10 of 2004	National Environmental Management: Biodiversity Act	Sections 57(1) read with 101(1)(a), 65(1) read with 101(1)(a), 67(2) read with 101(1)(a), 71(1) read with 101(1)(a), 81(1)
Act 39 of 2004	National Environmental Management: Air Quality Act	Sections 51(1)(a) to (h), 51(2) and (3)

Part (b): Provincial Legislation

No. and year of law	Short title	Relevant provisions
Ordinance 8 of 1969	Orange Free State Conservation	Section 40(1)(a) in so far as it relates to contraventions of sections 2(3), 14(2), 15(a), 16(a) and 33
Ordinance 9 of 1969	Orange Free State Townships	Section 40(1)(a)(ii)
Ordinance 15 of 1974	Natal Nature Conservation	Section 55 in so far as it relates to section 37(1), to section 49 in respect of specially protected game and to section 51 in respect of specially protected game, section 109 in so far as it relates to section 101, to section 102 and to section 104, section 154 in so far as it relates to section 152; section 185 in so far as it relates to section 183, and section 208 in so far as it relates to section 194 and to section 200
Ordinance 19 of 1974	Nature and Environmental Conservation Ordinance	Section 86(1) in so far as it relates to contraventions of sections 26, 41(1)(b)(ii) and (c) to (e), 52(a), 57(a), 58(b) and 62(1)
Ordinance 12 of 1983	Gauteng Nature Conservation	Sections 16A, 17 to 45, 47, 48, 51, 52, 54, 66, 71 to 78, 79, 80, 81, 83, 84, 85, 87, 88 to 93, 95, 96, 98, 99, 100 and 107

Ordinance 15 of 1985	Cape Land Use Planning	Section 46(1) in so far as it relates to sections 23(1) and 39(2)
Ordinance 15 of 1986	Transvaal Town Planning and Townships	Sections 42, 93 and 115
Act 29 of 1992	Kwa-Zulu Nature Conservation	Section 67 in so far as it relates to sections 59(1), 59(2), 60(1) and 62(1); section 86 in so far as it relates to sections 76, 77 and 82; and section 110 in so far as it relates to section 109
Act 5 of 1998	Kwa-Zulu Natal Planning and Development	Section 48

2.2.1.2 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, co-operative governance, public participation and matters related to protected areas.

National Environmental Management: Protected Areas Act 57 of 2003

As last amended by National Environment Laws Amendment Act 14 of 2009.

National Environmental Management: Protected Areas Amendment Act 15 of 2009 (provisions not yet proclaimed)	
<i>Proposed amendments by</i>	<i>Sections to be amended</i>
S 1 of Act 15 of 2009	S 20 of Act 57 of 2003
S 8 of Act 15 of 2009	Schedule of Act 57 of 2003

CHAPTER 1: Interpretation, Objectives and Application of Act

1. Definitions

(1) In this Act, unless the context indicates otherwise:

‘*aircraft*’ means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;

'*Biodiversity Act*' means the National Environmental Management: Biodiversity Act, 2003;

'*biological diversity*' or '*biodiversity*' has the meaning ascribed to it in section 1 of the Biodiversity Act;

'*biological resource*' means any resource consisting of:

- (a) a living or dead animal, plant or other organism of an indigenous species;
- (b) a derivative of such an animal, plant or other organism, as defined in section 1 of the Biodiversity Act; or
- (c) any genetic material of such animal, plant or other organism, as defined in section 1 of the Biodiversity Act;

'*Board*' means the Board of South African National Parks referred to in section 57;

'*Chief Executive Officer*' means the Chief Executive Officer of South African National Parks appointed in terms of section 72;

'*declare*', when used in relation to:

- (a) the Minister, means declare by notice in the *Government Gazette*; and
- (b) the MEC, means declare by notice in the *Provincial Gazette*;

'*Department*' means the national Department of Environmental Affairs and Tourism;

'*designate*', when used in relation to:

- (a) the Minister, means designate by notice in the *Government Gazette*;
- (b) the MEC, means designate by notice in the *Provincial Gazette*;

'*Director-General*' means the Director-General of the Department;

'*ecological integrity*' means the sum of the biological, physical and chemical components of an ecosystem, and their interactions which maintain the ecosystem and its products, functions and attributes;

'*ecosystem*' means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;

'*environmental goods and services*' includes:

- (a) benefits obtained from ecosystems such as food, fuel and fibre and genetic resources;
- (b) benefits from the regulation of ecosystem processes such as climate regulation, disease and flood control and detoxification; and
- (c) cultural non-material benefits obtained from ecosystems such as benefits of a spiritual, recreational, aesthetic, inspirational, educational, community and symbolic nature;

'*Gazette*', when used in relation to:

- (a) the Minister, means the *Government Gazette*; and
- (b) the MEC, means the *Provincial Gazette* of that province;

'*habitat*', in relation to a specific species, means a place or type of site where such species naturally occurs;

'*indigenous species*', in relation to a specific protected area, means a species that occurs, or has historically occurred, naturally in a free state in nature within that specific protected area, but excludes a species introduced in that protected area as a result of human activity;

'*lawful occupier*' includes an occupier protected under the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996), the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996), or the Extension of Security of Tenure Act, 1997 (Act 26 of 1997), if the land regarding which the occupier enjoys such protection falls within a protected area or is proposed to be declared as or included in a protected area;

'*local community*' means any community of people living or having rights or interests in a distinct geographical area;

'local protected area' means a nature reserve or protected environment managed by a municipality;

'management', in relation to a protected area, includes control, protection, conservation, maintenance and rehabilitation of the protected area with due regard to the use and extraction of biological resources, community-based practices and benefit-sharing activities in the area in a manner consistent with the Biodiversity Act;

'management authority', in relation to a protected area, means the organ of state or other institution or person in which the authority to manage the protected area is vested;

'marine protected area' means an area declared as a marine protected area in terms of section 43 of the Marine Living Resources Act, 1998 (Act 18 of 1998);

'MEC' means the member of the Executive Council of a province in whose portfolio provincial protected areas in the province fall;

'Minister' means the Cabinet member responsible for national environmental management;

Local Government 'municipality' means a municipality established in terms of the Municipal Structures Act, 1998 (Act 117 of 1998);

'National Environmental Management Act' means the National Environmental Management Act, 1998 (Act 107 of 1998);

'national environmental management principles' means the principles contained in section 2 of the National Environmental Management Act;

'national protected area' means:

- (a) a special nature reserve;
- (b) a national park; or
- (c) a nature reserve or protected environment:
 - (i) managed by a national organ of state; or
 - (ii) which falls under the jurisdiction of the Minister for any other reason;

'national park' means:

- (a) an area which was a park in terms of the National Parks Act, 1976 (Act 57 of 1976), immediately before the repeal of that Act by section 90(1) of this Act, and includes a park established in terms of an agreement between a local community and the Minister which has been ratified by Parliament; or
- (b) an area declared or regarded as having been declared in terms of section 20 as a national park, and includes an area declared in terms of section 20 as part of an area referred to in paragraph (a) or (b) above;

'National Parks Land Acquisition Fund' means the fund established by section 12A of the National Parks Act, 1976 (Act 57 of 1976);

'nature reserve' means:

- (a) an area declared, or regarded as having been declared, in terms of section 23 as a nature reserve; or
- (b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 23(2) be declared as a nature reserve, and includes an area declared in terms of section 23(1) as part of an area referred to in paragraph (a) or (b) above;

'organ of state' has the meaning assigned to it in section 239 of the Constitution;

'prescribe' means prescribe by the Minister by regulation in terms of section 86;

'protected area' means any of the protected areas referred to in section 9;

'protected environment' means:

- (a) an area declared, or regarded as having been declared, in terms of section 28 as a protected environment;

- (b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 28(2) be declared as a protected environment; or
- (c) an area which was a lake area in terms of the Lake Areas Development Act, 1975 (Act 39 of 1975), immediately before the repeal of that Act by section 90(1) of this Act, and includes an area declared in terms of section 28(1) as part of an area referred to in paragraph (a), (b) or (c) above;

'provincial protected area' means a nature reserve or protected environment:

- (a) managed by a provincial organ of state; or
 - (b) which falls under the jurisdiction of a province for any other reason;
- 'Public Finance Management Act'* means the Public Finance Management Act, 1999 (Act 1 of 1999);

'special nature reserve' means:

- (a) an area which was a special nature reserve in terms of the Environment Conservation Act, 1989 (Act 73 of 1989), immediately before the repeal of section 18 of that Act by section 90 of this Act; or
- (b) an area declared, or regarded as having been declared, in terms of section 18 as a special nature reserve, and includes an area declared in terms of section 18 as part of an area referred to in paragraph (a) or (b) above;

'species' means a kind of animal, plant or other organism, including any subspecies, cultivar, variety, geographic race, strain, hybrid or geographically separate population;

'subordinate legislation' means any regulation made or notice issued under or in terms of this Act;

'the Fund' means the National Parks Land Acquisition Fund;

'this Act' includes any subordinate legislation;

'wilderness area' means an area designated in terms of section 22 or 26 for the purpose of retaining an intrinsically wild appearance and character or capable of being restored to such and which is undeveloped and roadless, without permanent improvements or human habitation;

'world heritage site' means a world heritage site in terms of the World Heritage Convention Act, 1999 (Act 49 of 1999).

(2) In this Act words or expressions derived from words or expressions defined in subsection (1) have corresponding meanings unless the context indicates otherwise.

2. Objectives of Act

The objectives of this Act are:

- (a) to provide, within the framework of national legislation, including the National Environmental Management Act, for the declaration and management of protected areas;
- (b) to provide for co-operative governance in the declaration and management of protected areas;
- (c) to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve its biodiversity;
- (d) to provide for a representative network of protected areas on state land, private land and communal land;
- (e) to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas;
- (f) to promote participation of local communities in the management of protected areas, where appropriate; and

- (g) to provide for the continued existence of South African National Parks.

3. State trustee of protected areas

In fulfilling the rights contained in section 24 of the Constitution, the State through the organs of state implementing legislation applicable to protected areas must:

- (a) act as the trustee of protected areas in the Republic; and
- (b) implement this Act in partnership with the people to achieve the progressive realisation of those rights.

4. Application of Act

- (1) This Act also applies:
 - (a) in the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948); and
 - (b) to the exclusive economic zone and continental shelf of the Republic, referred to in sections 7 and 8, respectively, of the Maritime Zones Act, 1994 (Act 15 of 1994).
- (2) This Act binds all organs of state.

5. Application of National Environmental Management Act

- (1) This Act must:
 - (a) be interpreted and applied in accordance with the national environmental management principles; and
 - (b) be read with the applicable provisions of the National Environmental Management Act.
- (2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

6. Application of Biodiversity Act in protected areas

This Act must, in relation to any protected area, be read, interpreted and applied in conjunction with the Biodiversity Act.

7. Conflicts with other legislation

- (1) In the event of any conflict between a section of this Act and:
 - (a) other national legislation, the section of this Act prevails if the conflict specifically concerns the management or development of protected areas;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the section of this Act prevails.
- (2) In the event of any conflict between subordinate legislation issued in terms of this Act and:
 - (a) an Act of Parliament, the Act of Parliament prevails;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the subordinate legislation prevails.
- (3) For the proper application of subsection section (2)(b) the Minister must, in terms of section 146(6) of the Constitution, submit all subordinate legislation issued in terms of Act and which affects provinces to the National Council of Provinces for approval.

8. Status of provincial legislation on provincial and local protected areas

This Act does not affect the implementation of provincial legislation regulating matters with regard to provincial or local protected areas to the extent that such legislation:

- (a) regulates matters not covered by this;
- (b) is consistent with this Act; or
- (c) prevails over this Act in terms of section 146 of the Constitution.

CHAPTER 2: System of Protected Areas in South Africa

9. Kinds of protected areas

The system of protected areas in South Africa consists of the following kinds of protected areas:

- (a) special nature reserves, national parks, nature reserves (including wilderness areas) and protected environments;
- (b) world heritage sites;
- (c) marine protected areas;
- (d) specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act, 1998 (Act 84 of 1998); and
- (e) mountain catchment areas declared in terms of the Mountain Catchment Areas Act, 1970 (Act 63 of 1970).

10. Register of Protected Areas

- (1) The Minister must maintain a register called the Register of Protected Areas.
- (2) The Register must:
 - (a) contain a list of all protected areas;
 - (b) indicate the kind of protected area in each case; and
 - (c) contain any other information determined by the Minister.
- (3) For the purposes of subsection (2)(b) a protected area declared in terms of provincial legislation must be included in the Register as a nature reserve or protected environment depending on the purpose for which it was declared.
- (4) The Cabinet member responsible for the administration of the National Forests Act, 1998 (Act 84 of 1998), and the MEC must notify the Minister of all areas declared as protected areas in terms of that Act or provincial legislation, as the case may be.

11. Norms and standards

- (1) The Minister may prescribe:
 - (a) norms and standards for the achievement of any of the objectives of this Act, including for the management and development of protected areas referred to in section 9(a), (b) and (c);
 - (b) indicators to measure compliance with those norms and standards; and
 - (c) the requirement for the management authorities of those protected areas to report on these indicators to the Minister.
- (2) Before issuing norms and standards and setting indicators for provincial or local protected areas, the Minister must consult:
 - (a) the MEC of each province in which those norms and standards will apply; and
 - (b) the relevant local government.
- (3) Norms and standards may apply:
 - (a) nationwide;
 - (b) in a specific protected area only;
 - (c) to a specific management authority or category of management authorities only.
- (4) Different norms and standards may be issued for:
 - (a) different areas; or

- (b) different management authorities or categories of management authorities.

12. Provincial protected areas

A protected area which immediately before this section took effect was reserved or protected in terms of provincial legislation for any purpose for which an area could in terms of this Act be declared as a nature reserve or protected environment, must be regarded to be a nature reserve or protected environment for the purpose of this Act.

13. World heritage sites

- (1) Chapter 1 and this chapter apply to world heritage sites, declared as such in terms of the World Heritage Convention Act, 199 (Act 49 of 1999).
- (2) The other provisions of this Act do not apply to world heritage sites except where expressly or by necessary implication provided otherwise.

14. Marine protected areas

- (1) Chapter 1, this chapter and section 48 apply to marine protected areas.
- (2) The other provisions of this Act do not apply to marine protected areas, but if a marine protected area has been included in a special nature reserve, national park or nature reserve, such area must be managed and regulated as part of the special nature reserve, national park or nature reserve in terms of this Act.

15. Specially protected forest areas, forest nature reserves and forest wilderness areas

- (1) Chapter 1, this chapter and section 48 apply to specially protected forest areas, forest nature reserves or forest wilderness areas, declared as such in terms of section 8 of the National Forests Act, 1998 (Act 84 of 1998).
- (2) The other provisions of this Act do not apply to specially protected forest areas, forest nature reserves or forest wilderness areas, but if any such area has been declared as or included in a special nature reserve, national park or nature reserve, such area must be managed as a, or as part of the, special nature reserve, national park or nature reserve in terms of this Act in accordance with an agreement concluded between the Minister and the Cabinet member responsible for forestry.

16. Mountain catchment areas

Chapter 1 and this chapter apply to mountain catchment areas, declared as such in terms of the Mountain Catchment Areas Act, 1970 (Act 63 of 1970).

CHAPTER 3: Declaration of Protected Areas

17. Purpose of protected areas

The purposes of the declaration of areas as protected areas are:

- (a) to protect ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes in a system of protected areas;
- (b) to preserve the ecological integrity of those areas;
- (c) to conserve biodiversity in those areas;
- (d) to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
- (e) to protect South Africa's threatened or rare species;
- (f) to protect an area which is vulnerable or ecologically sensitive;
- (g) to assist in ensuring the sustained supply of environmental goods and services;

- (h) to provide for the sustainable use of natural and biological resources;
- (i) to create or augment destinations for nature-based tourism;
- (j) to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
- (k) generally, to contribute to human, social, cultural, spiritual and economic development; or
- (l) to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.

Part 1: Special Nature Reserves

18. Declaration of special nature reserves

- (1) The Minister may by notice in the *Gazette*:
 - (a) declare an area specified in the notice:
 - (i) as a special nature reserve; or
 - (ii) as part of an existing special nature reserve; and
 - (b) assign a name to such special nature reserve.
- (2) A declaration under subsection (1)(a) may only be issued:
 - (a) to protect highly sensitive, outstanding ecosystems, species or geological or physical features in the area; and
 - (b) to make the area primarily available for scientific research or environmental monitoring.
- (3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has consented to the declaration by way of a written agreement with the Minister.
- (4) An area which was a special nature reserve immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

19. Withdrawal of declaration or exclusion of part of special nature reserve

The declaration of an area as a special nature reserve, or as part of an existing special nature reserve, may not be withdrawn and no part of a special nature reserve may be excluded from the reserve except by resolution of the National Assembly.

Part 2: National Parks

20. Declaration of national parks

- (1) The Minister may by notice in the *Gazette*:
 - (a) declare an area specified in the notice:
 - (i) as a national park; or
 - (ii) as part of an existing national park; and
 - (b) assign a name to the national park.
- (2) A declaration under subsection (1)(a) may only be issued to:
 - (a) protect:
 - (i) the area if the area is of national or international biodiversity importance or is or contains a viable, representative sample of South Africa's natural systems, scenic areas or cultural heritage sites; or
 - (ii) the ecological integrity of one or more ecosystems in the area.
 - (b) prevent exploitation or occupation inconsistent with the protection of the ecological integrity of the area;
 - (c) provide spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible; and
 - (d) contribute to economic development, where feasible.

(3) A notice under subsection (1)(a) may be issued in respect of land if the owner has consented to the declaration by way of a written agreement with the Minister or South African National Parks.

(4) The Minister must notify the relevant MEC of any declaration of an area in terms of subsection (1).

(5) An area which was a national park when this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

21. Withdrawal of declaration or exclusion of part of national park

(1) A declaration under section 20 may only be withdrawn:

- (a) by resolution of the National Assembly; or
- (b) in terms of subsection (2).

(2) If the Minister or South African National Parks, as the case may be, or the other party to an agreement referred to in section 20(3), withdraws from the agreement, the Minister must withdraw the declaration in terms of which the land in question was declared a national park or part of an existing national park.

22. Designation of national park as wilderness area

(1) The Minister may by notice in the *Gazette* designate any national park, or part thereof, as a wilderness area.

(2) A designation under subsection (1) may only be issued:

- (a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;
- (b) to provide outstanding opportunities for solitude;
- (c) to control access which, if allowed, may only be by non-mechanised means.

(3) Before designating a national park as a wilderness area, the Minister must consult the management authority of the park.

Part 3: Nature reserves

23. Declaration of nature reserve

(1) The Minister or the MEC may by notice in the *Gazette*:

- (a) declare an area specified in the notice:
- (i) as a nature reserve; or

- (ii) as part of an existing nature reserve; and
- (b) assign a name to the nature reserve.

(2) A declaration under subsection (1)(a) may only be issued:

- (a) to supplement the system of national parks in South Africa;
- (b) to protect the area if the area:
 - (i) has significant natural features or biodiversity;
 - (ii) is of scientific, cultural, historical or archaeological interest; or
- (iii) is in need of long-term protection for the maintenance of its biodiversity or for the provision of environmental goods and services.
- (c) to provide for a sustainable flow of natural products and services to meet the needs of a local community;
- (d) to enable the continuation of such traditional consumptive uses as are sustainable; or
- (e) to provide for nature-based recreation and tourism opportunities.

...

(3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has consented to the declaration by way of written agreement with the Minister or the MEC.

(4) No area which is or forms part of a special nature reserve or national park may be declared as a nature reserve or as part of an existing nature reserve.

(5) An area which was a nature reserve immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

24. Withdrawal of declaration or exclusion of part of nature reserve

(1) A declaration under section 23(1) may only be withdrawn:

- (a) in the case of a declaration by the Minister, by resolution of the National Assembly;
- (b) in the case of a declaration by an MEC, by resolution of the legislature of the relevant province; or
- (c) in terms of subsection (2).

(2) If the Minister or MEC, or the other party to an agreement, withdraws from an agreement referred to in section 23(3), the Minister or MEC must withdraw the notice in terms of which the land in question was declared nature reserve or part of an existing nature reserve.

25. Designation of nature reserve as specific type

The Minister or the MEC may by notice in the *Gazette* designate a nature reserve as a specific type of nature reserve in accordance with such uniform system of types as may be prescribed.

26. Designation of nature reserve as wilderness area

(1) The Minister or MEC may by notice in the *Gazette* designate a nature reserve or part thereof as a wilderness area.

(2) A notice under subsection (1) may only be issued:

- (a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;
- (b) to provide outstanding opportunities for solitude;
- (c) to control access which, if allowed, may only be by non-mechanised means.

(3) Before designating a nature reserve or part of a nature reserve as a wilderness area, the Minister or MEC must consult the management authority of the nature reserve.

27. Notice to be given to Minister of provincial declarations

The MEC must promptly forward to the Minister a copy of each notice issued under section 23, 24, 25 or 26.

Part 4: Protected Environments

28. Declaration of protected environment

(1) The Minister or the MEC may by notice in the *Gazette*:

(a) declare any area specified in the notice:

- (i) as a protected environment; or
 - (ii) as part of an existing protected environment; and
- (b) assign a name to the protected environment.

(2) A declaration under subsection (1)(a) may only be issued:

- (a) to regulate the area as a buffer zone for the protection of a special nature reserve, national park, world heritage site or nature reserve;
- (b) to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor;
- (c) to protect the area if the area is sensitive to development due to its:

- (i) biological diversity;
- (ii) natural characteristics;
- (iii) scientific, cultural, historical, archaeological or geological value;
- (iv) scenic and landscape value; or
- (v) provision of environmental goods and services.
- (d) to protect a specific ecosystem outside of a special nature reserve, national park, world heritage site or nature reserve;
- (e) to ensure that the use of natural resources in the area is sustainable; or
- (f) to control change in land use in the area if the area is earmarked for declaration as, or inclusion in, a national park or nature reserve.
- (3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has requested or consented to a declaration contemplated in subsection (1)(a) and the Minister or the MEC has given the owner notice in writing in terms of section 33.
- (4) No area which is or forms part of a special nature reserve, national park or nature reserve may be declared as a protected environment or as part of an existing protected environment.
- (5) The declaration of an area as a protected environment for the purposes of subsection (2)(f) lapses at the expiry of the period stated in the notice contemplated in subsection (1), but the Minister or the MEC, as the case may be, may, by agreement reached with the owners of the land in question and by notice in the Gazette, extend that period.
- (6) An area ceases to be a protected environment if that area is declared as, or included into, a national park or nature reserve or part thereof.
- (7) An area which was a protected environment immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

29. Withdrawal of declaration or exclusion of part of protected environment

The Minister or the MEC may by notice in the *Gazette*:

- (a) withdraw the declaration, issued under section 28, of an area as a protected environment or as part of an existing protected environment; or
- (b) exclude any part of a protected environment from the area.

30. Notice to be given to Minister of provincial declarations

The MEC must promptly forward to the Minister a copy of each notice issued under section 28 or 29.

Part 5: Consultation Process

31. Consultation by Minister

Subject to section 34, before issuing a notice under section 18(1), 19, 20(1), 22(1), 23(1), 24(1), 26(1), 28(1) or 29, the Minister may follow such consultative process as may be appropriate in the circumstances, but must:

- (a) consult all national organs of state affected by the proposed notice;
- (b) in accordance with the principles of co-operative government as set out in chapter 3 of the Constitution, consult:
 - (i) the MEC of the province concerned; and
 - (ii) the municipality in which the area concerned is situated;
- (c) in the prescribed manner, consult any lawful occupier with a right in land in any part of the area affected; and
- (d) follow a process of public participation in accordance with section 33.

32. Consultation by MEC

Subject to section 34, before issuing a notice under section 23(1), 26(1), 28(1) or 29, the MEC may follow such consultative process as may be appropriate in the circumstances, but must:

- (a) consult in accordance with the principles of co-operative government as set out in chapter 3 of the Constitution:
 - (i) the Minister and other national organs of state affected by the proposed notice; and
 - (ii) the municipality in which the area concerned is situated;
- (b) consult all provincial organs of state affected by any proposed notice;
- (c) in the prescribed manner, consult any lawful occupier with a right in land in any part of the area affected; and
- (d) follow a process of public participation in accordance with section 33.

33. Public participation

- (1) The Minister or the MEC must:
 - (a) publish the intention to issue a notice contemplated in section 31 or 32, in the *Gazette* and in at least two national newspapers distributed in the area in which the affected area is situated; and
 - (b) if it is proposed to declare any private land as a protected environment, send a copy of the proposed notice by registered post to the last known postal address of each owner of land within the area to be declared, and inform in an appropriate manner any other person whose rights in such land may materially and adversely be affected by such declaration.
- (2) The publication contemplated in subsection (1) must:
 - (a) invite members of the public and the persons referred to in subsection (1)(b), if applicable, to submit to the Minister or MEC written representations on or objections to the proposed notice within 60 days from the date of publication in the *Gazette*; and
 - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration.
- (3) The Minister or MEC may in appropriate circumstances allow any interested person to present oral representations or objections to the Minister or the MEC, or to a person designated by the Minister or MEC, but such representations or objections must be allowed where the proposed notice will affect the rights or interests of a local community.
- (4) The Minister or MEC must give due consideration to all representations or objections received or presented before publishing the relevant notice.

34. Affected organs of state, communities and [other beneficiaries]

(1) If it is proposed to declare an area under section 18(1) or 20(1) as a special nature reserve or a national park, or as part thereof, and that area consists of or includes:

- (a) land owned by the State, the Minister may make that declaration only:
 - (i) with the concurrence of the Cabinet member responsible for the administration of that land, if that land is administered by the national executive; or
 - (ii) after consultation with the provincial executive, if that land is administered by that provincial executive.
- (b) land which is held in trust by the State or an organ of state for a community or other beneficiary, the Minister may declare that area only with the concurrence of the trustee and the community involved.

(2) If it is proposed to declare an area under section 23(1) or 28(1) as a nature reserve or a protected environment, or as part thereof, and that area consists of or includes:

- (a) land owned by the State, the Minister of the MEC may make that declaration only with the concurrence of the Cabinet member or MEC responsible for the administration of that land; or
- (b) land which is held in trust by the State or an organ of state for a community or other beneficiary, the Minister or the MEC may declare that area only with the concurrence of the trustee and the community involved.

Part 6: General

35. Initiation of declaration

- (1) The declaration of private land as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, may be initiated either by the Minister or the MEC or the owners of that land acting individually or collectively.
- (2) Any request received by the Minister or an MEC from the owners of private land for their land to be declared must be considered by the Minister or MEC.
- (3)(a) The terms of any written agreement entered into between the Minister, South African National Parks or an MEC and the owner of private land in terms of section 18(3), 20(3) or 23(3) are binding on the successors in title of such owner.
- (b) The terms of agreement must be recorded in a notarial deed and registered against the title deeds of the property.

36. Endorsement by Registrar of Deeds

- (1) The Minister or the MEC, as the case may be, must in writing notify the Registrar of Deeds whenever an area is declared as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, or whenever a declaration in respect thereof is withdrawn or altered.
- (2) The notification must include a description of the land involved and the terms and conditions of any notarial deed.
- (3) On receipt of the notification, the Registrar of Deeds must record any such declaration, withdrawal or alteration in relevant registers and documents in terms of section 3(1)(w) of the Deeds Registries Act, 1937 (Act 47 of 1937).

CHAPTER 4: Management of Protected Areas

37. Application of chapter

Except where expressly stated otherwise in this chapter, this chapter only applies to a protected area which is a special nature reserve, national park, nature reserve or protected environment, and the expressions 'protected area', 'national protected area', 'provincial protected area', 'local protected area' and 'protected environment' must be construed accordingly in this chapter.

Part 1: Management authorities and management plans

38. Management authorities

- (1) The Minister, in writing:
 - (a) may assign the management of any kind of protected area listed in section 9 to a suitable person, organisation or organ of state;
 - (aa) must assign the management of a national park to South African National Parks; and

- (b) may assign the management of a protected environment to a suitable person, organisation or organ of state, provided that the owner and lawful occupier have requested or consented to such assignment, and the Minister has given the owner and lawful occupier notice in writing in terms of section 33.

...

- (2) The MEC, in writing:

- (a) must assign the management of a nature reserve to a suitable person, organisation or organ of state; and
 - (b) may assign the management of a protected environment to a suitable person, organisation or organ of state, provided that the owner and lawful occupier have requested or consented to such assignment, and the MEC has given the owner and lawful occupier notice in writing in terms of section 33.
- (3) The person, organisation or organ of state to whom the management of a protected area has been assigned in terms of subsection (1) or (2) is the management authority of the area for the purposes of this Act.
 - (4) Marine and terrestrial protected areas with common boundaries must be managed as an integrated protected area by a single management authority.

39. Preparation of management plan

- (1) The Minister or the MEC may make an Assignment in terms of section 38(1) or (2) only with the concurrence of the prospective management authority.
- (2) The management authority assigned in terms of section 38(1) or (2) must, within 12 months of the assignment, submit a management plan for the protected area to the Minister or the MEC for approval.
- (3) When preparing a management plan for a protected area, the management authority concerned must consult municipalities, other organs of state, local communities and other affected parties which have an interest in the area.
- (4) A management plan must take into account any applicable aspects of the integrated development plan of the municipality in which the protected area is situated.

40. Management criteria

- (1) The management authority must manage the area:
 - (a) exclusively for the purpose for which it was declared; and
 - (b) in accordance with:
 - (i) the management plan for the area;
 - (ii) this Act, the Biodiversity Act, the National Environmental Management Act and any other applicable national legislation;
 - (iii) any applicable provincial legislation, in the case of a provincial protected area; and
 - (iv) any applicable municipal by-laws, in the case of a local protected area.
- (2) The management authority may amend the management plan by agreement with the Minister or the MEC, as the case may be.

41. Management plan

- (1) The object of a management plan is to ensure the protection, conservation and management of the protected area concerned in a manner which is consistent with the objectives of this Act and for the purpose it was declared.
- (2) A management plan must contain at least:
 - (a) the terms and conditions of any applicable biodiversity management plan;
 - (b) a co-ordinated policy framework;

- (c) such planning measures, controls and performance criteria as may be prescribed;
 - (d) a programme for the implementation of the plan and its costing;
 - (e) procedures for public participation, including participation by the owner (if applicable), any local community or other interested party;
 - (f) where appropriate, the implementation of community-based natural resource management; and
 - (g) a zoning of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections.
- (3) A management plan may contain:
- (a) development of economic opportunities within and adjacent to the protected area in terms of the integrated development plan framework;
 - (b) development of local management capacity and knowledge exchange;
 - (c) financial and other support to ensure effective administration and implementation of the co-management agreement; and
 - (d) any other relevant matter.
- (4) Management plans may include subsidiary plans, and the Minister or MEC may approve the management plan or any subsidiary plan in whole or in part.

42. Co-management of protected area

- (1)(a) The management authority may enter into an agreement with another organ of state, a local community, an individual or other party for:
- (i) the co-management of the area by the parties; or
 - (ii) the regulation of human activities that affect the environment in the area.
- (b) The co-management contemplated in paragraph (a) may not lead to fragmentation or duplication of management functions.
- (2) A co-management agreement may provide for:
- (a) the delegation of powers by the management authority to the other party to the agreement;
 - (b) the apportionment of any income generated from the management of the protected area or any other form of benefit sharing between the parties;
 - (c) the use of biological resources in the area;
 - (d) access to the area;
 - (e) occupation of the protected area or portions thereof;
 - (f) development of economic opportunities within and adjacent to the protected area;
 - (g) development of local management capacity and knowledge exchange;
 - (h) financial and other support to ensure effective administration and implementation of the co-management agreement; and
 - (i) any other relevant matter.
- (3) A co-management agreement must:
- (a) provide for the harmonisation and integration of the management of cultural heritage resources in the protected area by the management authority; and
 - (b) be consistent with the other provisions of this Act.
- (4) The Minister or the MEC, as the case may be, may cancel a co-management agreement after giving reasonable notice to the parties if the agreement is not effective or is inhibiting the attainment of any of the management objectives of the protected area.
- (5) Where the Minister or MEC in terms of subsection (4) cancels a co-management agreement forming a material term of an agreement contemplated in section 20(3), 23(3) or 28(3), the withdrawal of the

declaration of the protected area or exclusion contemplated in section 21(2), 24(2) or 29, respectively, applies.

Part 2: Monitoring and supervision

43. Performance indicators

- (1) The Minister may establish indicators for monitoring performance with regard to the management of national protected areas and the conservation of biodiversity in those areas.
- (2) The MEC may establish indicators for monitoring performance with regard to the management of provincial and local protected areas and the conservation of biodiversity in those areas.
- (3) The management authority of a protected area must:
 - (a) monitor the area against the indicators set in terms of subsection (1) or (2); and
 - (b) annually report its findings to the Minister or MEC, as the case may be, or a person designated by the Minister or MEC.
- (4) The Minister or MEC may appoint external auditors to monitor a management authority's compliance with the overall objectives of the management plan.

44. Termination of mandate to manage protected area

- (1) If the management authority of a protected area is not performing its duties in terms of the management plan for the area, or is under performing with regard to the management of the area or the biodiversity of the area, the Minister or the MEC, as the case may be, must:
 - (a) notify the management authority in writing of the failure to perform its duties or of the underperformance; and
 - (b) direct the management authority to take corrective steps set out in the notice within a specified time.
- (2) If the management authority fails to take the required steps, the Minister or MEC may:
 - (a) terminate that management authority's mandate to manage the protected area; and
 - (b) assign another organ of state as the management authority of the area.
- (3) The Minister implements this section in relation to national protected areas and the MEC implements this section in relation to provincial and local protected areas.

Part 3: Access to protected areas

45. Access to special nature reserve

- (1) No person may:
 - (a) enter a special nature reserve;
 - (b) reside in a special nature reserve; or
 - (c) perform any activity in a special nature reserve.
- (2) Subsection (1) does not apply to:
 - (a) an official of the Department or another organ of state designated by the Minister in writing to monitor:
 - (i) the state of conservation of the reserve or of the biodiversity in the reserve; or
 - (ii) the implementation of the management plan and this Act;
 - (b) any police, customs or excise officer entering the area in the performance of official duties; or
 - (c) a person acting in terms of an exemption granted under subsection (3).

(3) The management authority of a special nature reserve may, in writing and on conditions determined by it after consulting the Minister, grant exemption from a provision of subsection (1) to:

- (a) a scientist to perform scientific work;
- (b) a person to perform an activity related to the conservation of the reserve or of the biodiversity in the reserve;
- (c) a person recording a news event that occurred in the reserve or an educational or scientific programme;
- (d) an official of the management authority to perform official duties; or
- (e) an official of an organ of state to perform official duties.

46. Access to national park, nature reserve and world heritage site

(1) Despite any other legislation, no person may without the written permission of the management authority of a national park, nature reserve or world heritage site enter or reside in the park, reserve or site.

(2) Subsection (1) does not apply to:

- (a) an official of the Department or of another organ of state designated by the Minister or, in the case of a provincial or local nature reserve, a person designated by the MEC, to monitor:
 - (i) the state of conservation of the park, reserve or site or of the biodiversity in the park, reserve or site; or
 - (ii) the implementation of the management plan and this Act;
 - (b) an official of the management authority performing official duties in the park, reserve or site;
 - (c) any police, customs or excise officer entering the park, reserve or site in the performance of official duties;
 - (d) the holder of a vested right to enter the park, reserve or site; or
 - (e) a person travelling through the park, reserve or site by rail, as long as that person stays on the train or within the precincts of any railway station.
- (3) If the management authority of a national park, nature reserve or world heritage site refuses permission to an official of an organ of state to enter the park, reserve or site for the performance of official duties, the Minister may:
- (a) reconsider the matter; and
 - (b) either confirm the refusal or grant the permission.

47. Use of aircraft in special nature reserve, national park or world heritage site

(1) A special nature reserve, national park or world heritage site includes the air space above the reserve, park or site to a level of 2 500 feet above the highest point of the reserve, park or site.

(2) No person may land or take off in an aircraft in a special nature reserve, national park or world heritage site, except:

- (a) on or from a landing field designated by the management authority of that special nature reserve, national park or world heritage site; and
- (b) on authority of the prior written permission of the management authority, which authority may stipulate the terms and conditions upon which this must take place.

(3) No person or organ of state may fly over or cause an aircraft to fly over a special nature reserve, national park or world heritage site at a level of less than 2500 feet above its highest point, except as may be necessary for the purpose of subsections (2) or (3A).

(3A)(a) The management authority may provide for flight corridors over a special nature reserve, national park or world heritage site, as well as through the protected airspace identified under subsection (1) where this is necessary for a public purpose or in the public interest.

- (b) No person or organ of state may fly or cause any person to fly an aircraft over a special nature reserve, national park or world heritage site and through the protected airspace identified under subsection (1):
 - (i) without the prior written permission of the management authority;
 - (ii) without the prescribed fee having first been paid, if applicable; and
 - (iii) unless and until the management authority has approved the flight plan for a flight and stipulated the terms and conditions upon which a flight is to take place.
- (c) The Minister in agreement with the Minister of Defence may allow for specific areas within the identified protected airspace to be used for training and testing of aircraft.
- (d) The provision of any flight corridor in paragraph (a) or area in paragraph (c) is subject to an environmental authorisation in terms of section 24 of the National Environmental Management Act.
- (4) Subsections (2), (3) and (3A) do not apply:
 - (a) in an emergency; or
 - (b) to a person acting on the instructions of the management authority.
- (4A) Any person who or organ of state that is affected by a decision of a management authority in terms of subsection (2), (3) or (3A) may appeal to the Minister against such decision.
- (5) The Minister, acting with the concurrence of the Cabinet member responsible for civil aviation, may prescribe further reasonable restrictions on flying over protected areas.

Part 4: Restrictions

48. Prospecting and mining activities in protected area

- (1) Despite other legislation, no person may conduct commercial prospecting or mining activities:
 - (a) in a special nature reserve, national park or nature reserve;
 - (b) in a protected environment without the written permission of the Minister and the Cabinet member responsible for minerals and energy affairs; or
 - (c) in a protected area referred to in section 9(b), (c) or (d).
- (2) The Minister, after consultation with the Cabinet member responsible for mineral 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 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.
- (4) When applying this section, the Minister must take into account the interests of local communities and the environmental principles referred to in section 2 of the National Environmental Management Act, 1998.

49. Regulation or restriction of activities in protected areas

Activities in protected areas are regulated restricted to the extent prescribed by:

- (a) regulations made under section 86;
- (b) regulations made under section 87 in protected areas;
- (c) by-laws made by the relevant municipality, areas; and

(d) internal rules made by the managing authority

Commercial and community activities in nature the case of provincial and local in the case of local protected of the area under section 52.

50. Commercial and community activities in national park, nature reserve and world heritage site

(1) The management authority of a national park, nature reserve and world heritage site may, despite any regulation or by-law referred to in section 49, but subject to the management plan of the park, reserve or site:

- (a) carry out or allow:
 - (i) a commercial activity in the park, reserve or site; or
 - (ii) an activity in the park, reserve or site aimed at raising revenue;
- (b) enter into a written agreement with a local community inside or adjacent to the park, reserve or site to allow members of the community to use in a sustainable manner biological resources in the park, reserve or site; and
- (c) set norms and standards for any activity allowed in terms of paragraph (a) or (b).

(2) An activity allowed in terms of subsection (1)(a) or (b) may not negatively affect the survival of any species in or significantly disrupt the integrity of the ecological systems of the national park, nature reserve or world heritage site.

(3) The management authority of the national park, nature reserve or world heritage site must establish systems to monitor:

- (a) the impact of activities allowed in terms of subsection (1)(a) or (b) on the park, reserve or site and its biodiversity; and
- (b) compliance with:
 - (i) any agreement entered into in terms of subsection (1)(b); and
 - (ii) any norms and standards set in terms of subsection (1)(c).
- (4) Any activity carried out lawfully in terms of any agreement which exists when this section takes effect may continue until the date of termination of such agreement, provided that the agreement may not be extended or varied so as to expire after the original intended expiry date without the consent of the Minister.

(5) No development, construction or farming may be permitted in a national park, nature reserve or world heritage site without the prior written approval of the management authority.

51. Regulation or restriction of development and other activities in protected environment

The Minister or the MEC may by notice in the *Gazette* restrict or regulate in a protected environment under the jurisdiction of the, Minister or the MEC:

- (a) development that may be inappropriate for the area given the purpose for which the area was declared; and
- (b) the carrying out of other activities that may impede such purpose.

52. Internal rules

(1) The management authority of a national park, nature reserve or world heritage site may, in accordance with prescribed norms and standards, make rules for the proper administration of the area.

(2) Rules made under subsection (1):

- (a) must be consistent with this Act and the management plan for the area;
- (b) bind all persons in the area, including visitors; and
- (c) may, as a condition for entry, provide for the imposition of fines for breaches of the rules.

53. Certain rights and entitlements to be respected

(1) Section 45, 46, 49, 50, 51 or 52 may not be applied in a manner that would obstruct the resolution of issues relating to land rights dealt with in terms of:

- (a) the Restitution of Land Rights Act, 1994 (Act 22 of 1994); and
- (b) the provision of essential services and the acquisition of servitudes for that purpose.

(2) A person may exercise a right that that person they have to water in a public stream in a protected area, but subject to such conditions a may be prescribed by the Minister with the concurrence of the Cabinet member responsible for water affairs.

CHAPTER 5: South African National Parks

Part 1: Continued existence and functions of South African National Parks

54. Continued existence

(1) South African National Parks established by section 5 of the National Parks Act, 1976 (Act 57 of 1976), continues to exist as a juristic person despite the repeal of that Act by section 90 of this Act.

(2) As from the repeal of the National Parks Act, 1976, South African National Parks functions in terms of this Act.

(3) The South African National Parks may not be wound up or dissolved except by or in terms of an Act of Parliament and by a resolution of a majority of at least two-thirds of all its members.

(4) Upon winding-up or dissolution of the South African National Parks, its remaining assets or the proceeds of those assets after satisfaction of its liabilities, must be transferred to the State or to an equivalent Schedule 3A Public Entity contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), which has the same objectives as the South African National Parks and which itself is exempt from income tax in terms of section 10(1)(cA) of the Income Tax Act, 1962 (Act 58 of 1962).

55. Functions

(1) South African National Parks must:

- (a) manage all existing national parks and any kind of protected area listed in section 9, assigned to it by the Minister in terms of chapter 4 and section 92, in accordance with this Act and any specific environmental management Act referred to in the National Environmental Management Act;

(aA) manage world heritage sites assigned to it by the Minister, in accordance with all national cultural heritage legislation as may be applicable to and required for proper management and protection of such world heritage sites, provided that the South African National Parks' authority to enforce such legislation are provided for in a written instrument of delegation issued by the Minister to this effect under and in terms of such legislation;

(aB) manage any other protected areas, which are not protected areas referred to in subsection 55(1)(a), and as may be assigned to it by the Minister, in accordance with the provisions of all national environmental legislation as may be applicable to and required for the proper management and protection of such other protected areas, provided that the South African National Parks' authority to enforce such legislation are provided for in a written instrument of delegation issued by the Minister to this effect under and in terms of such legislation;

- (aC) participate in such further international, regional and national environmental, conservation and cultural heritage initiatives identified by the Minister from time to time, and then only on such terms and conditions as the Minister shall in writing provide.
- (b) protect, conserve and control those national parks and other protected areas, including their biological diversity; and
- (c) on the Minister's request, advise the Minister on any matter concerning:
 - (i) the conservation and management of biodiversity; and
 - (ii) proposed national parks and additions to or exclusions from existing national parks; and
- (d) on the Minister's request, act as the provisional managing authority of protected areas under investigation in terms of this Act.
- (2) South African National Parks may in managing national parks, or any other kind of protected area assigned to it by the Minister:
 - (a) manage breeding and cultivation programmes, and reserve areas in a park as breeding places and nurseries;
 - (b) sell, exchange or donate any animal, plant or other organism occurring in a park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to re-introduce into a specific park;
 - (c) undertake and promote research;
 - (d) control, remove or eradicate any species or specimens of species which it considers undesirable to protect and conserve in a park or that may negatively impact on the biodiversity of the park;
 - (e) carry out any development and construct or erect any works necessary for the management of a park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels;
 - (f) allow visitors to a park;
 - (fA) make, set penalties for, and enforce traffic rules in such national parks, special nature reserves, protected environments, world heritage sites or other protected areas assigned to it by the Minister;
 - (g) take reasonable steps to ensure the security and well-being of visitors and staff;
 - (h) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;
 - (i) carry on any business or trade or provide other services for the convenience of visitors and staff, including the sale of liquor;
 - (j) determine and collect fees for:
 - (i) entry to or stay in a park; or
 - (ii) any service provided by it;
 - (k) authorise any person, subject to such conditions and the payment of such fees as it may determine, to:
 - (i) carry on any business or trade, or provide any service, which South African National Parks may carry on or provide in terms of this section; and
 - (ii) provide the infrastructure for such business, trade or service;
 - (l) by agreement with:
 - (i) a municipality, provide any service in a park which that municipality may or must provide in terms of legislation; or
 - (ii) any other organ of state, perform a function in a park which that organ of state may or must perform in terms of legislation; or
 - (m) perform such other functions as may be prescribed.
- (3) Subsection (2) applies also to other protected areas managed by South African National Parks, and the powers contained in that subsection may be

exercised by it to the extent that those powers are consistent with the purpose for which any such area was declared as a protected area.

56. General powers

South African National Parks may for the purpose of performing its functions:

- (a) appoint its own staff, subject to section 73;
- (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;
- (d) open and operate its own bank accounts;
- (e) invest, subject to section 76, any of its money, including money in the fund referred to in section 77;
- (f) borrow money, subject to section 66 of the Public Finance Management Act;
- (g) charge fees for any work performed or services rendered by it or collect fees resulting from any intellectual property rights;
- (h) insure itself against:
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in respect of Board members or staff members 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) institute or defend any legal action.

Part 2: Governing board, composition and membership

57. Composition

- (1) South African National Parks is governed by a board consisting of:
 - (a) no fewer than nine and no more than 12 members appointed in terms of section 59;
 - (b) the Director-General or an official of the Department designated by the Director-General; and
 - (c) the Chief Executive Officer.
- (2) The Minister:
 - (a) must determine the number of members to be appointed in terms of subsection (1)(a); and
 - (b) may alter from time to time 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 functions of South African National Parks, except:
 - (a) those decisions taken in consequence of a delegation in terms of section 71; or
 - (b) where the Public Finance Management Act provides otherwise.

58. Qualifications

- (1) A member of the Board must:
 - (a) be a fit and proper person to hold office as a member; and
 - (b) have appropriate qualifications or experience.
- (2) A person is disqualified from becoming or remaining a member of the Board if that person:
 - (a) is holding office as a member of Parliament or a provincial legislature; or
 - (b) has been removed from office in terms of section 65.

59. Appointment procedure

- (1) Whenever it is necessary to appoint a member of the Board, the Minister must:
 - (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations; and
 - (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:
 - (a) the personal details of the nominee;
 - (b) particulars of the nominee's qualifications or experience; and
 - (c) any other information that may be prescribed.
- (3) The Minister must make the required number of appointments from the list referred to in subsection (1)(b), but if the list is inadequate, the Minister may appoint any suitable person.
- (4) When making an appointment the Minister must have regard to the need for appointing persons disadvantaged by unfair discrimination.
- (5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise.

60. Chairperson

- (1) The Minister must appoint a member of the Board as the Chairperson.
- (2) The Chairperson is appointed for such period as the Minister may determine which may, in the case of a member referred to in section 57(1)(a), not extend beyond his or her term as a member.
- (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.

61. Term of office

- (1) Members of the Board referred to in section 57(1)(a) are:
 - (a) appointed for a term of three years or, if section 66(2) applies, for a term determined in terms of that section;
 - (b) on completion of any term contemplated in paragraph (a), eligible for reappointment for one additional term of three years; and
 - (c) after a break of at least three years after a term has ended, eligible for appointment in terms of paragraph (a) again and, if appointed, eligible for reappointment in terms of paragraph (b).
- (2) Any appointment in terms of subsection (1) may be extended by the Minister for a specific period not exceeding one year.

62. Conditions of appointment

- (1) The Minister must determine the conditions of appointment of members of the Board referred to in section 57(1)(a).
- (2)(a) The conditions of appointment of members who are not in the employ of a national, provincial or local organ of state may provide for the payment of remuneration and allowances determined by the Minister with the concurrence of the Cabinet member responsible for finance.
- (b) Such remuneration and allowances are payable by South African National Parks.
- (3) Members who are in the employ of a national, provincial or local organ of state are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by South African National Parks.
- (4) Members are appointed part-time.

63. Conduct of members

- (1) A member of the Board:
 - (a) must perform the functions 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 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 South African National Parks.
- (2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

64. Termination of membership

- (1) A person referred to in section 51(1)(a) ceases to be a member of the Board when that person:
 - (a) is no longer eligible in terms of section 58 to be a member;
 - (b) resigns; or
 - (c) is removed from office in terms of section 65.
- (2) A member may resign by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.

65. Removal from office

- (1) The Minister may remove a member of the Board referred to in section 57(1)(a) from office 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 ground 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.

66. Filling of vacancies

- (1) A vacancy in the Board is filled:
 - (a) in the case of a vacating Chairperson, by appointing another member in terms of section 60(1) as the Chairperson; and
 - (b) in the case of a vacating member referred to in section 51(1)(a), by following the procedure set out in section 59.
- (2) A person appointed to fill a vacancy holds office for the unexpired portion of the term of the vacating Chairperson or member.

Part 3: Operating procedures of Board

67. Meetings

- (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 meeting at a time and place set out in the request.

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

68. Procedures

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

(2) The Board must keep a record of its proceedings and of decisions taken.

69. Quorum and decisions

(1) A majority of the serving members of the Board constitutes a quorum for a meeting of the Board.

(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.

70. Committees

(1) The Board may establish one or more committees to assist it in the performance of its functions.

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

(3) The Board:

- (a) must determine the functions of a committee;
- (b) must appoint the chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time; and
- (d) may determine a committee's procedure.

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

(5)(a) Section 62 applies with the changes required by the context to the conditions of appointment of committee members.

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

71. Delegation of powers and assignment of duties

(1) When necessary for the proper performance of its functions the Board may delegate any of its powers or assign any of its duties, excluding those mentioned in subsection (2), to:

- (a) a Board member;
- (b) a committee referred to in section 70; or
- (c) a staff member of South African National Parks.

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

- (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 72(1) or (2);
- (b) the determination of the conditions of service of the Chief Executive Officer in terms of section 72(3);
- (c) the determination of an employment policy in terms of section 73(1);
- (d) the setting of financial limits in terms of section 13(2)(a) or (3); and
- (e) the approval of the budget.

(3) A delegation or assignment in terms of subsection (1):

- (a) must be in writing;
- (b) is subject to such limitations, conditions and directions as the Board may impose;

- (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty; and
- (d) does not prevent the exercise of the assigned power or the performance of the assigned duty by the Board.
- (4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Part 4: Administration of South African National Parks

72. Appointment of Chief Executive Officer

- (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 South African National Parks.
- (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.
- (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) is responsible for the management of South African National Parks;
 - (b) must perform such duties and may exercise such powers as the Board may assign or delegate to the Chief Executive Officer; and
 - (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers at such frequency and in such manner as the Board may determine.
- (5)(a) Whenever the Chief Executive Officer is for any reason absent or unable to perform his or her functions, or whenever there is a vacancy in the office of the Chief Executive Officer, the Chairperson of the Board may appoint another staff member of South African National Parks as acting Chief Executive Officer for a period not exceeding six months.
- (b) Whilst acting as Chief Executive Officer, such staff member:
 - (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 of the Board may determine in accordance with the policy referred to in subsection (3).

73. Employment of staff

- (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for South African National Parks.
- (2) The Chief Executive Officer:
 - (a) within the financial limits set by the Board, must determine a staff establishment necessary to enable South African National Parks to perform its functions; and
 - (b) may appoint persons in posts on the staff establishment.
- (3) An employee of South African National Parks is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of 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 South African National Parks by agreement between the Chief Executive Officer and such organ of state.
- (b) Persons seconded to South African National Parks perform their functions under the supervision of the Chief Executive Officer.

(5) A person in the service of South African National Parks 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.

Part 5: Financial matters

74. Financial accountability

South African National Parks is a public entity for the purposes of the Public Finance Management Act, and must to that end comply with the provisions of that Act.

75. Funding

The funds of South African National Parks consist of:

- (a) income derived from the performance of its functions;
- (b) money appropriated for its purposes by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed in terms of section 56(f);
- (f) income derived from investments;
- (g) fines received or recovered in respect of offences committed under this Act; and
- (h) money derived from any other source, with the approval of the Cabinet member responsible for finance.

76. Investments

South African National Parks 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 accordance with any criteria set by the Minister.

77. National Parks Land Acquisition Fund

The National Parks Land Acquisition Fund established by section 12A of the National Parks Act, 1976 (Act 57 of 1976), continues to exist as a separate fund under the administration of South African National Parks despite the repeal of that Act by section 90 of this Act.

(2) The Fund is administered by South African National Parks and consists of:

- (a) any voluntary contributions, donations and bequests received by South African National Parks for the purpose of the Fund;
- (b) money appropriated by Parliament for the purpose of the Fund;
- (c) the proceeds of land sold by South African National Parks which it has acquired in terms of section 81;
- (d) income derived from investing any credit balances in the Fund;
- (e) money borrowed by South African National Parks in terms of section 56(f) for the purpose of the Fund; and
- (f) money derived from any other source for the purpose of the Fund.

(3) The money in the Fund may be used:

- (a) to finance:
 - (i) the acquisition of private land or a right in or to private land in terms of section 80 or 81; or
 - (ii) the cancellation of a servitude or a right in land in terms of section 82 or 83; or
 - (b) to defray expenses incurred by South African National Parks in connection with the management of the Fund.
- (4) The Chief Executive Officer must:

- (a) keep account of the Fund separately from the other money of South African National Parks; and
- (b) comply with the Public Finance Management Act in administering the Fund.

Part 6: General

78. Minister's supervisory powers

- (1) The Minister:
 - (a) must monitor the performance by South African National Parks of its functions;
 - (b) may determine norms and standards for the performance by South African National Parks of its functions;
 - (c) may issue directives to South African National Parks on measures to achieve those norms and standards;
 - (d) may determine limits on fees charged by South African National Parks in the performance of its functions; and
 - (e) may identify land for new national parks and extensions to existing national parks.
- (2) South African National Parks must perform its functions subject to the norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

79. Absence of functional Board

In the absence of a functional Board, the functions of the Board revert to the Minister who, in such a case, must perform those functions until the Board is functional again.

CHAPTER 6: Acquisition of Rights in or to Land

80. Acquisition of private land by State

- (1) The Minister, acting with the concurrence of the Cabinet member responsible for land affairs, may acquire land, or any right in or to land, which has been or is proposed to be declared as or included in a national protected area, by:
 - (a) purchasing the land or right;
 - (b) exchanging the land or right for other land or rights; or
 - (c) expropriating the land or right in accordance with the Expropriation Act, 1975 (Act 63 of 1975), and subject to section 25 of the Constitution, if no agreement is reached with the owner of the land or the holder of the right in or to the land.
- (2) The MEC, acting with the approval of the Executive Council of the province, may acquire private land, or any right in or to private land which has been or is proposed to be declared as or included in a provincial protected area, by:
 - (a) purchasing the land or right; exchanging the land or right for other land or rights; or
 - ...
 - (c) expropriating the land or right in accordance with the Expropriation Act, 1975, and subject to section 25 of the Constitution, if no agreement is reached with the owner of the land or the holder of the right in or to the land.

81. Acquisition of private land by South African National Parks

- (1) South African National Parks, with the approval of the Minister acting with the concurrence of the Cabinet member responsible for land affairs, may

acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a national park:

- (a) by purchasing the land or right; or
 - (b) if the land or right is donated or bequeathed to it, by accepting the donation or bequest.
- (2) If the parties fail to agree on a purchase price for the land or right contemplated in subsection (1)(a), the Minister may on behalf of South African National Parks or the State expropriate the land or right in accordance with the Expropriation Act, 1975 (Act 63 of 1975), subject to section 25 of the Constitution.

82. Cancellation of servitude on, or privately held right in or to, state land

- (1) The Minister, acting with the concurrence of the Cabinet member responsible for public works, may take any steps necessary to cancel a servitude on state land, or a privately held right in or to state land, which has been or is proposed to be declared as or included in a national protected area.
- (2) The MEC, acting with the concurrence of the MEC responsible for public works in the province, may take any steps necessary to cancel a servitude on provincial land, or a privately held right in or to provincial land, which has been or is proposed to be declared as or included in a provincial protected area.
- (3) If the Minister or MEC fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister or MEC may expropriate the servitude or the privately held right in or to State land, in accordance with the Expropriation Act, 1975 (Act 63 of 1975), subject to section 25 of the Constitution.

83. Cancellation of servitude on, or privately held right in or to, land owned by South African National Parks

- (1) South African National Parks may take any steps necessary to cancel a servitude on land owned by South African National Parks, or a privately held right in or to such land, which has been or is proposed to be declared as or included in a national park.
- (2) If South African National Parks fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister may on behalf of South African National Parks or the State expropriate the servitude or right in accordance with the Expropriation Act, 1975 (Act 63 of 1975), subject to section 25 of the Constitution.

84. Mineral right

The Minister may in accordance with section 80(1)(c), 81(2), 82(3) or 83(2), and the MEC may in accordance with section 80(2) or 82(3), acquire or cancel a mineral right by way of expropriation only with the concurrence of the Cabinet member responsible for mineral and energy affairs.

85. Financing

- (1) The Minister may finance the acquisition of private land or a right in or to private land in terms of section 80, or the cancellation of a servitude on, or a privately held right in or to, state land in terms of section 82, from:
- (a) money appropriated for this purpose by Parliament; or
 - (b) the Fund, by agreement with South African National Parks.
- (2) South African National Parks may finance the acquisition of private land or a right in or to private land in terms of section 81, or the cancellation of a

servitude on, or a privately held right in or to, land owned by South African National Parks in terms of section 83, from:

- (a) the funds of South African National Parks; or
- (b) the Fund, by agreement with the Minister.

CHAPTER 7: Administration of Act

86. Regulations by Minister

- (1) The Minister may make regulations that are not in conflict with this Act:
 - (a) regarding any matter that may or must be prescribed in terms of this Act;
 - (b) conferring additional powers or assigning additional duties to management authorities;
 - (c) regulating:
 - (i) biodiversity management and conservation in protected areas;
 - (ii) the use of biological resources in protected areas;
 - (iii) access to protected areas;
 - (iv) tourism in protected areas where tourism is allowed;
 - (v) activities that may be carried out in terms of section 50;
 - (vi) the use of land and water in protected areas;
 - (vii) community-based natural resource utilisation; or
 - (viii) consultation activities which are required in terms of this Act.
 - (d) prohibiting or restricting:
 - (i) activities that have an adverse effect in protected areas;
 - (ii) the use of biological resources in protected areas;
 - (iii) land uses in protected areas that are harmful to the environment;
 - (e) providing for the establishment of advisory committees for protected areas, the appointment of members and their role;
 - (f) setting norms and standards for the proper performance of any function contemplated in this Act, and the monitoring and enforcing of such norms and standards;
 - (g) regarding any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (2) Any regulation with material financial implications must be made with the concurrence of the Cabinet member responsible for finance.
- (3) Before publishing any regulation contemplated in subsection (1), the Minister must publish the draft regulations in the *Gazette* for public comment.

87. Regulations by MEC

- (1) The MEC may, in relation to provincial and local protected areas, make regulations not in conflict with this Act regarding any matter referred to in section 86, except a matter referred to in section 86(1)(f).
- (2) Any regulation made under subsection (1) must be consistent with the norms and standards prescribed under section 11 or 86(1)(f).
- (3) Any regulation with substantive financial implications for the province must be made with the concurrence of the MEC responsible for finance in the province.
- (4) Before publishing any regulation contemplated in subsection (1), the MEC must publish the draft regulations in the *Gazette* for public comment.

88. General

- (1) Regulations made under section 86 or 87 may:
 - (a) restrict or prohibit any act either absolutely or conditionally;
 - (b) apply:

- (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas;
- (ii) generally to all persons or only a specified category of persons; or
- (iii) generally with respect to all species or only a specified species or category of species; or
- (c) differentiate between:
 - (i) different areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.
- (2) Regulations made under section 86 or 87 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.

CHAPTER 8: Offences and Penalties

89. Offences and penalties

- (1) A person is guilty of an offence if that person:
 - (a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A), 48(1), 49A(5)(b), 50(5) or 55(2)(fA);
 - (b) contravenes a notice issued under section 51;
 - (c) hinders or interferes with a management authority or a member or staff member of a management authority in the performance of official duties; or
 - (d) falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer.
- (2) A person convicted of an offence in terms of subsection (1) 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.
- (3) Contravention of or failure to comply with any provision of a regulation made under section 86 or 87 is an offence.
- (4) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

CHAPTER 9

90. Repeal of laws

- (1) Subject to subsection (2), the laws mentioned in the second column of Schedule 1 are hereby repealed to the extent set out in the third column thereof.
- (2) Sections 16 and 17 of the Environment Conservation Act, 1989 (Act 73 of 1989), are repealed in a province with effect from the date of publication by the MEC of regulations under section 87 prescribing matters covered by the said sections 16 and 17.

91. Savings

- (1) Anything done in terms of a law repealed by section 90 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

(2) A person who, immediately before the repeal of the National Parks Act, 1976 (Act 57 of 1976), was:

- (a) a board member of South African National Parks becomes a member of the Board for the unexpired part of the term for which that person was appointed as a member of South African National Parks; or
- (b) the Chairperson of South African National Parks becomes the Chairperson of the Board for the unexpired part of the term for which that person was appointed as the Chairperson of South African National Parks.

92. Protected areas existing before commencement of section

(1) South African National Parks:

- (a) is the management authority for any protected area it managed immediately before this section took effect, unless otherwise assigned by the Minister in terms of this Act; and
- (b) must manage such area in accordance with:
 - (i) this Act and any management plan in terms of chapter 4 for the area; and
 - (ii) any condition and agreement which existed immediately before this section took effect and which were applicable to the area.

(2) The organ of state managing a protected area immediately before this section took effect, other than a protected area referred to in subsection (1), must continue managing the area until the management of the area is assigned either to it or to another management authority in terms of chapter 4.

93. Short title and commencement

This Act is called the National Environmental Management: Protected Areas Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE: REPEAL OF LAWS

(Section 90)

No. and year of law	Short title	Extent of repeal
Act 39 of 1975	Lake Areas Development Act, 1975	The repeal of the whole
Act 57 of 1976	National Parks Act, 1976	The repeal of the whole, except section 2(1) and Schedule 1
Act 60 of 1979	National Parks Amendment Act, 1979	The repeal of the whole
Act 9 of 1980	Lake Areas Development Amendment Act, 1980	The repeal of the whole
Act 13 of 1982	National Parks Amendment Act, 1982	The repeal of the whole
Act 23 of 1983	National Parks Amendment Act, 1983	The repeal of the whole
Act 43 of 1986	National Parks Amendment Act, 1986	The repeal of the whole

Act 111 of 1986	National Parks Second Amendment Act, 1986	The repeal of the whole
Act 60 of 1987	National Parks Amendment Act, 1987	The repeal of the whole
Act 73 of 1989	Environment Conservation Act, 1989	The repeal of sections 16, 17 and 18
Act 23 of 1990	National Parks Amendment Act, 1990	The repeal of the whole
Act 52 of 1992	National Parks Amendment Act, 1992	The repeal of the whole
Act 54 of 2001	National Parks Second Amendment Act, 1992	The repeal of the whole

2.2.1.3 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity – South African Biodiversity Institute.

National Environmental Management: Biodiversity Act 10 of 2004

As last amended by National Environment Laws Amendment Act 14 of 2009.

CHAPTER 1: Interpretation, Objectives and Application of Act

1. Definitions

(1) In this Act, unless the context indicates otherwise:

'alien species' means:

- (a) a species that is not an indigenous species; or
- (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

'benefit', in relation to bio-prospecting involving indigenous biological resources, means any benefit, whether commercial or not, arising from bio-prospecting involving such resources, and includes both monetary and non-monetary returns;

'biological diversity' or *'biodiversity'* means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems;

'bio-prospecting', in relation to indigenous biological resources, means any research on, or development or application of, indigenous biological resources for commercial or industrial exploitation, and includes:

- (a) the systematic search, collection or gathering of such resources or making extractions from such resources for purposes of such research, development or application;
- (b) the utilisation for purposes of such research or development of any information regarding any traditional uses of indigenous biological resources by indigenous communities; or
- (c) research on, or the application, development or modification of, any such traditional uses, for commercial or industrial exploitation;

'bioregion' means a geographic region which has in terms of section 40(1) been determined as a bioregion for the purposes of this Act;

'Board' means the board referred to in section 13;

'commercialisation', in relation to indigenous biological resources, includes the following activities:

- (a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;
- (b) obtaining or transferring any intellectual property rights or other rights;
- (c) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; or the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours and extracts;

'commercialisation phase of bioprospecting' means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is sufficiently established to begin the process of commercialisation;

'competent authority', in relation to the control of an alien or invasive species, means:

- (a) the Minister;
- (b) an organ of state in the national, provincial or local sphere of government designated by regulation as a competent authority for the control of an alien species or a listed invasive species in terms of this Act; or
- (c) any other organ of state;

'components', in relation to biodiversity, includes species, ecological communities, genes, genomes, ecosystems, habitats and ecological processes;

'control', in relation to an alien or invasive species, means:

- (a) to combat or eradicate an alien or invasive species; or
- (b) where such eradication 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;

'critically endangered ecosystem' means any ecosystem listed as a critically endangered ecosystem in terms of section 52(2);

'critically endangered species' means any indigenous species listed as a critically endangered species in terms of section 56;

'delegation', in relation to a duty, includes an instruction to perform the duty;

'Department' means the national Department of Environmental Affairs and Tourism;

'derivative', in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;

'Director-General' means the Director-General of the Department;

'discovery phase of bioprospecting' means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is not sufficiently clear or known to begin the process of commercialisation;

'ecological community' means an integrated group of species inhabiting a given area;

'ecosystem' means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;

'endangered ecosystem' means any ecosystem listed as an endangered ecosystem in terms of section 52(2);

'endangered species' means any indigenous species listed as an endangered species in terms of section 56;

'environmental management inspector' means a person authorised in terms of the National Environmental Management Act to enforce the provisions of this Act;

'export', in relation to the Republic, means to take out or transfer, or attempt to take out or transfer, from a place within the Republic to another country or to international waters;

'Gazette', when used:

(a) in relation to the Minister, means the *Government Gazette*; or

(b) in relation to the MEC for Environmental Affairs of a province, means the *Provincial Gazette* of that province;

'genetic material' means any material of animal, plant, microbial or other biological origin containing functional units of heredity;

'genetic resource' includes:

(a) any genetic material; or

(b) the genetic potential or characteristics of any species;

'habitat' means a place where a species or ecological community naturally occurs;

'import', in relation to the Republic:

(a) means to land on, bring into or introduce into the Republic, or attempt to land on, bring into or introduce into the Republic; and

(b) includes to bring into the Republic for re-export to a place outside the Republic;

'indigenous biological resource':

(a) when used in relation to bio-prospecting, means any indigenous biological resource as defined in section 80(2); or

(b) when used in relation to any other matter, means any resource consisting of:

(i) any living or dead animal, plant or other organism of an indigenous species;

(ii) any derivative of such animal, plant or other organism; or

(iii) any genetic material of such animal, plant or other organism;

'indigenous species' means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity;

'Institute' means the South African National Biodiversity Institute established in terms of section 10;

'introduction', in relation to a species, means the introduction by humans, whether deliberately or accidentally, of a species to a place outside the natural range or natural dispersal potential of that species;

'introduction from the sea', in relation to a specimen of any species, means the transportation into the Republic of a specimen taken from a marine environment not under the jurisdiction of any state;

'invasive species' means any species whose establishment and spread outside of its natural distribution range:

- (a) threaten ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species; and
- (b) may result in economic or environmental harm or harm to human health;

'issuing authority', in relation to permits regulating the matters mentioned in section 87, means:

- (a) the Minister; or
- (b) an organ of state in the national, provincial or local sphere of government designated by regulation in terms of section 97 as an issuing authority for permits of the kind in question;

'listed ecosystem' means any ecosystem listed in terms of section 52(1);

'listed invasive species' means any invasive species listed in terms of section 70(1);

'listed threatened or protected species' means any species listed in terms of section 56(1);

'local community' means any community of people living or having rights or interests in a distinct geographical area;

'management authority', in relation to a protected area, means an authority to whom the management of a protected area has been assigned;

'MEC for Environmental Affairs' means a member of the Executive Council of a province who is responsible for the conservation of biodiversity in the province;

'migratory species' means the entire population or any geographically separate part of the population of any species or lower tax on of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;

'Minister' means the Cabinet member responsible for national environmental management;

'municipality' means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

'national botanical garden' means land declared or regarded as having been declared as a national botanical garden in terms of section 33, and includes any land declared in terms of section 33 as part of an existing botanical garden;

'National Environmental Management Act' means the National Environmental Management Act, 1998 (Act 107 of 1998);

'national environmental management principles' means the principles referred to in section 7;

'non-detriment findings' means the determination of the non-detrimental impact of an action on the survival of a species in the wild;

'organ of state' has the meaning assigned to it in section 239 of the Constitution;

'permit' means a permit issued in terms of chapter 7;

'prescribe' means prescribe by regulation in terms of section 97;

'protected area' means a protected area defined in the Protected Areas Act;

'Protected Areas Act' means the National Environmental Management: Protected Areas Act, 2003;

'protected ecosystem' means any ecosystem listed as a protected ecosystem in terms of section 52(2);

'protected species' means any species listed as a protected species in terms of section 56;

'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act 1 of 1999);

're-export', in relation to a specimen of a listed threatened or protected species, means the export from the Republic of a specimen of a listed threatened or protected species previously imported into the Republic;

'restricted activity':

- (a) in relation to a specimen of a listed threatened or protected species, means:
 - (i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;
 - (ii) gathering, collecting or plucking any specimen of a listed threatened or protected species;
 - (iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species;
 - (iv) importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species;
 - (v) exporting from the Republic, including re-exporting from the Republic, any specimen of a listed threatened or protected species;
 - (vi) having in possession or exercising physical control over any specimen of a listed threatened or protected species;
 - (vii) growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply;
 - (viii) conveying, moving or otherwise translocating any specimen of a listed threatened or protected species;
 - (ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or
 - (x) any other prescribed activity which involves a specimen of a listed threatened or protected species; and
- (b) in relation to a specimen of an alien species or listed invasive species, means:
 - (i) importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species;
 - (ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species;
 - (iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;
 - (iv) conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;
 - (v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or
 - (vi) any other prescribed activity which involves a specimen of an alien or listed invasive species;

'species' means a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population;

'specimen' means:

- (a) any living or dead animal, plant or other organism;
- (b) a seed, egg, gamete or propagule or part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits;
- (c) any derivative of any animal, plant or other organism; or
- (d) any goods which:
 - (i) contain a derivative of an animal, plant or other organism; or
 - (ii) from an accompanying document, from the packaging or mark or label, or from any other indications, appear to be or to contain a derivative of an animal, plant or other organism;

'stakeholder' means:

- (a) a person, an organ of state or a community contemplated in section 82(1)(a); or
- (b) an indigenous community contemplated in section 82(1)(b);

'subordinate legislation', in relation to this Act, means:

- (a) any regulation made in terms of section 97; or
- (b) any notice published in terms of section 9, 33, 34, 40(1), 42(2), 43(3), 46(2), 52(1), 53(1), 55, 56(1), 57(2), 58, 66(1), 67(1), 68, 70(1), 72, 86(1) or 100(1)

'sustainable', in relation to the use of a biological resource, means the use of such resource in a way and at a rate that:

- (a) would not lead to its long-term decline;
- (b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and
- (c) would ensure its continued use to meet the needs and aspirations of present and future generations of people;

'this Act' includes any subordinate legislation issued in terms of a provision of this Act;

'threatening process' means a process which threatens, or may threaten:

- (a) the survival, abundance or evolutionary development of an indigenous species or ecological community; or
- (b) the ecological integrity of an ecosystem, and includes any process identified in terms of section 53 as a threatening process;

'vulnerable ecosystem' means any ecosystem listed as a vulnerable ecosystem in terms of section 52(2); and

'vulnerable species' means any indigenous species listed as a vulnerable species in terms of section 56.

(2) In this Act, words or expressions derived from words or expressions defined in subsection (1) have corresponding meanings unless the context indicates that another meaning is intended.

2. Objectives of Act

The objectives of this Act are:

- (a) within the framework of the National Environmental Management Act, to provide for:
 - (i) the management and conservation of biological diversity within the Republic and of the components of such biological diversity;
 - (ii) the use of indigenous biological resources in a sustainable manner; and
 - (iii) the fair and equitable sharing among stakeholders of benefits arising from bio-prospecting involving indigenous biological resources;
- (b) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic;
- (c) to provide for co-operative governance in biodiversity management and conservation; and
- (d) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act.

3. State's trusteeship of biological diversity

In fulfilling the rights contained in section 24 of the Constitution, the state through its organs that implement legislation applicable to biodiversity, must:

- (a) manage, conserve and sustain South Africa's biodiversity and its components and genetic resources; and
- (b) implement this Act to achieve the progressive realisation of those rights.

4. Application of Act

(1) This Act applies:

- (a) in the Republic, including:
 - (i) its territorial waters, exclusive economic zone and continental shelf described in the Maritime Zones Act, 1994 (Act 15 of 1994); and
 - (ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act 43 of 1948); and
- (b) to human activity affecting South Africa's biological diversity and its components.

(2) This Act binds all organs of state:

- (a) in the national and local spheres of government; and
- (b) in the provincial sphere of government, subject to section 146 of the Constitution.

5. Application of international agreements

This Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.

6. Application of other biodiversity legislation

- (1) This Act must be read with any applicable provisions of the National Environmental Management Act.
- (2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

7. National environmental management principles

The application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

8. Conflicts with other legislation

- (1) In the event of any conflict between a section of this Act and:
 - (a) other national legislation in force immediately prior to the date of commencement of this Act, the section of this Act prevails if the conflict specifically concerns the management of biodiversity or indigenous biological resources;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the section of this Act prevails.
- (2) In the event of any conflict between subordinate legislation issued in terms of this Act and:
 - (a) an Act of Parliament, the Act of Parliament prevails;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.
- (3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146(6) of the Constitution, submit all subordinate legislation

issued in terms of this Act which affects provinces to the National Council of Provinces for approval.

9. Norms and standards

- (1) The Minister may, by notice in the *Gazette*:
 - (a) issue norms and standards for the achievement of any of the objectives of this Act, including for the:
 - (i) management and conservation of South Africa's biological diversity and its components;
 - (ii) restriction of activities which impact on biodiversity and its components;
 - (b) set indicators to measure compliance with those norms and standards; and
 - (c) amend any notice issued in terms of paragraph (a) or (b).
- (2)(a) Before publishing a notice in terms of subsection (1), the Minister must follow a consultative process in accordance with sections 99 and 100.
- (b) A consultative process referred to in paragraph (a) need not apply to a non-substantial change to the notice.
- (3) Norms and standards may apply:
 - (a) nationwide;
 - (b) in a specific area only, or
 - (c) to a specific category of biodiversity only.
- (4) Different norms and standards may be issued for:
 - (a) different areas; or
 - (b) different categories of biodiversity.

CHAPTER 2: South African National Biodiversity Institute

Part 1: Establishment, powers and duties of Institute

10. Establishment

- (1) The South African National Biodiversity Institute is established by this Act.
- (2) The Institute is a juristic person.

11. Functions

- (1) The Institute:
 - (a) must monitor and report regularly to the Minister on:
 - (i) the status of the Republic's biodiversity;
 - (ii) the conservation status of all listed threatened or protected species and listed ecosystems; and
 - (iii) the status of all listed invasive species;
 - (b) must monitor and report regularly to the Minister on the environmental impacts of all categories of genetically modified organism, post commercial release, based on research that identifies and evaluates risk;
 - (c) may act as an advisory and consultative body on matters relating to biodiversity to organs of state and other biodiversity stakeholders;
 - (d) must coordinate and promote the taxonomy of South Africa's biodiversity;
 - (e) must manage, control and maintain all national botanical gardens;
 - (f) may establish, manage, control and maintain:
 - (i) herbaria, and
 - (ii) collections of dead animals that may exist;
 - (g) must establish facilities for horticulture display, environmental education, visitor amenities and research;

- (h) must establish, maintain, protect and preserve collections of plants in national botanical gardens and in herbaria;
 - (i) may establish, maintain, protect and preserve collections of animals and micro-organisms in appropriate enclosures;
 - (j) must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard;
 - (k) may allow, regulate or prohibit access by the public to national botanical gardens, herbaria and other places under the control of the Institute, and supply plants, information, meals or refreshments or render other services to visitors;
 - (l) may undertake and promote research on indigenous biodiversity and the sustainable use of indigenous biological resources;
 - (m) may coordinate and implement programmes for:
 - (i) the rehabilitation of ecosystems; and
 - (ii) the prevention, control or eradication of listed invasive species;
 - (n) may coordinate programmes to involve civil society in:
 - (i) the conservation and sustainable use of indigenous biological resources; and
 - (ii) the rehabilitation of ecosystems;
 - (o) on the Minister's request, must assist him or her in the performance of duties and the exercise of powers assigned to the Minister in terms of this Act;
 - (p) on the Minister's request, must advise him or her on any matter regulated in terms of this Act, including:
 - (i) the implementation of this Act and any international agreements affecting biodiversity which are binding on the Republic;
 - (ii) the identification of bioregions and the contents of any bioregional plans;
 - (iii) other aspects of biodiversity planning;
 - (iv) the management and conservation of biological diversity; and
 - (v) the sustainable use of indigenous biological resources;
 - (q) on the Minister's request, must advise him or her on the declaration and management of, and development in, national protected areas; and
 - (r) must perform any other duties:
 - (i) assigned to it in terms of this Act; or
 - (ii) as may be prescribed.
- (2) When the Institute in terms of subsection (1) gives advice on a scientific matter, it may consult any appropriate organ of state or other institution which has expertise in that matter.

12. General powers

The Institute may for the purpose of performing its duties:

- (a) appoint its own staff, subject to section 29;
- (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;
- (d) open and operate its own bank accounts;
- (e) establish a company which has as its object the production and supply of goods or the rendering of services on behalf of the Institute, subject to the Public Finance Management Act;
- (f) invest any of its money, subject to section 32;
- (g) borrow money, subject to section 66 of the Public Finance Management Act;

- (h) charge fees:
- (i) for access to national botanical gardens, herbaria and other places under its control;
- (ii) for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 11(1)(m), (n) or
- (iii) for access to the results of, or to other information in connection with, any research performed by it;
- (i) collect royalties resulting from any discoveries, inventions or computer programmes;
- (j) insure itself against:
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act;
- (k) perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and
- (l) institute or defend any legal action.

Part 2: Governing board, composition and membership

13. Composition

- (1) The Institute is governed by a Board consisting of:
 - (a) not fewer than seven and not more than nine members appointed in terms of section 15;
 - (b) the Director-General or an official of the Department designated by the Director-General; and
 - (c) the Chief Executive Officer of the Institute.
- (2) The Minister:
 - (a) must determine the number of members to be appointed in terms of subsection (1)(a); and
 - (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 Institute, except:
 - (a) those decisions taken in consequence of a delegation in terms of section 27; or
 - (b) where the Public Finance Management Act provides otherwise.

14. Qualifications

- (1) A member of the Board must:
 - (a) be a fit and proper person to hold office as a member; and
 - (b) have appropriate qualifications and experience in the field of biodiversity. (1)(a); and
- (2) The following persons are disqualified from becoming or remaining a member of the Board:
 - (a) a person holding office as a member of Parliament, a provincial legislature or a municipal council; or
 - (b) a person who has been removed from office in terms of section 21.

15. Appointment procedure

- (1) Whenever it is necessary to appoint members of the Board referred to in section 13(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

- (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:
 - (a) the personal details of the nominee;
 - (b) nominee's qualifications or experience; and
 - (c) any other information that may be prescribed.
- (3) The Minister must, subject to subsection (4), appoint:
 - (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:
 - (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 biodiversity.

16. Chairperson

- (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 which is determined by the Minister which may, in the case of a member referred to in section 13(1)(a), not extend beyond the period of his or her term as a member.
- (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.

17. Term of office

Members of the Board referred to in section 13(1)(a):

- (a) are appointed for a period of three years or, if section 22(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
- (c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.

18. Conditions of appointment

- (1) The Minister must determine the conditions of employment of members of the Board referred to in section 13(1)(a).
- (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) Their remuneration and allowances are paid by the Institute.
- (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 Institute.
- (b) Such members are appointed on a part-time basis.

19. Conduct of members

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

20. Termination of membership

(1) A member of the Board referred to in section 13(1)(a) ceases to be a member when that person:

- (a) is no longer eligible in terms of section 14 to be a member;
- (b) resigns, or
- (c) is removed from office in terms of section 21.

(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.

21. Removal from office

(1) The Minister may remove a member of the Board referred to in section 13(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 ground 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.

22. Filling of vacancies

(1) A vacancy in the Board is filled:

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 16(1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section 13(1)(a), by following the procedure set out in section 15.

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

Part 3: Meetings

23. Operating procedures of Board

(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.

(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.

24. Procedures

- (1) The Board may determine its own procedures subject to the provisions of this Act.
- (2) The Board must keep records of its proceedings and of decisions taken.

25. Quorum and decisions

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

26. Committees

- (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.
- (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 the 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 3 of 2000); and
 - (d) must determine a working procedure of a committee.
- (4) The Board may dissolve a committee at any time.
- (5)(a) Section 18 read with the necessary change as the context may require, applies to the terms and conditions of employment of committee members.
- (b) A staff member of the Institute appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

27. Delegation of powers and duties

- (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 26; or
 - (c) a staff member of the Institute.
- (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 28(1) or (2);
 - (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 28(3);
 - (c) the determination of an employment policy in terms of section 29(1); and
 - (d) the setting of financial limits in terms of section 29(2)(a) or (3).
- (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 or revoke 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.

Part 4: Administration of Institute

28. Appointment of Chief Executive Officer

(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 Institute.

(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) is responsible for the management of the institute;
- (b) must perform such duties and may exercise such powers as the Board may delegate to him or her; and
- (c) 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 Institute 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).

29. Employment of staff

(1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Institute.

(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 Institute; and
- (b) may appoint persons in posts on the staff establishment.

(3) An employee of the Institute is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of, 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 Institute by agreement between the Chief Executive Officer and such organ of state.

(b) Persons seconded to the Institute perform their duties under the supervision of the Chief Executive Officer.

(5) A person in the service of the Institute 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.

Part 5: Financial matters

30. Financial accountability

The Institute is a public entity for the purposes of the Public Finance Management Act, and must comply with the provisions of that Act.

31. Funding

The funds of the Institute consist of:

- (a) income derived by it 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) money borrowed in terms of section 12(g);
- (f) income derived from investments referred to in sections 32; and
- (g) money derived from any other source, subject to the Public Finance Management Act.

32. Investments

The Institute 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 that the Minister may approve.

Part 6: National botanical gardens

33. Declaration

(1) The Minister may, by notice in the *Gazette* amend Schedule 1 in order to:

- (a) national botanical garden; or
- (b) part of an existing national botanical garden.

(2) The Minister, acting in accordance with an agreement with the owner of the land described in that agreement may, by notice in the *Gazette* declare that land as a:

- (a) national botanical garden; or
- (b) part of an existing national botanical garden.

(3) A notice in terms of subsection (1)(a) or (2)(a) must assign a name to the national botanical garden, and Schedule 1 must be amended accordingly.

(4) All notices in terms of sections (1), (2) and (3) must be included in Schedule 1 to this Act, which will contain the name and definition of the land in question, of all proclaimed national botanical gardens.

34. Amendment or withdrawal of declarations

(1) The Minister may, by notice in the *Gazette* amend Schedule 1 in order to:

- (a) amend or withdraw a notice referred to in section 33, subject to subsection (2); or
- (b) amend the name assigned to a national botanical garden.

(2) The declaration of state land as a national botanical garden, or part of an existing national botanical garden, may not be withdrawn and a part of a national botanical garden on state land may not be excluded from it except by resolution of each House of Parliament.

Part 7: General

35. Minister's supervisory powers

- (1) The Minister:
 - (a) must monitor the exercise and performance by the Institute of its powers and duties;
 - (b) may set norms and standards for the exercise and performance by the Institute of its powers and duties;
 - (c) may issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;
 - (d) must determine limits on fees charged by the Institute in the exercise and performance of its powers and duties; and
 - (e) may identify land for new botanical gardens and extensions to existing botanical gardens.
- (2) The Institute must exercise its powers and perform its duties subject to any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

36. Absence of functional Board

In the event of absence of a functional Board, the powers and duties of the Board revert to the Minister who, in such a case, must exercise those powers and perform those duties until the Board is functional again.

36A. Winding up or dissolution of Institute

- (1) The Institute may not be wound up or dissolved except by or in terms of an Act of Parliament.
- (2) Upon its winding-up or dissolution the South African Biodiversity Institute 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 which has the same objectives as the South African Biodiversity Institute and which itself is exempt from income tax in terms of section 10 (1)(cA) of the Income Tax Act, 1962 (Act 58 of 1962).

CHAPTER 3: Biodiversity Planning and Monitoring

37. Purpose of chapter

The purpose of this chapter is to:

- (a) provide for integrated and co-ordinated biodiversity planning;
- (b) provide for monitoring the conservation status of various components of South Africa's biodiversity; and
- (c) promote biodiversity research.

Part 1: Biodiversity planning

38. National biodiversity framework

- (1) The Minister:
 - (a) must prepare and adopt a national biodiversity framework within three years of the date on which this Act takes effect;
 - (b) must monitor implementation of the framework;
 - (c) must review the framework at least every five years; and
 - (d) may, when necessary, amend the framework.
- (2) The Minister must, by notice in the *Gazette*, publish the national biodiversity framework and each amendment of the framework.

39. Contents of national biodiversity framework

- (1) The national biodiversity framework must:
 - (a) provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, other stakeholders and the public;
 - (b) be consistent with:
 - (i) this Act;
 - (ii) the national environmental management principles; and
 - (iii) any relevant international agreements binding on the Republic;
 - (c) identify priority areas for conservation action and the establishment of protected areas; and
 - (d) reflect regional co-operation on issues concerning biodiversity management in Southern Africa.
- (2) The national biodiversity framework may determine norms and standards for provincial and municipal environmental conservation plans.

40. Bioregions and bioregional plans

- (1) The Minister or the MEC for environmental affairs in a province may, by notice in the *Gazette*:
 - (a) determine a geographic region as a bioregion for the purposes of this Act if that region contains whole or several nested ecosystems and is characterised by its landforms, vegetation cover, human culture and history; and
 - (b) publish a plan for the management of biodiversity and the components of biodiversity in such region.
- (2) The Minister may determine a region as a bioregion and publish a bioregional plan for that region either:
 - (a) on own initiative but after consulting the MEC for Environmental Affairs in the relevant province; or
 - (b) at the request of a province or municipality.
- (3) The MEC for environmental affairs may determine a region as a bioregion and publish a bioregional plan for that region only with the concurrence of the Minister.
- (4) Any person or organ of state may, on the request of the Minister or MEC for Environmental Affairs, assist in the preparation of a bioregional plan.
- (5) The Minister:
 - (a) may enter into an agreement with a neighbouring country to secure the effective implementation of the plan; and
 - (b) must submit to Parliament a copy of any agreement entered into in terms of paragraph (a).

41. Contents of bioregional plans

A bioregional plan must:

- (a) contain measures for the effective management of biodiversity and the components of biodiversity in the region;
- (b) provide for monitoring of the plan; and
- (c) be consistent with:
 - (i) this Act;
 - (ii) the national environmental management principles;
 - (iii) the national biodiversity framework; and
 - (iv) any relevant international agreements binding on the Republic.

42. Review and amendment of bioregional plans

- (1) The Minister or the MEC for Environmental Affairs in the relevant province, as may be appropriate, must review a bioregional plan published in

terms of section 40(1)(b) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.

(2) The Minister or MEC for Environmental Affairs may, when necessary, by notice in the *Gazette*, amend a bioregional plan or the boundaries of the bioregion.

(3) The MEC for Environmental Affairs may amend a bioregional plan or the boundaries of the bioregion only with the concurrence of the Minister.

43. Biodiversity management plans

(1) Any person, organisation or organ of state desiring to contribute to biodiversity management may submit to the Minister for his or her approval a draft management plan for:

- (a) an ecosystem:
 - (i) listed in terms of section 52; or
 - (ii) which is not listed in terms of section 52 but which does warrant special conservation attention;
- (b) an indigenous species:
 - (i) listed in terms of section 56; or
 - (ii) which is not listed in terms of section 56 but which does warrant special conservation attention; or
- (c) a migratory species to give effect to the Republic's obligations in terms of an international agreement binding on the Republic.

(2) Before approving a draft biodiversity management plan, the Minister must identify a suitable person, organisation or organ of state which is willing to be responsible for the implementation of the plan.

(3) The Minister must:

- (a) publish by notice in the *Gazette* a biodiversity management plan approved in terms of subsection (1);
- (b) determine the manner of implementation of the plan; and
- (c) assign responsibility for the implementation of the plan to the person, organisation or organ of state identified in terms of subsection (2).

44. Biodiversity management agreements

The Minister may enter into a biodiversity management agreement with the person, organisation or organ of state identified in terms of section 43(2), or any other suitable person, organisation or organ of state, regarding the implementation of a biodiversity management plan, or any aspect of it.

45. Contents of biodiversity management plans

A biodiversity management plan must:

- (a) be aimed at ensuring the long-term survival in nature of the species or ecosystem to which the plan relates;
- (b) provide for the responsible person, organisation or organ of state to monitor and report on progress with implementation of the plan;
- (c) be consistent with:
 - (i) this Act;
 - (ii) the national environmental management principles;
 - (iii) the national biodiversity framework;
 - (iv) any applicable bioregional plan;
 - (v) ...
 - (vi) ...
 - (vii) ...
- (viii) any relevant international agreements binding on the Republic; and
- (d) take into consideration:
 - (i) any plans issued in terms of chapter 3 of the National Environmental Management Act;

- (ii) any municipal integrated development plan; and
- (iii) any other plans prepared in terms of national or provincial legislation that is affected.

46. Review and amendment of biodiversity management plans

- (1) The Minister must review a biodiversity management plan published in terms of section 43(3) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.
- (2) The Minister, either on own initiative or on request by an interested person, organisation or organ of state, may by notice in the *Gazette* amend a biodiversity management plan published in terms of section 43(3).
- (3) Before amending a biodiversity management plan, the Minister must consult:
 - (a) any person, organisation or organ of state implementing the plan; and
 - (b) any organ of state whose activities are affected by the implementation of the plan.

47. Consultation

- (1) Before adopting or approving a national biodiversity framework, a bioregional plan or a biodiversity management plan, or any amendment to such a plan, the Minister must follow a consultative process in accordance with sections 99 and 100.
- (2) Before adopting a bioregional plan, or any amendment to such a plan, the MEC for Environmental Affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

Part 2: Co-ordination and alignment of plans, monitoring and research

48. Co-ordination and alignment of biodiversity plans

- (1) The national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of this chapter may not be in conflict with:
 - (a) any environmental implementation or environmental management plans prepared in terms of chapter 3 of the National Environmental Management Act;
 - (b) any integrated development plans adopted by municipalities in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
 - (c) any spatial development frameworks in terms of legislation regulating land use management, land development and spatial planning administered by the Cabinet member responsible for land affairs; and
 - (d) any other plans prepared in terms of national or provincial legislation that are affected.
- (2) An organ of state that must prepare an environmental implementation or environmental management plan in terms of chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000, must:
 - (a) align its plan with the national biodiversity framework and any applicable bioregional plan;
 - (b) incorporate into that plan those provisions of the national biodiversity framework or a bioregional plan that specifically apply to it, and
 - (c) demonstrate in its plan how the national biodiversity framework and any applicable bioregional plan may be implemented by that organ of state or municipality.
- (3) The Institute may:

- (a) assist the Minister and others involved in the preparation of the national biodiversity framework, a bioregional plan or a biodiversity management plan to comply with subsection (1); and
- (b) make recommendations to organs of states or municipalities referred to in subsection (2) to align their plans referred to in that subsection with the national biodiversity framework and any applicable bioregional plan.

49. Monitoring

(1) The Minister must for the purposes of this chapter designate monitoring mechanisms and set indicators to determine:

- (a) the conservation status of various components of South Africa's biodiversity; and
- (b) any negative and positive trends affecting the conservation status of the various components.

(2) The Minister may require any person, organisation or organ of state involved in terms of subsection (1) in monitoring the matters referred to in that subsection to report regularly to the Minister on the results of such monitoring measured against the predetermined indicators.

(3) The Minister must:

- (a) annually report to Parliament on the information submitted to the Minister in terms of subsection (2); and
- (b) make such information publicly available.

50. Research

(1) The Minister must promote research done by the Institute and other institutions on biodiversity conservation, including the sustainable use, protection and conservation of indigenous biological resources.

(2) Research on biodiversity conservation may include:

- (a) the collection and analysis of information about:
 - (i) the conservation status of the various components of biodiversity;
 - (ii) negative and positive trends affecting the conservation status of various components; and
 - (iii) threatening processes or activities likely to impact on biodiversity conservation;
- (b) the assessment of strategies and techniques for biodiversity conservation;
- (c) the determination of biodiversity conservation needs and priorities; and
- (d) the sustainable use, protection and conservation of indigenous biological resources.

CHAPTER 4: Threatened or Protected Ecosystems and Species

51. Purpose of chapter

The purpose of this chapter is to:

- (a) provide for the protection of ecosystems that are threatened or in need of protection to ensure the maintenance of their ecological integrity;
- (b) provide for the protection of species that are threatened or in need of protection to ensure their survival in the wild;
- (c) give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species; and
- (d) ensure that the utilisation of biodiversity is managed in an ecologically sustainable way.

Part 1: Protection of threatened or protected ecosystems

52. Ecosystems that are threatened or in need of protection

- (1)(a) The Minister may, by notice in the *Gazette*, publish a national list of ecosystems that are threatened and in need of protection.
- (b) An MEC for environmental affairs in a province may, by notice in the *Gazette*, publish a provincial list of ecosystems in the province that are threatened and in need of protection.
- (2) The following categories of ecosystems may be listed in terms of subsection (1):
 - (a) critically endangered ecosystems, being ecosystems that have undergone severe degradation of ecological structure, function or composition as a result of human intervention and are subject to an extremely high risk of irreversible transformation;
 - (b) endangered ecosystems, being ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems;
 - (c) vulnerable ecosystems, being ecosystems that have a high risk of undergoing significant degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems or endangered ecosystems; and
 - (d) protected ecosystems, being ecosystems that are of high conservation value or of high national or provincial importance, although they are not listed in terms of paragraphs (a), (b) or (c).
- (3) A list referred to in subsection (1) must describe in sufficient detail the location of each ecosystem on the list.
- (4) The Minister and the MEC for environmental affairs in a relevant province, respectively, must at least every five years review any national or provincial list published by the Minister or MEC in terms of subsection (1).
- (5) An MEC may publish or amend a provincial list only with the concurrence of the Minister.

53. Threatening processes in listed ecosystems

- (1) The Minister may, by notice in the *Gazette*, identify any process or activity in a listed ecosystem as a threatening process.
- (2) A threatening process identified in terms of subsection (1) must be regarded as a specified activity contemplated in section 24(2)(b) of the National Environmental Management Act and a listed ecosystem must be regarded as an area identified for the purpose of that section.

54. Certain plans to take into account in protection of listed ecosystems

An organ of state that must prepare an environmental implementation or environmental management plan in terms of chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), must take into account the need for the protection of listed ecosystems.

55. Amendment of notices

The Minister or the MEC for Environmental Affairs in any relevant province may, by notice in the *Gazette*, amend or repeal any notice published by him or her in terms of section 52(1) or 53(1).

Part 2: Protection of threatened or protected species

56. Listing of species that are threatened or in need of national protection

- (1) The Minister may, by notice in the *Gazette*, publish a list of:
- (a) critically endangered species, being any indigenous species facing an extremely high risk of extinction in the wild in the immediate future;
 - (b) endangered species, being any indigenous species facing a high risk of extinction in the wild in the near future, although they are not a critically endangered species;
 - (c) vulnerable species, being any indigenous species facing an extremely high risk of extinction in the wild in the medium-term future, although they are not a critically endangered species or an endangered species; and
 - (d) protected species, being any species which are of such high conservation value or national importance that they require national protection, although they are not listed in terms of paragraph (a), (b), or (c).
- (2) The Minister must review the lists published in terms of subsection (1) at least every five years.

57. Restricted activities involving listed threatened or protected species

- (1) A person may not carry out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of chapter 7.
- (2) The Minister may, by notice in the *Gazette*, prohibit the carrying out of any activity:
- (a) which is of a nature that may negatively impact on the survival of a listed threatened or protected species; and
 - (b) which is specified in the notice, or prohibit the carrying out of such activity without a permit issued in terms of chapter 7.
- (3) Subsection (1) does not apply in respect of a specimen of a listed threatened or protected species conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place under the control of an environmental management inspector.
- (4)(a) The Minister may, by notice in the *Gazette*, exempt a person from a restriction contemplated in subsection (1);
- (b) Before granting an exemption in terms of paragraph (a), the Minister must follow a consultative process in accordance with sections 99 and 100.

58. Amendment of notices

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

Part 3: Trade in listed threatened or protected species

59. Functions of Minister

The Minister:

- (a) must monitor:
- (i) compliance with section 57(1) insofar as trade in specimens of listed threatened or protected species is concerned; and

- (ii) compliance in the Republic with an international agreement regulating international trade in specimens of endangered species which is binding on the Republic;
- (b) must consult the scientific authority on issues relating to trade in specimens of endangered species regulated by such an international agreement;
- (c) must prepare and submit reports and documents in accordance with the Republic's obligations in terms of such an international agreement;
- (d) may provide administrative and technical support services and advice to organs of state to ensure the effective implementation and enforcement in the Republic of such an international agreement;
- (e) may make information and documentation relating to such an international agreement publicly available; and
- (f) may, prescribe a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities.

60. Establishment of scientific authority

- (1) The Minister must establish a scientific authority for purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species.
- (2) The Institute must provide logistical, administrative and financial support for the proper functioning of the scientific authority.

61. Functions of scientific authority

- (1) The scientific authority must:
 - (a) monitor in the Republic the legal and illegal trade in specimens of listed threatened or protected species;
 - (b) advise the Minister and any other interested organs of state on the matters that it monitors;
 - (c) make recommendations to an issuing authority on applications for permits referred to in section 57(1) or (2);
 - (d) make non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species;
 - (e) advise the Minister on:
 - (i) the registration of ranching operations, nurseries, captive breeding operations and other facilities;
 - (ii) whether an operation or facility meets the criteria for producing species considered to be bred in captivity or artificially propagated;
 - (iii) the choice of a rescue centre or other facility for the disposal of forfeited specimens;
 - (iv) any amendments to a notice published in terms of section 56(1) or 57(2);
 - (v) the nomenclature of species; or
 - (vi) any other matter of a specialised nature;
 - (f) assist the Minister or an environmental management inspector in the identification of specimens for the purpose of enforcing the provisions of this Act;
 - (g) issue certificates in which the identification of a specimen is verified as being taxonomically accurate;
 - (h) perform any other function that may be:
 - (i) prescribed; or
 - (ii) delegated to it by the Minister in terms of section 47D of the National Environmental Management Act; and
 - (i) deal with any other matter necessary for, or reasonably incidental to, its powers and duties.
- (2) In performing its duties, the scientific authority must:

- (a) base its findings, recommendations and advice on a scientific and professional review of available information; and
- (b) consult, when necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations or giving any advice.

62. Annual non-detriment findings

- (1) The scientific authority must publish in the *Gazette* any annual non-detriment findings on trade in specimens of listed threatened or protected species in accordance with an international agreement regulating international trade in specimens of listed threatened or protected species which is binding on the Republic.
- (2) Any interim findings of the scientific authority must be published in the *Gazette* for public information within 30 days after the decision has been made.

Part 4: General provisions

63. Consultation

- (1) Before publishing a notice in terms of section 52(1), 53(1), 56(1) or 57(2), or amending or repealing such a notice in terms of section 55 or 58, the Minister must follow a consultative process in accordance with sections 99 and 100.
- (2) Before publishing a notice in terms of section 52(1), or amending or repealing such a notice in terms of section 55, the MEC for environmental affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 5: Species and Organisms Posing Potential Threats to Biodiversity

64. Purposes of chapter

- (1) The purpose of this chapter is:
 - (a) to prevent the unauthorised introduction and spread of alien species and invasive species to ecosystems and habitats where they do not naturally occur;
 - (b) to manage and control alien species and invasive species to prevent or minimise harm to the environment and to biodiversity in particular;
 - (c) to eradicate alien species and invasive species from ecosystems and habitats where they may harm such ecosystems or habitats; and
 - (d) to ensure that environmental assessments for purposes of permits in terms of the Genetically Modified Organisms Act, 1997 (Act 15 of 1997), are conducted in appropriate cases in accordance with chapter 5 of the National Environmental Management Act.
- (2) For the purpose of this chapter, 'specimen' has the meaning assigned to it in paragraphs (a) and (b) of the definition of 'specimen' in section 1(1).

Part 1: Alien species

65. Restricted activities involving alien species

- (1) A person may not carry out a restricted activity involving a specimen of an alien species without a permit issued in terms of chapter 7.
- (2) A permit referred to in subsection (1) may be issued only after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

66. Exemptions

- (1) The Minister may, by notice in the *Gazette*, exempt from the provisions of section 65:
- (a) any alien species specified in the notice; or
 - (b) any alien species of a category specified in the notice.
- (2) Any person may carry out a restricted activity involving a specimen of an exempted alien species without a permit mentioned in section 65(1).
- (3) The Minister must regularly review a notice published in terms of subsection (1).

67. Restricted activities involving certain alien species totally prohibited

- (1) The Minister may, by notice in the *Gazette*, publish a list of those alien species in respect of which a permit mentioned in section 65(1) may not be issued.
- (2) A person may not carry out any restricted activity involving a specimen of an alien species published in terms of subsection (1).
- (3) The Minister must regularly review a list published in terms of subsection (1).

68. Amendment of notices

The Minister may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 66(1) or 67(1).

69. Duty of care relating to alien species

- (1) A person authorised by permit, in terms of section 65(1), to carry out a restricted activity involving a specimen of an alien species must:
- (a) comply with the conditions under which the permit has been issued; and
 - (b) take all required steps to prevent or minimise harm to biodiversity.
- (2) A competent authority may, in writing, direct any person who has failed to comply with subsection (1), or who has contravened section 65(1) or 67(2), to take such steps:
- (a) as may be necessary to remedy any harm to biodiversity caused by the actions of that person; and
 - (b) as may be specified in the directive.
- (3) If that person fails to comply with a directive issued in terms of subsection (2), the competent authority may:
- (a) implement the directive; and
 - (b) recover from that person all costs incurred by the competent authority in implementing the directive.
- (4) Should an alien species establish itself in nature as an invasive species because of the actions of a specific person, a competent authority may hold that person liable for any costs incurred in the control and eradication of that species.

Part 2: Invasive species**70. List of invasive species**

- (1)(a) The Minister must within 24 months of the date on which this section takes effect, by notice in the *Gazette*, publish a national list of invasive species in respect of which this chapter must be applied nationally.
- (b) The MEC for environmental affairs in a province may, by notice in the *Gazette*, publish a provincial list of invasive species in respect of which this chapter must be applied in the province.

(2) The Minister or the MEC for environmental affairs in a relevant province must regularly review the national list or any provincial list published in terms of subsection (1), as may be appropriate.

(3) An MEC for Environmental Affairs may only publish or amend a provincial list in terms of subsection (1) or (2) with the concurrence of the Minister.

71. Restricted activities involving listed invasive species

(1) A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of chapter 7.

(2) A permit referred to in subsection (1) may be issued only after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

72. Amendment of notices

The Minister or the MEC for environmental affairs in any relevant province may, by notice in the *Gazette*, amend or repeal any notice published by him or her in terms of section 70(1).

73. Duty of care relating to listed invasive species

(1) A person authorised by permit in terms of section 71(1) to carry out a restricted activity involving a specimen of a listed invasive species must take all the required steps to prevent or minimise harm to biodiversity.

(2) A person who is the owner of land on which a listed invasive species occurs must:

- (a) notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;
- (b) take steps to control and eradicate the listed invasive species and to prevent it from spreading; and
- (c) take all the required steps to prevent or minimise harm to biodiversity.

(3) A competent authority may, in writing, direct any person who has failed to comply with subsection (1) or (2) or who has contravened section 71(1), to take such steps:

- (a) as may be necessary to remedy any harm to biodiversity caused by:
 - (i) the actions of that person; or
 - (ii) the occurrence of the listed invasive species on land of which that person is the owner; and
- (b) as may, be specified in the directive.

(4) If that person fails to comply With a directive issued in terms of subsection (3), a competent authority may:

- (a) implement the directive; and
- (b) recover all costs reasonably incurred by a competent authority in implementing the directive:
 - (i) from that person; or
 - (ii) proportionally from that person and any other person who benefited from implementation of the directive.

74. Requests to competent authorities to issue directives

(1) Any person may request a competent authority, in writing, to issue a directive in terms of section 73(3).

(2) A competent authority must reply to the request, in writing, within 30 days of receipt of the request.

(3) Should a competent authority fail to respond to the request within the stated period or refuses the request, the person who made the request may apply to a court for an order directing that competent authority to issue the directive.

75. Control and eradication of listed invasive species

- (1) Control and 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 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 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.
- (4) The Minister must ensure the coordination and implementation of programmes for the prevention, control or eradication of invasive species.
- (5) The Minister may establish an entity consisting of public servants to coordinate and implement programmes for the prevention, control or eradication of invasive species.

76. Invasive species control plans of organs of state

- (1) The management authority of a protected area preparing a management plan for the area in terms of the Protected Areas Act must incorporate into the management plan an invasive species control and eradication strategy.
- (2) (a) All organs of state in all spheres of government must prepare an invasive species monitoring, control and eradication plan for land under their control, as part of their environmental plans in accordance with section 11 of the National Environmental Management Act.
- (b) The invasive species monitoring, control and eradication plans of municipalities must be part of their integrated development plans.
- (3) The Minister may request the Institute to assist municipalities in performing their duties in terms of subsection (2).
- (4) An invasive species monitoring, control and eradication plan must include:
 - (a) a detailed list and description of any listed invasive species occurring on the relevant land;
 - (b) a description of the parts of that land that are infested with such listed invasive species;
 - (c) an assessment of the extent of such infestation;
 - (d) a status report on the efficacy of previous control and eradication measures;
 - (e) the current measures to monitor, control and eradicate such invasive species; and
 - (f) measurable indicators of progress and success, and indications of when the control plan is to be completed.

77. Invasive species status reports

- (1) The management authority of a protected area must at regular intervals prepare and submit to the Minister or the MEC for Environmental Affairs in the province a report on the status of any listed invasive species that occurs in that area.
- (2) A status report must include:
 - (a) a detailed list and description of all listed invasive species that occur in the protected area;
 - (b) a detailed description of the parts of the area that are infested with listed invasive species;
 - (c) an assessment of the extent of such infestation; and
 - (d) a report on the efficacy of previous control and eradication measures.

Part 3: Other threats

78. Genetically modified organisms

- (1) If the Minister has reason to believe that the release of a genetically modified organism into the environment under a permit applied for in terms of the Genetically Modified Organisms Act, 1997 (Act 15 of 1997), may pose a threat to any indigenous species or the environment, no permit for such release may be issued in terms of that Act unless an environmental impact assessment has been conducted in accordance with chapter 5 of the National Environmental Management Act as if such release were a listed activity contemplated in that chapter.
- (2) The Minister must convey his or her belief referred to in subsection (1) to the authority issuing permits in terms of the Genetically Modified Organisms Act, 1997, before the application for the relevant permit is decided.
- (3) For the purposes of subsection (1) 'release' means trial release or general release as defined in section 1 of the Genetically Modified Organisms Act, 1997.

Part 4: General provisions

79. Consultation

- (1) Before publishing a notice in terms of section 66(1), 67(1) or 70(1), or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100.
- (2) Before publishing a notice in terms of section 70(1), or amending or repealing such a notice in terms of section 72, the MEC for environmental affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 6: Bio-prospecting, Access and Benefit-sharing

80. Purpose and application of chapter

- (1) The purpose of this chapter is:
 - (a) to regulate bio-prospecting involving indigenous biological resources;
 - (b) to regulate the export from the Republic of indigenous biological resources for the purpose of bio-prospecting or any other kind of research; and
 - (c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bio-prospecting involving indigenous biological resources.
- (2) In this chapter:
'indigenous biological resources':
 - (a) includes:
 - (i) any indigenous biological resources as defined in paragraph (b) of the definition of 'indigenous biological resource' in section 1, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology;
 - (ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in subparagraph (i); and
 - (iii) any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology, have been altered with any genetic material or chemical

compound found in any indigenous species or any animals, plants or other organisms referred to in subparagraph (i) or (ii); but

- (b) excludes:
 - (i) genetic material of human origin;
 - (ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph (a)(iii); and
 - (iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture

81. Permits

- (1) No person may, without a permit issued in terms of chapter 7:
 - (a) engage in the commercialisation phase of bioprospecting involving any indigenous biological resources; or
 - (b) export from the Republic any indigenous biological resources for the purpose of bio-prospecting or any other kind of research.
- (2) Before any application for a permit referred to in subsection (1) may be considered by a relevant issuing authority, the applicant must at the request of the issuing authority, disclose to the issuing authority all information concerning the proposed bio-prospecting and the indigenous biological resources to be used for such bio-prospecting that is relevant for a proper consideration of the application.

81A. Notification requirements

- (1) No person may, without first notifying the Minister, engage in the discovery phase of bioprospecting involving any indigenous biological resources.
- (2) A notice referred to in subsection (1) must be in such form and must contain such other particulars as may be prescribed.
- (3) A person involved in the discovery phase of bioprospecting must sign a prescribed commitment to comply with the requirements at the commercialisation phase of bioprospecting.

82. Certain interests to be protected before permits are issued

- (1) Before a permit referred to in section 81(1)(a) or (b) is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bio-prospecting project:
 - (a) a person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates; and
 - (b) an indigenous community or a specific individual:
 - (i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bio-prospecting; or
 - (ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bio-prospecting.
- (2) If a stakeholder has an interest as set out in subsection (1)(a), an issuing authority may issue a permit only if:
 - (a) the applicant has disclosed all material information relating to the relevant bio-prospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources;
 - (b) the applicant and the stakeholder have entered into:
 - (i) a material transfer agreement that regulates the provision of or access to such resources; and

- (ii) a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bio-prospecting; and
- (c) the Minister has in terms of sections 83(2) and 84(2) approved such benefit-sharing and material transfer agreements.
- (3) If a stakeholder has an interest as set out in subsection (1)(b), an issuing authority may issue a permit only if:
 - (a) the applicant has disclosed all material information relating to the relevant bio-prospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder to use any of the stakeholder's knowledge of or discoveries about the indigenous biological resources for the proposed bio-prospecting;
 - (b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bio-prospecting; and
 - (c) the Minister has in terms of section 83(2) approved such benefit-sharing agreement.
- (4) An issuing authority:
 - (a) may engage the applicant and stakeholder on the terms and conditions of a benefit-sharing or material transfer agreement;
 - (b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;
 - (c) on request by the Minister, must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable;
 - (d) may make recommendations to the Minister; and
 - (e) must perform any other functions that may be prescribed.

83. Benefit-sharing agreements

- (1) A benefit-sharing agreement must:
 - (a) be in a prescribed format;
 - (b) specify:
 - (i) the type of indigenous biological resources to which the relevant bio-prospecting relates;
 - (ii) the area or source from which the indigenous biological resources are to be collected or obtained;
 - (iii) the quantity of indigenous biological resources that is to be collected or obtained;
 - (iv) any traditional uses of the indigenous biological resources by an indigenous community; and
 - (v) the present potential uses of the indigenous biological resources;
 - (c) name the parties to the benefit-sharing agreement;
 - (d) set out the manner in which and the extent to which the indigenous biological resources are to be utilised or exploited for purposes of such bio-prospecting;
 - (e) set out the manner in which and the extent to which the stakeholder will share in any benefits that may arise from such bio-prospecting;
 - (f) provide for a regular review of the agreement by the parties as the bio-prospecting progresses; and
 - (g) comply with any other matters that may be prescribed.
- (2) A benefit-sharing agreement or any amendment to such an agreement:
 - (a) must be submitted to the Minister for approval; and
 - (b) does not take effect unless approved by the Minister.

84. Material transfer agreements

- (1) A material transfer agreement must:

- (a) be in a prescribed format;
- (b) specify:
 - (i) particulars of the provider, and the exporter or recipient, of the indigenous biological resources;
 - (ii) the type of indigenous biological resources to be provided or to be given access to;
 - (iii) the area or source from which the indigenous biological resources are to be collected, obtained or provided;
 - (iv) the quantity of indigenous biological resources that is to be provided, collected, obtained or exported;
 - (v) the purpose for which such indigenous biological resources are to be exported;
 - (vi) the present potential uses of the indigenous biological resources; and
 - (vii) conditions under which the recipient may provide any such indigenous biological resources, or their progeny, to a third party.
- (2) A material transfer agreement or any amendment to such an agreement:
 - (a) must be submitted to the Minister for approval; and
 - (b) does not take effect unless approved by the Minister.

85. Establishment of Bio-prospecting Trust Fund

- (1) A Bio-prospecting Trust Fund is established into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from which all payments to, or for the benefit of, stakeholders must be made.
- (2) All money paid into the bio-prospecting trust fund is trust money within the meaning of section 13(1)(f)(ii) of the Public Finance Management Act.
- (3) The Director-General:
 - (a) must manage the Fund in the prescribed manner or may appoint a trustee in terms of the Trust Property Control Act, 1988 (Act 57 of 1988), to administer the fund on the Director-General's behalf in the prescribed manner and under such terms as the Director-General may consider necessary; and
 - (b) is accountable for the money in the Fund in terms of the Public Finance Management Act.

86. Exemptions

- (1) The Minister may by notice in the *Gazette*:
 - (a) declare that this chapter does not apply to indigenous resources specified in the notice or to an activity relating to such indigenous biological resources; or
 - (b) declare that this chapter does not apply to certain categories of research involving indigenous biological resources or commercial exploitation of indigenous biological resources; and
 - (c) amend or withdraw a notice referred to in paragraphs (a) and (b).
- (2) Before publishing a notice in terms of subsection (1) the Minister must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 7: Permits

87. Purpose of chapter

The purpose of this chapter is to provide for the regulation of the issuing of permits authorising:

- (a) restricted activities involving specimens of:
 - (i) listed threatened or protected species in terms of section 57(1);
 - (ii) alien species in terms of section 65(1); or

- (iii) listed invasive species in terms of section 71(1);
- (b) activities regulated in terms of a notice published in terms of section 57(2);
- (c) bio-prospecting involving indigenous biological resources in terms of section 81(1); or
- (d) the export of indigenous biological resources for bio-prospecting or any other type of research in terms of section 81(1).

Part 1: Permit system

88. Application for permits

- (1) A person may apply for a permit by lodging an application on the prescribed form to the authority.
- (2) An issuing authority may:
 - (a) request the applicant to furnish any additional information before it considers the application;
 - (b) require the applicant to comply with such reasonable conditions as it may impose before it grants the application;
 - (c) issue a permit unconditionally or issue it subject to conditions; or
 - (d) refuse a permit.
- (3) A decision of the issuing authority to issue or refuse a permit or to issue it subject to conditions, must be consistent with:
 - (a) the applicable provisions of this Act;
 - (b) the national environmental management principles;
 - (c) the national biodiversity framework;
 - (d) any other relevant plans adopted or approved in terms of chapter 3;
 - (e) any applicable international agreements binding on the Republic;
 - (f) the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
 - (g) any requirements that may be prescribed.
- (4) If compulsory conditions are prescribed for any kind of permit, an issuing authority may not issue a permit of that kind other than subject to those conditions.
- (5) If an application is rejected, the issuing authority must give reasons for the decision in writing to the applicant.

89. Risk assessments and expert evidence

Before issuing a permit, the issuing authority may in writing require the applicant to furnish it, at the applicant's expense, with such independent risk assessment or expert evidence as the issuing authority may determine.

90. Permits

- (1) A permit:
 - (a) must specify:
 - (i) the purpose for which it is issued;
 - (ii) the period for which it will remain valid; and
 - (iii) any other matters that may be prescribed;
 - (b) may be issued on conditions specified in the permit; and
 - (c) must be in the form and contain such other particulars as may be prescribed.
- (2) A permit issued in terms of section 91 does not absolve the holder or any other person from complying with the provisions of any other applicable law.

91. Additional requirements relating to alien and invasive species

An issuing authority may issue a permit for a restricted activity involving a specimen of an alien species or of a listed invasive species only if:

- (a) adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity;
- (b) the relevant species has been found to have negligible or no invasive potential;
- (c) the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment or biodiversity; and
- (d) it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.

92. Integrated permits

(1) If the carrying out of an activity mentioned in section 87 is also regulated in terms of other law, the authority empowered under that other law to authorise that activity and the issuing authority empowered under this Act to issue permits in respect of that activity may:

- (a) exercise their respective powers jointly; and
 - (b) issue a single integrated permit instead of a separate permit and authorisation.
- (2) An authority empowered under that other law may issue an integrated permit for the activity in question if that authority is designated in terms of this Act also as an issuing authority for permits in respect of that activity.
- (3) An integrated permit may be issued only if:
- (a) the relevant provisions of this Act and that other law have been complied with; and
 - (b) the permit specifies the:
 - (i) provisions in terms of which it has been issued; and
 - (ii) authority or authorities that have issued it.

93. Cancellation of permits

An issuing authority which issued a permit may cancel the permit if:

- (a) the permit was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant; or
- (b) the applicant or permit holder has contravened or failed to comply with:
 - (i) any condition of the permit;
 - (ii) any provision of this Act or other law governing the permitted activity; or
 - (iii) any foreign law governing the permitted activity.

93A. Renewal and amendment of permits

(1) A permit holder may, before the expiry date of a permit, apply to an issuing authority for the renewal or amendment of such permit.

(2) An application for the renewal or amendment of a permit must be in the form, contain such information and be accompanied by such processing fees as may be prescribed.

(3) In considering an application to renew or amend a permit, the issuing authority must have regard to the same matters which it was required to consider when deciding on the initial application for that permit.

(4) A issuing authority may for good reason amend or substitute any condition attached to a permit and any new information at the time of the renewal application.

[S. 93A inserted by s. 44 of Act 14/2009]

(Commencement date of s. 93A: to be proclaimed)

Part 2: Appeals

94. Appeals to be lodged with Minister

- (1) An applicant who feels aggrieved by the decision of an issuing authority in terms of section 88(2)(c) or (d), or a permit holder whose permit has been cancelled in terms of section 93, may lodge with the Minister an appeal against the decision within 30 days after having been informed of the decision.
- (2) The Minister must either:
 - (a) consider and decide the appeal;
 - (b) redirect the appeal to the MEC for Environmental Affairs in the relevant province to consider and decide the appeal; or
 - (c) designate a panel of persons to consider and decide the appeal.
- (3) An appeal does not suspend the decision against which the appeal is lodged unless the Minister, MEC for Environmental Affairs or appeal panel considering the appeal directs otherwise.

95. Appeal panels

- (1) If the Minister decides that the appeal must be considered and decided by an appeal panel, the Minister must designate:
 - (a) a number of persons with appropriate knowledge as members of the panel; and
 - (b) one of the panel members as the presiding member.
- (2) The presiding member of the appeal panel decides when and where the panel meets.
- (3) An appeal panel must:
 - (a) consider and decide the appeal in accordance with a prescribed procedure; and
 - (b) keep a record of its proceedings and decisions.

96. Decisions

- (1) The Minister, MEC for Environmental Affairs or appeal panel considering an appeal may:
 - (a) either uphold or refuse the appeal; and
 - (b) when upholding or refusing the appeal, make such other orders as may be appropriate.
- (2) If the appeal is upheld against:
 - (a) a refusal to issue a permit, the Minister, MEC for Environmental Affairs or appeal panel may issue the permit unconditionally or subject to conditions;
 - (b) a condition subject to which the permit was issued, the Minister, MEC for Environmental Affairs or appeal panel may withdraw or amend the condition; or
 - (c) the cancellation of a permit, the Minister, MEC for Environmental Affairs or appeal panel may restore the permit.

CHAPTER 8: Administration of Act

Part 1: Regulations

97. Regulations by Minister

- (1) The Minister may make regulations relating to:
 - (a) the monitoring of compliance with and enforcement of norms and standards referred to in section 9;
 - (b)(i) the designation of organs of state which may be issuing authorities for

- permits referred to in section 57(1) or (2);
- (ii) the facilitation of the implementation and enforcement of section 57(1) or any notice published in terms of section 57(2);
 - (iii) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species;
 - (iv) the facilitation of the implementation and enforcement of an international agreement regulating international trade in specimens of species to which the agreement applies and which is binding on the Republic.
 - (v) the minimising of the threat to the survival in the wild of a listed threatened or protected species;
 - (vi) the minimising of the threat to the ecological integrity of a listed ecosystem;
 - (vii) the composition and operating procedure of the scientific authority;
 - (viii) the ecologically sustainable utilisation of biodiversity; or
 - (ix) the hunting industry.
- (c)(i) the designation of organs of state which may be issuing authorities for permits referred to in section 67(1) or 71(1);
 - (ii) the designation of organs of state which may be competent authorities for implementing and enforcing the provisions of this chapter;
 - (iii) the facilitation of the implementation and enforcement of section 65, 67 or 71;
 - (iv) the prescription of compulsory conditions for any permit issued in terms of section 65(1) or 71(1);
 - (v) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; and
 - (vi) the control and eradication of listed invasive species;
- (d) biosafety and the environment;
- (e)(i) the designation of organs of state that may be issuing authorities for permits referred to in section 81;
 - (ii) the form and content of, and requirements and criteria for, notification requirements referred to in section 81A and benefit-sharing agreements and material transfer agreements;
 - (iii) moneys payable in connection with benefit-sharing agreements and material transfer agreements; and
 - (iv) the administration of the Bio-prospecting Trust Fund;
- (f)(i) the conditions subject to which issuing authorities may issue, renew or amend permits in terms of this Act;
 - (ii) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for permits;
 - (iii) the powers of issuing authorities when considering and deciding such applications;
 - (iv) the conditions with which applicants must comply before or after the lodging of their applications;
 - (v) appropriate consultation processes;
 - (vi) the authorities whose consent is required before permits may be issued;
 - (vii) the factors that must be taken into account when deciding applications;
 - (viii) the circumstances in which applications must be refused or may be approved;
 - (ix) the form and contents of permits;
 - (x) the conditions on which permits must be issued, or guidelines for determining conditions on which permits may be issued;
 - (xi) methods, procedures and conditions of enforcing compliance with the conditions of a permit;

- (xii) the giving of security in respect of any obligation that may arise from carrying out a restricted activity authorised by a permit, and the form of such security;
 - (xiii) the period of validity of permits;
 - (xiv) the transferability of permits;
 - (xv) the duties of the permit holders; and
 - (xvi) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals;
 - (g) any other matter that may be prescribed in terms of this Act; and
 - (h) any other matter that maybe necessary to facilitate the implementation of this Act.
- (2) Any regulation with direct fiscal implications may be made only with the concurrence of the Minister of Finance.
- (3) Before publishing any regulations in terms of subsection (1), or any amendment to the regulations, the Minister must follow a consultative process in accordance with sections 99 and 00.
- (4) Subsection (3) need not be applied to a non-substantial change to the regulations.

98. General

- (1) Regulations made in terms of section 97 may:
- (a) restrict or prohibit any act either absolutely or conditionally;
 - (b) apply:
 - (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas;
 - (ii) generally to all persons or only to a specified category of persons;
 - (iii) generally with respect to all species or only to a specified species or category of species; or
 - (iv) generally with respect to all permits or appeals or only to a specified category of permits or appeals; or
 - (c) differentiate between different:
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons;
 - (iii) species or categories of species; or
 - (iv) categories of permits or appeals.
- (2) Regulations made in terms of section 97 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to:
- (a) imprisonment for a period not exceeding five years;
 - (b) 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 such imprisonment.

Part 2: Consultation process

99. Consultation

- (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 must follow an appropriate consultative process in the circumstances.
- (2) The Minister must, in terms of subsection (1):
- (a) consult all Cabinet members whose areas of responsibility may be affected by the exercise of the power;

- (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; and
- (c) allow public participation in the process in accordance with section 100.

100. Public participation

- (1) The Minister must give notice of the proposed exercise of the power referred to in section 99:
 - (a) in the *Gazette*; and
 - (b) in at least one newspaper distributed nationally, or if the exercise of the power may affect only a specific area, in at least one newspaper distributed in that area.
- (2) The notice must:
 - (a) invite members of the public to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written representations on, or objections to, the proposed exercise of the power; and
 - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections.
- (3) The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.
- (4) The Minister must give due consideration to all representations or objections received or presented before exercising the power.

CHAPTER 9: Offences and Penalties

101. Offences

- (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of:
 - (a) section 57(1), 65(1), 67(2), 71(1) or 81(1);
 - (b) a notice published in terms of section 57(2); or
 - (c) a directive issued in terms of section 69(2) or 73(3).
- (2) A person who is the holder of a permit is guilty of an offence if that person:
 - (a) contravenes or fails to comply with a provision of section 69(1) or 73(1);
 - (b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which the permit was issued; or
 - (c) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b).
- (3) A person is guilty of an offence if that person:
 - (a) fraudulently alters any permit;
 - (b) fabricates or forges any document for the purpose of passing it as a permit;
 - (c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit; or
 - (d) knowingly makes any false statement or report for the purpose of obtaining a permit.

102. Penalties

- (1) A person convicted of an offence in terms of section 101 is liable to a fine not exceeding R10 million, or an imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment.
- (2) If a person is convicted of an offence involving a specimen of a listed threatened or protected species, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the

specimen in respect of which the offence was committed, whichever is the greater.

(3) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

CHAPTER 10: Miscellaneous

103. Repeal of Act 122 of 1984

The Forest Act, 1984 (Act 122 of 1984), is repealed by this Act.

104. Savings

(1) Anything done in terms of the Forest Act, 1984 (Act 122 of 1984), which may or must be done in terms of this Act must be regarded as having been done in terms of this Act.

(2) A person who immediately before the repeal of the Forest Act, 1984, by section 100 of this Act was:

- (a) a member of the board of the National Botanical Institute, becomes a member of the Board of the South African National Biodiversity Institute and remains such a member until the Minister appoints the members of the Board in terms of section 15;
 - (b) the chief executive officer of the National Botanical Institute becomes the acting chief executive officer of the South African National Biodiversity Institute and remains the acting chief executive officer until the Board appoints a person as the chief executive officer of the Institute in terms of section 29; and
 - (c) all employees of the National Botanical Institute, including its chief executive officer, must be regarded as having been appointed in terms of section 30 as employees of the South African National Biodiversity Institute subject to the same conditions of services which applied to them immediately before the repeal of the Forest Act, 1984.
- (3) Subsection (2)(c) does not affect pension, leave and other benefits which accrued to employees referred to in that subsection before the repeal of the Forest Act, 1984, and such benefits must be respected as if there was no break in their service and no change of employer.
- (4) As from the date of repeal of the Forest Act, 1984:
- (a) all assets and liabilities and all rights and obligations of the National Botanical Institute are vested in the South African National Biodiversity Institute; and
 - (b) any balance in the National Botanical Institute Fund referred to in section 64 of that Act must be paid to the South African National Biodiversity Institute.

105. Existing bio-prospecting projects

(1) Any party involved at the commencement of chapter 6 in a bio-prospecting project which concerns any interests to be protected in terms of section 82, may despite that section continue with the project pending the negotiation and entry into force of an appropriate benefit-sharing agreement in terms of that chapter.

(2) Subsection (1) lapses one year after chapter 6 takes effect.

106. Short title and commencement

This Act is called the National Environmental Management: Biodiversity Act, 2004, and takes effect on a date determined by the President by proclamation in the *Gazette*.

2.2.1.4 National Environmental Management: Air Quality Act

Description: The Air Quality Act regulates air quality in order to protect the environment. It provides reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development. The Act further provides for national norms and standards regulating air quality monitoring, management and control by all spheres of government. It also provides for specific air quality measures.

National Environmental Management: Air Quality Act 39 of 2004

As last amended by the Environment Laws Amendment Act 14 of 2009.

Preamble

WHEREAS the quality of ambient air in many areas of the Republic is not conducive to a healthy environment for the people living in those areas let alone promoting their social and economic advancement;

And whereas the burden of health impacts associated with polluted ambient air falls most heavily on the poor;

And whereas air pollution carries a high social, economic and environmental cost that is seldom borne by the polluter;

And whereas atmospheric emissions of ozone-depleting substances, greenhouse gases and other substances have deleterious effects on the environment both locally and globally;

And whereas everyone has the constitutional right to an environment that is not harmful to their health or well-being;

And whereas everyone has the constitutional right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

And whereas minimisation of pollution through vigorous control, cleaner technologies and cleaner production practices is key to ensuring that air quality is improved; And whereas additional legislation is necessary to strengthen the Government's strategies for the protection of the environment and, more specifically, the enhancement of the quality of ambient air, in order to secure an environment that is not harmful to the health or well-being of people, BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

CHAPTER 1: Interpretation and Fundamental Principles

1. Definitions

(1) In this Act, unless the context indicates otherwise:

'air pollution' means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances;

‘air quality management plan’ means a plan referred to in section 15;

‘air quality officer’ means an officer appointed in terms of section 14 as an air quality officer;

‘ambient air’ excludes air regulated by the Occupational Health and Safety Act, 1993 (Act 85 of 1993);

‘atmospheric emission’ or ‘emission’ means any emission or entrainment process emanating from a point, non-point or mobile source that results in air pollution;

‘atmospheric emission licence’ means an atmospheric emission licence contemplated in chapter 5;

‘Atmospheric Pollution Prevention Act’ means the Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965);

‘controlled emitter’ means any appliance or activity declared as a controlled emitter in terms of section 23;

‘Department’ means the Department of Environmental Affairs and Tourism;

‘environment’ has the meaning assigned to it section 1 of the National Environmental Management Act;

‘Environment Conservation Act’ means the Environment Conservation Act, 1989 (Act 73 of 1989);

‘*Gazette*’ when used in relation to:

- (a) the Minister, means the Government *Gazette*; and
- (b) the MEC, means the Provincial *Gazette* of the province concerned;

‘greenhouse gas’ means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and includes carbon dioxide, methane and nitrous oxide;

‘licensing authority’ means an authority referred to in section 36(1), (2), (3) or (4) responsible for implementing the licensing system set out in chapter 5;

‘listed activity’ means any activity listed in terms of section 21;

‘MEC’ means the member of the Executive Council of a province who is responsible for air quality management in the province;

‘Minister’ means the Minister of Environmental Affairs and Tourism;

‘mobile source’ means a single identifiable source of atmospheric emission which does not emanate from a fixed location;

‘municipality’ means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

‘Municipal Systems Act’ means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

‘National Environmental Management Act’ means the National Environmental Management Act, 1998 (Act 107 of 1998);

‘national framework’ means the framework established in terms of section 7(1);

‘non-point source’ means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

‘offensive odour’ means any smell which is considered to be malodorous or a nuisance to a reasonable person;

‘organ of state’ has the meaning assigned to it in section 239 of the Constitution;

‘ozone-depleting substance’ means a substance having chemical or physical properties which, by its release into the atmosphere, can cause a depletion of the stratospheric ozone layer;

‘point source’ means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;

‘pollution’ has the meaning assigned to it in section 1 of the National Environmental Management Act;

‘priority area’ means an area declared as such in terms of section 18;

‘priority area air quality management plan’ means a plan referred to in section 19;

‘provisional atmospheric emission licence’ means a provisional atmospheric emission licence contemplated in chapter 5;

‘this Act’ includes:

- (a) the national framework;
 - (b) any regulation made in terms of this Act; and
 - (c) any other subordinate legislation issued in terms of this Act.
- (2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

2. Object of Act

The object of this Act is:

- (a) to protect the environment by providing reasonable measures for:
 - (i) the protection and enhancement of the quality of air in the Republic;
 - (ii) the prevention of air pollution and ecological degradation; and
 - (iii) securing ecologically sustainable development while promoting justifiable economic and social development; and
- (b) generally to give effect to section 24(b) of the Constitution in order to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people.

3. General duty of State

In fulfilling the rights contained in section 24 of the Constitution, the State:

- (a) through the organs of state applying this Act, must seek to protect and enhance the quality of air in the Republic; and
- (b) must apply this Act in a manner that will achieve the progressive realisation of those rights.

4. Application of Act

(1) This Act also applies to the exclusive economic zone and continental shelf of the Republic referred to in sections 7 and 8, respectively, of the Maritime Zones Act, 1994 (Act 15 of 1994).

(2) This Act binds all organs of state:

- (a) in the national and local spheres of government; and
- (b) in the provincial sphere of government, subject to section 146 of the Constitution.

5. Application of National Environmental Management Act

(1) This Act must be read with any applicable provisions of the National Environmental Management Act.

(2) The interpretation and application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

6. Conflicts with other legislation

(1) In the event of any conflict between a section of this Act and:

- (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;
- (b) a municipal by-law, the section of this Act prevails.

(2) In the event of any conflict between subordinate legislation issued in terms of this Act and:

- (a) an Act of Parliament, the Act of Parliament prevails;
- (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and

- (c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.
- (3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146(6) of the Constitution, submit all subordinate legislation issued in terms of this Act and which affects provinces to the National Council of Provinces for approval.

CHAPTER 2: National Framework and National, Provincial and Local Standards

Part 1: National framework

(7) Establishment

- (1) The Minister must, within two years of the date on which this section took effect, by notice in the *Gazette*, establish a national framework for achieving the object of this Act, which must include:
 - (a) mechanisms, systems and procedures to attain compliance with ambient air quality standards;
 - (b) mechanisms, systems and procedures to give effect to the Republic's obligations in terms of international agreements;
 - (c) national norms and standards for the control of emissions from point and non-point sources;
 - (d) national norms and standards for air quality monitoring;
 - (e) national norms and standards for air quality management planning;
 - (f) national norms and standards for air quality information management; and
 - (g) any other matter which the Minister considers necessary for achieving the object of this Act.
- (2) National norms and standards established in terms of subsection must be aimed at ensuring:
 - (a) opportunities for public participation in the protection and enhancement of air quality;
 - (b) public access to air quality information;
 - (c) the prevention of air pollution and degradation of air quality;
 - (d) the reduction of discharges likely to impair air quality, including the reduction of air pollution at source;
 - (e) the promotion of efficient and effective air quality management;
 - (f) effective air quality monitoring;
 - (g) regular reporting on air quality; and
 - (h) compliance with the Republic's obligations in terms of international agreements.
- (3) The national framework:
 - (a) binds all organs of state in all spheres of government; and
 - (b) may assign and delineate responsibilities for the implementation of this Act amongst:
 - (i) the different spheres of government; and
 - (ii) different organs of state.
- (4) An organ of state must give effect to the national framework when exercising a power or performing a duty in terms of this Act or any other legislation regulating air quality management.
- (5) The national framework:
 - (a) may differentiate between different geographical areas;
 - (b) may provide for the phasing in of its provisions;
 - (c) may be amended; and
 - (d) must be reviewed by the Minister at intervals of not more than five years.

- (6)(a) Before publishing the national framework, or any amendment to the framework, the Minister must follow a consultative process in accordance with sections 56 and 57.
- (b) Paragraph (a) need not be complied with if the framework is amended in a non-substantive way.

8. National monitoring and information management standards

The national framework must establish national standards for:

- (a) municipalities to monitor:
 - (i) ambient air quality; and
 - (ii) point, non-point and mobile source emissions;
- (b) provinces to monitor:
 - (i) ambient air quality; and
 - (ii) the performance of municipalities in implementing this Act; and
- (c) the collection and management of data necessary to assess:
 - (i) compliance with this Act;
 - (ii) compliance with ambient air quality and emission standards;
 - (iii) the performance of organs of state in respect of air quality management plans and priority area air quality management plans;
 - (iv) the impact of, and compliance with, air quality management plans and priority area air quality management plans;
 - (v) compliance with the Republic's obligations in terms of international agreements; and
 - (vi) access to information by the public.

Part 2: National, provincial and local ambient air quality and emission standards

9. National standards

- (1) The Minister, by notice in the *Gazette*:
 - (a) must identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment or which the Minister reasonably believes present such a threat;
 - (b) must, in respect of each of those substances or mixtures of substances, establish national standards for ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; and
 - (c) may, in respect of each of those substances or mixtures of substances, establish national standards for emissions from point, non-point or mobile sources.
- (2) Section 7(3)(a), (4), (5) and (6), with the necessary changes as the context may require, apply to a notice published in terms of this section.

10. Provincial standards

- (1) The MEC may, by notice in the *Gazette*:
 - (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the province or which the MEC reasonably believes present such a threat; and
 - (b) in respect of each of those substances or mixtures of substances, establish provincial standards for:
 - (i) ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; or

- (ii) emissions from point, non-point or mobile sources in the province or in any geographical area within the province.
- (2) If national standards have been established in terms of section 9 or any particular substance or mixture of substances, the MEC may not alter any such national standards except by establishing stricter standards for the province or for any geographical area within the province.
- (3) A notice issued under this section may:
 - (a) differentiate between different geographical areas within the province;
 - (b) provide for the phasing in of its provisions; and
 - (c) be amended.
- (4)(a) Before publishing a notice in terms of this section, or any amendment to the notice, the MEC must follow a consultative process in accordance with sections 56 and 57.
- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive way.

11. Local standards

- (1) A municipality may in terms of a by-law:
 - (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the municipality or which the municipality reasonably believes present such a threat; and
 - (b) in respect of each of those substances or mixtures of substances, establish local standards for emissions from point, non-point or mobile sources in the municipality.
- (2) If national or provincial standards have been established in terms of section 9 or 10 for any particular substance or mixture of substances, a municipality may not alter any such national or provincial standards except by establishing stricter standards for the municipality or any part of the municipality.
- (3) A notice issued under this section may:
 - (a) provide for the phasing in of its provisions; and
 - (b) be amended.
- (4) Before a municipality passes a by-law referred to in subsection (1), it must follow a consultative process in terms of chapter 4 of the Municipal Systems Act.

Part 3: General

12. Ambient air quality and emission measurements

For the purpose of this chapter, the Minister must prescribe the manner in which:

- (a) ambient air quality measurements must be carried out;
- (b) measurements of emissions from point, non-point or mobile sources must be carried out; and
- (c) the form in which such measurements must be reported and the organs of state to whom such measurements must be reported.

CHAPTER 3: Institutional and Planning Matters

13. National Air Quality Advisory Committee

- (1) The Minister may establish a National Air Quality Advisory Committee as a subcommittee of the National Environmental Advisory Forum, established in terms of the National Environmental Management Act, to advise the Minister on the implementation of this Act.

- (2) When establishing the Committee, the Minister:
 - (a) must determine the composition of the Committee, including the appointment, tenure and termination of service of members of the Committee;
 - (b) must determine the conditions of appointment of members of the Committee;
 - (c) must determine the functions and functioning of the Committee; and
 - (d) may determine any other matter relating to the Committee.

14. Appointment of air quality officers

- (1) The Minister must designate an officer in the Department as the national air quality officer to be responsible for co-ordinating matters pertaining to air quality management in the national government.
- (2) The MEC must designate an officer in the provincial administration as the provincial air quality officer to be responsible for co-ordinating matters pertaining to air quality management in the province.
- (3) Each municipality must designate an air quality officer from its administration to be responsible for co-ordinating matters pertaining to air quality management in the municipality.
- (4)(a) An air quality officer must perform the duties or exercise the powers assigned or delegated to that officer in terms of this Act.
- (b) An air quality officer may delegate a power or assign a duty to an official in the service of that officer's administration, subject to such limitations or conditions as may be prescribed by the Minister.
- (5) Air quality officers must co-ordinate their activities in such a manner as may be set out in the national framework or prescribed by the Minister.

15. Air quality management plans

- (1) Each national department or province responsible for preparing an environmental implementation plan or environmental management plan in terms of chapter 3 of the National Environmental Management Act must include in that plan an air quality management plan.
- (2) Each municipality must include in its integrated development plan contemplated in chapter 5 of the Municipal Systems Act, an air quality management plan.

16. Contents of air quality management plans

- (1) An air quality management plan must:
 - (a) within the domain of the relevant national department, province or municipality, seek:
 - (i) to give effect, in respect of air quality, to chapter 3 of the National Environmental Management Act to the extent that that chapter is applicable to it;
 - (ii) to improve air quality;
 - (iii) to identify and reduce the negative impact on human health and the environment of poor air quality;
 - (iv) to address the effects of emissions from the use of fossil fuels in residential applications;
 - (v) to address the effects of emissions from industrial sources;
 - (vi) to address the effects of emissions from any point or non-point source of air pollution other than those contemplated in subparagraph (iii) or (iv);
 - (vii) to implement the Republic's obligations in respect of international agreements; and
 - (viii) to give effect to best practice in air quality management;

- (b) describe how the relevant national department, province or municipality will give effect to its air quality management plan; and
- (c) comply with such other requirements as may be prescribed by the Minister.

17. Reporting on implementation of air quality management plans

The annual report which an organ of state must submit in terms of section 16(1)(b) of the National Environmental Management Act must contain information on the implementation of its air quality management plan, including information on:

- (a) air quality management initiatives undertaken by it during the reporting period;
- (b) the level of its compliance with ambient air quality standards;
- (c) measures taken by it to secure compliance with those standards;
- (d) its compliance with any priority area air quality management plans applicable to it; and
- (e) its air quality monitoring activities.

CHAPTER 4: Air Quality Management Measures

Part 1: Priority areas

18. Declaration of priority areas

- (1) The Minister or MEC may, by notice in the *Gazette*, declare an area as a priority area if the Minister or MEC reasonably believes that:
 - (a) ambient air quality standards are being, or may be, exceeded in the area, or any other situation exists which is causing, or may cause, a significant negative impact on air quality in the area; and
 - (b) the area requires specific air quality management action to rectify the situation.
- (2) The Minister may act under subsection (1), if:
 - (a) the negative impact on air quality in the area:
 - (i) affects the national interest; or
 - (ii) is contributing, or is likely to contribute, to air pollution in another country;
 - (b) the area extends beyond provincial boundaries; or
 - (c) the area falls within a province and the province requests the Minister to declare the area as a priority area.
- (3) The MECs of two or more adjoining provinces may by joint action in terms of subsection (1) declare an area falling within those provinces as a priority area.
- (4) Before publishing a notice in terms of subsection (1), the Minister or the relevant MEC or MECs must follow a consultative process in accordance with sections 56 and 57.
- (5) The Minister or MEC may, by notice in the *Gazette*, withdraw the declaration of an area as a priority area if the area is in compliance with ambient air quality standards for a period of at least two years.

19. Management of priority areas

- (1) If the Minister has in terms of section 18 declared an area as a priority area, the national air quality officer must:
 - (a) after consulting the air quality officers of any affected province and municipality, prepare a priority area air quality management plan for the area; and
 - (b) within six months of the declaration of the area, or such longer period as the Minister may specify, submit the plan to the Minister for approval.

- (2) If the MEC has in terms of section 18 declared an area as a priority area, the air quality officer of the relevant province must:
 - (a) after consulting the national air quality officer and the air quality officer of any affected municipality, prepare a priority area air quality management plan for the area; and
 - (b) within six months of the declaration of the area, or such longer period as the MEC may specify, submit the plan to the MEC for approval.
- (3) If the MECs in two or more adjoining provinces have by joint action in terms of section 18 declared an area as a priority area, the air quality officers of the relevant provinces must jointly:
 - (a) after consulting the national air quality officer and the air quality officers of the affected municipalities, prepare a priority area air quality management plan for the area; and
 - (b) within six months of the declaration of the area, or such longer period as the relevant MECs may specify, submit the plan to the MECs for approval.
- (4) Before approving a priority area air quality management plan, the Minister or the relevant MEC or MECs:
 - (a) must follow a consultative process in accordance with sections 56 and 57;
 - (b) may require the relevant air quality officer to amend the plan within a period determined by the Minister or the relevant MEC or MECs.
- (5)(a) The Minister or the relevant MEC or MECs must publish an approved plan in the *Gazette* within 90 days of approval.
 - (b) The approved plan takes effect from the date of its publication.
- (6) A priority area air quality management plan must:
 - (a) be aimed at co-ordinating air quality management in the area;
 - (b) address issues related to air quality in the area; and
 - (c) provide for the implementation of the plan by a committee representing relevant role-players.
- (7) A priority area air quality management plan lapses when the declaration of the area as a priority area is withdrawn in terms of section 18(5).

20. Regulations for implementing and enforcing priority area air quality management plans

The Minister or MEC may prescribe regulations necessary for implementing and enforcing approved priority area air quality management plans, including:

- (a) funding arrangements;
- (b) measures to facilitate compliance with such plans;
- (c) penalties for any contravention of or any failure to comply with such plans; and
- (d) regular review of such plans.

Part 2: Listing of activities resulting in atmospheric emissions

21. Listing of activities

- (1) The Minister must, or the MEC may, by notice in the *Gazette*:
 - (a) publish a list of activities which result in atmospheric emissions and which the Minister or MEC reasonably believes have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage; and
 - (b) when necessary, amend the list by:
 - (i) adding to the list activities in addition to those contemplated in paragraph (a);

- (ii) removing activities from the list; or
- (iii) making other changes to particulars on the list.
- (2) A list published by the Minister applies nationally and a list published by the MEC applies to the relevant province only.
- (3) A notice referred to in subsection (1):
 - (a) must establish minimum emission standards in respect of a substance or mixture of substances resulting from a listed activity and identified in the notice, including:
 - (i) the permissible amount, volume, emission rate or concentration of that substance or mixture of substances that may be emitted; and
 - (ii) the manner in which measurements of such emissions must be carried out;
 - (b) may contain transitional and other special arrangements in respect of activities which are carried out at the time of their listing; and
 - (c) must determine the date on which the notice takes effect.
- (4)(a) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must follow a consultative process in accordance with sections 56 and 57.
- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive way.

22. Consequences of listing

No person may without a provisional atmospheric emission licence or an atmospheric emission licence conduct an activity:

- (a) listed on the national list anywhere in the Republic; or
- (b) listed on the list applicable in a province anywhere in that province.

Part 3: Controlled emitters

23. Controlled emitters

- (1) The Minister or MEC may, by notice in the *Gazette*, declare any appliance or activity, or any appliance or activity falling within a specified category, as a controlled emitter if such appliance or activity, or appliances or activities falling within such category, result in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health or the environment or which the Minister or MEC reasonably believes presents such a threat.
- (2) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must:
 - (a) follow a consultative process in accordance with sections 56 and 57;
 - (b) apply the precautionary principle contained in section 2(4)(a)(vii) of the National Environmental Management Act;
 - (c) take into account the Republic's obligations in terms of any applicable international agreement; and
 - (d) consider:
 - (i) any sound scientific information; and
 - (ii) any risk assessments.
- (3) Subsection (2) need not be complied with if the notice is amended in a non-substantive way.

24. Standards for controlled emitters

- (1) A notice contemplated in section 23(1) must establish emission standards, which must include standards setting the permissible amount, volume, emission rate or concentration of any specified substance or mixture of substances that may be emitted from the controlled emitter.

(2) The Minister must prescribe the manner in which measurements of emissions from controlled emitters must be carried out.

25. Consequences of declaration

- (1) No person may manufacture, sell or use any appliance or conduct an activity declared as a controlled emitter unless that appliance or activity complies with the standards established in terms of section 24.
- (2) Subsection (1) applies:
 - (a) nationwide in respect of an appliance or activity declared by the Minister; or
 - (b) in a relevant province only in respect of an appliance or activity declared by the MEC responsible for air quality in that province.

Part 4: Controlled fuels

26. Controlled fuels

- (1) The Minister or MEC may, by notice in the *Gazette*, declare a substance or mixture of substances which, when used as a fuel in a combustion process, result in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health or the environment or which the Minister or MEC reasonably believes present such a threat, as a controlled fuel.
- (2) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must:
 - (a) follow a consultative process in accordance with sections 56 and 57;
 - (b) apply the precautionary principle contained in section 2(4)(a)(vii) of the National Environmental Management Act;
 - (c) take into account the Republic's obligations in terms of any applicable international agreement; and
 - (d) consider:
 - (i) any sound scientific information; and
 - (ii) any risk assessments.
- (3) Subsection (2) need not be complied with if the notice is amended in a non-substantive way.

27. Use and prohibition of controlled fuels

A notice contemplated in section 26(1) may:

- (a) establish standards for the use of the controlled fuel in combustion processes;
- (b) establish standards for the manufacture or sale of the controlled fuel;
- (c) establish specifications, including maximum or minimum levels or concentrations of the constituents of substances or mixtures of substances, for the composition of controlled fuels;
- (d) prohibit the manufacture, sale or use of the controlled fuel;
- (e) differentiate between different geographical areas;
- (f) provide for the phasing in of its provisions; and
- (g) be amended.

28. Consequences of declaration

- (1) No person may manufacture, sell or use a controlled fuel unless that manufacture, sale or use complies with the standards established in terms of section 27.
- (2) No person may manufacture, sell or use a prohibited controlled fuel unless that manufacture, sale or use complies with any conditions of manufacture, sale or use established in terms of section 27.
- (3) Subsections (1) and (2) apply:

- (a) nationwide in respect of a substance or mixture of substances declared by the Minister; or
- (b) in a relevant province only in respect of a substance or mixture of substances declared by the MEC responsible for air quality in that province.

Part 5: Other measures

29. Pollution prevention plans

- (1) The Minister or MEC may, by notice in the *Gazette*:
 - (a) declare any substance contributing to air pollution as a priority air pollutant; and
 - (b) require persons falling within a category specified in the notice to prepare, submit to the Minister or MEC for approval, and implement pollution prevention plans in respect of a substance declared as a priority air pollutant in terms of paragraph (a).
- (2) The Minister or MEC may, by written notice to a person conducting a listed activity which involves the emission of a substance declared as a priority air pollutant, require that person to prepare, submit to the Minister or MEC for approval and implement a pollution prevention plan, whether or not that person falls within a category specified in terms of subsection (1)(b).
- (3) Pollution prevention plans must comply with such requirements as may be prescribed by the Minister or MEC.

30. Atmospheric impact reports

An air quality officer may require any person to submit to the air quality officer an atmospheric impact report in a prescribed form if:

- (a) the air quality officer reasonably suspects that the person has on one or more occasions contravened or failed to comply with this Act or any conditions of a licence and that such contravention or failure has had, or may have, a detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, or has contributed to the degradation of ambient air quality; or
- (b) a review of a provisional atmospheric emission licence or an atmospheric emission licence is undertaken in terms of section 45.

31. Recognition programmes

An air quality officer may establish a programme for the public recognition of significant achievements in the area of pollution prevention.

Part 6: Measures in respect of dust, noise and offensive odours

32. Control of dust

The Minister or MEC may prescribe:

- (a) measures for the control of dust in specified places or areas, either in general or by specified machinery or in specified instances;
- (b) steps that must be taken to prevent nuisance by dust; or
- (c) other measures aimed at the control of dust.

33. Rehabilitation when mining operations cease

If it is determined that a mine, having regard to its known ore reserves, is likely to cease mining operations within a period of five years, the owner of that mine must promptly notify the Minister in writing:

- (a) of the likely cessation of those mining operations; and
- (b) of any plans that are in place or in contemplation for:

- (i) the rehabilitation of the area where the mining operations were conducted after mining operations have stopped; and
- (ii) the prevention of pollution of the atmosphere by dust after those operations have stopped.

34. Control of noise

- (1) The Minister may prescribe essential national standards:
 - (a) for the control of noise, either in general or by specified machinery or activities or in specified places or areas; or
 - (b) for determining:
 - (i) a definition of noise; and
 - (ii) the maximum levels of noise.
- (2) When controlling noise the provincial and local spheres of government are bound by any prescribed national standards.

35. Control of offensive odours

- (1) The Minister or MEC may prescribe measures for the control of offensive odours emanating from specified activities.
- (2) The occupier of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises.

CHAPTER 5: Licensing of Listed Activities

36. Licensing authority

- (1) Metropolitan and district municipalities are charged with implementing the atmospheric emission licensing system referred to in section 22, and must for this purpose perform the functions of licensing authority as set out in this chapter and other provisions of this Act, subject to subsections (2), (3) and (4).
- (2) If a metropolitan or district municipality has delegated its functions of licensing authority to a provincial organ of state in terms of section 238 of the Constitution, that provincial organ of state must for the purposes of this Act be regarded as the licensing authority in the area of that municipality.
- (3) If the MEC has in terms of section 139 of the Constitution intervened in a metropolitan or district municipality on the ground that that municipality cannot or does not fulfil its obligations as licensing authority in terms of this Act, a provincial organ of state designated by the MEC must for the duration of the intervention be regarded as the licensing authority in the area of that municipality.
- (4) If a municipality applies for an atmospheric emission licence, a provincial organ of state designated by the MEC must be regarded as the licensing authority for the purpose of:
 - (a) that application; and
 - (b) the implementation of this Act in relation to any licence that may be issued to the municipality.

37. Application for atmospheric emission licences

- (1) A person must apply for an atmospheric emission licence by lodging with the licensing authority of the area in which the listed activity is or is to be carried out, an application in the form required by the licensing authority.
- (2) An application for an atmospheric emission licence must be accompanied by:
 - (a) the prescribed processing fee; and
 - (b) such documentation and information as may be required by the licensing authority.

38. Procedure for licence applications

- (1) The licensing authority:
 - (a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant's expense, to obtain and provide it by a given date with other information, in addition to the information contained in or submitted in connection with the application;
 - (b) may conduct its own investigation on the likely effect of the proposed licence on air quality;
 - (c) may invite written comments from any organ of state which has an interest in the matter; and
 - (d) must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.
- (2) Section 24 of the National Environmental Management Act and section 22 of the Environment Conservation Act apply to all applications for atmospheric emission licences, and both an applicant and the licensing authority must comply with those sections and any applicable notice issued or regulation made in relation to those sections.
- (3)(a) An applicant must take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.
- (b) Such steps must include the publication of a notice in at least two newspapers circulating in the area in which the listed activity applied for is or is to be carried out:
 - (i) describing the nature and purpose of the licence applied for;
 - (ii) giving particulars of the listed activity, including the place where it is or is to be carried out;
 - (iii) stating a reasonable period within which written representations on or objections to the application may be submitted, and the address or place where representations or objections must be submitted; and
 - (iv) containing such other particulars as the licensing authority may require.

39. Factors to be taken into account by licensing authorities

When considering an application for an atmospheric emission licence, the licensing authority must take into account all relevant matters, including:

- (a) any applicable minimum standards set for ambient air and point source emissions that have been determined in terms of this Act;
- (b) the pollution being or likely to be caused by the carrying out of the listed activity applied for and the effect or likely effect of that pollution on the environment, including health, social conditions, economic conditions, cultural heritage and ambient air quality;
- (c) the best practicable environmental options available that could be taken:
 - (i) to prevent, control, abate or mitigate that pollution; and
 - (ii) to protect the environment, including health, social conditions, economic conditions, cultural heritage and ambient air quality, from harm as a result of that pollution;
- (d) section 24 of the National Environmental Management Act and section 22 of the Environment Conservation Act and any applicable notice issued or regulation made pursuant to those sections;
- (e) any relevant tradable emission scheme;
- (f) whether the applicant is a fit and proper person as contemplated in section 49;
- (g) the applicant's submissions;
- (h) any submissions from organs of state, interested persons and the public; and
- (i) any guidelines issued by the Minister or MEC relating to the performance by licensing authorities of their functions.

40. Decisions of licensing authority

- (1) The licensing authority may:
 - (a) grant an application; or
 - (b) refuse an application.
- (2) Any decision by a licensing authority to grant an application must be consistent with:
 - (a) this Act and any other applicable national or provincial legislation;
 - (b) any applicable national or provincial environmental management policies;
 - (c) section 24 of the National Environmental Management Act and section 22 of the Environment Conservation Act and any applicable notice issued or regulation made pursuant to those sections;
 - (d) the national environmental management principles set out in section 2 of the National Environmental Management Act;
 - (e) any transitional and other special arrangements contemplated in section 21(3)(b);
 - (f) any minimum standards for atmospheric emissions of identified substances or mixtures of substances as contemplated in section 21(3);
 - (g) any applicable pollution prevention plan contemplated in section 29;
 - (h) the objectives of any applicable air quality management plan; and
 - (i) any ambient air quality or emission standards that have been determined in terms of this Act.
- (3) If an authorisation notice is issued in terms of section 24 of the National Environmental Management Act or section 22 of the Environment Conservation Act in respect of an application, the licensing authority must decide the application within 60 days of the date on which the notice has been issued.
- (4) After a licensing authority has reached a decision in respect of licence application, it must within 30 days:
 - (a) notify the applicant of the decision, and give written reasons if the application was unsuccessful;
 - (b) in a manner determined by the licensing authority, notify any persons who have objected to the application; and
 - (c) at the request of any person contemplated in paragraph (b), give written reasons for its decision or make public its reasons.

41. Successful applications

- (1) If an application for an atmospheric emission licence has been granted in terms of section 40(1)(a), the licensing authority must first issue a provisional atmospheric emission licence to enable the commissioning of the listed activity.
- (2) A provisional atmospheric emission licence is subject to such conditions and requirements:
 - (a) as the licensing authority may determine; and
 - (b) as the Minister or MEC has prescribed for listed activities of the kind in question.

42. Issuing of atmospheric emission licences

- (1) The holder of a provisional atmospheric emission licence is entitled to an atmospheric emission licence when the commissioned facility has been in full compliance with the conditions and requirements of the provisional atmospheric emission licence for a period of at least six months.
- (2) An atmospheric emission licence is subject to such conditions and requirements:
 - (a) as are specified in terms of section 43;
 - (b) as the licensing authority may determine; and

- (c) as the Minister or MEC has prescribed for listed activities of the kind in question.

43. Contents of provisional atmospheric emission licences and atmospheric emission licences

(1) A provisional atmospheric emission licence and an atmospheric emission licence must specify:

- (a) the activity in respect of which it is issued;
- (b) the premises in respect of which it is issued;
- (c) the person to whom it is issued;
- (d) the period for which the licence is issued;
- (e) the name of the licensing authority;
- (f) the periods at which the licence may be reviewed;
- (g) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere:
 - (i) under normal working conditions; and
 - (ii) under normal start-up, maintenance and shut-down conditions;
- (h) any other operating requirements relating to atmospheric discharges, including non-point source or fugitive emissions;
 - (i) point source emission measurement and reporting requirements;
 - (j) on-site ambient air quality measurement and reporting requirements;
 - (k) penalties for non-compliance;
 - (l) greenhouse gas emission measurement and reporting requirements; and
 - (m) any other matters which are necessary for the protection or enforcement of air quality.

(2) A licence may:

- (a) specify conditions in respect of odour and noise;
- (b) require the holder of the licence to comply with all lawful requirements of an environmental management inspector carrying out his or her duties in terms of the National Environmental Management Act, including a requirement that the holder of the licence must, on request, submit to the inspector a certified statement indicating:
 - (i) the extent to which the conditions and requirements of the licence have or have not been complied with;
 - (ii) particulars of any failure to comply with any of those conditions or requirements;
 - (iii) the reasons for any failure to comply with any of those conditions or requirements; and
 - (iv) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure.

44. Transfer of provisional atmospheric emission licences and atmospheric mission licences

(1) If ownership of an activity for which a provisional atmospheric emission licence or an atmospheric emission licence was issued is transferred, the licence may, with the permission of a licensing authority, be transferred by the holder of the licence to the new owner of the activity.

(2)(a) A person applying for permission for the transfer of a licence must lodge the application with the licensing authority of the area in which the listed activity is carried out.

(b) The application must be in the form required by the licensing authority.

(3) An application for the transfer of a licence must be accompanied by:

- (a) the prescribed processing fee; and
- (b) such documentation and information as may be required by the licensing authority.

- (4)(a) An applicant must take appropriate steps to bring the application for the transfer of an atmospheric emission licence to the attention of interested persons and the public.
- (b) Such steps must include the publication of a notice in at least two newspapers circulating in the area in which the listed activity applied for is carried out:
 - (i) describing the reasons for the transfer of an atmospheric emission licence;
 - (ii) giving particulars of the listed activity, including the place where it is carried out;
 - (iii) stating a reasonable period within which written representations on or objections to the application may be submitted, and the address or place where representations or objections must be submitted; and
 - (iv) containing such other particulars as the licensing authority may require.
- (5) When considering an application for the transfer of a licence, the licensing authority must take into account all relevant matters, including whether the person to whom the licence is to be transferred is a fit and proper person as contemplated in section 49.

45. Review of provisional atmospheric emission licences and atmospheric emission licences

- (1) A licensing authority must review a provincial atmospheric emission licence or an atmospheric emission licence at intervals specified in the licence, or when circumstances demand that a review is necessary, on payment of the prescribed processing fee.
- (2) The licensing authority must inform the licence holder and the relevant provincial air quality officer, in writing, of any proposed review, the reason for such review and the cost of the prescribed processing fee.
- (3) For purposes of the review, an air quality officer may require the licence holder to compile and submit an atmospheric impact report contemplated in section 30.

46. Variation of provisional atmospheric emission licences and atmospheric emission licences

- (1) A licensing authority may, by written notice to the holder of a provisional atmospheric emission licence or an atmospheric emission licence, vary the licence:
 - (a) if it is necessary or desirable to prevent deterioration of ambient air quality;
 - (b) if it is necessary or desirable for the purposes of achieving ambient air quality standards;
 - (c) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
 - (d) at the written request of the holder of the licence;
 - (e) if it is transferred to another person in terms of section 44; or
 - (f) if it is reviewed in terms of section 45.
- (2) The variation of a licence includes:
 - (a) the attaching of an additional condition or requirement to the licence;
 - (b) the substitution of a condition or requirement;
 - (c) the removal of a condition or requirement; or
 - (d) the amendment of a condition or requirement.
- (3) If a licensing authority receives a request from the holder of a licence in terms of subsection (1)(d), the licensing authority must require the holder of the licence to take appropriate steps to bring the request to the attention of relevant organs of state, interested persons and the public if:

- (a) the variation of the licence will authorise an increase in the environmental impact regulated by the licence;
 - (b) the variation of the licence will authorise an increase in atmospheric emissions; and
 - (c) the proposed variation has not, for any reason, been the subject of an authorisation in terms of any other legislation and public consultation.
- (4) Steps in terms of subsection (3) must include the publication of notice in at least two newspapers circulating in the area in which the listed activity authorised by the licence is, or will be, carried out:
- (a) describing the nature and purpose of the request;
 - (b) giving particulars of the listed activity, including the place where it is or will be carried out;
 - (c) stating a reasonable period within which written representations on or objections to the request may be submitted, and the address or place where representations or objections must be submitted; and
 - (d) containing such other particulars as the licensing authority may require.
- (5) Sections 38 and 40, read with the necessary changes as the context may require, apply to the variation of a licence.

47. Renewal of provisional atmospheric emission licences and atmospheric emission licences

- (1) A provisional atmospheric emission licence or an atmospheric emission licence may, on application by the holder of the licence, be renewed by a licensing authority.
- (2) The holder of a licence must before the expiry date of the licence apply for the renewal of the licence to the licensing authority of the area in which the listed activity is carried out, by lodging to the licensing authority an application in the form required by the licensing authority.
- (3) An application for the renewal of a licence must be accompanied by:
 - (a) the prescribed processing fee;
 - (b) proof that the relevant provincial air quality officer has been notified of the application;
 - (c) such documentation and information as may be required by the licensing authority.
- (4) The holder of a provisional atmospheric emission licence may not apply for the renewal of the provisional licence more than once.
- (5) Sections 38, 40 and 43, read with the necessary changes as the context may require, apply to an application for the renewal of a licence.

48. Emission control officers

- (1) An air quality officer may require the holder of a provisional atmospheric emission licence or an atmospheric emission licence to designate an emission control officer, having regard to the size and nature of the listed activity for which the licence was granted.
- (2) An emission control officer must have requisite air quality management competence in respect of the listed activity in question, and must:
 - (a) work towards the development and introduction of cleaner production technologies and practices;
 - (b) take all reasonable steps to ensure compliance by the holder of the licence with the licence conditions and requirements; and
 - (c) promptly report any non-compliance with any licence conditions or requirements to the licensing authority through the most effective means reasonably available.
- (3) Nothing in this section affects the obligations and liability of the holder of a licence to comply with the conditions and requirements of the licence.

49. Criteria for fit and proper persons

In order to determine whether a person is a fit and proper person for the purposes of an application in terms of this chapter, a licensing authority must take into account all relevant facts, including whether:

- (a) that person has contravened or failed to comply with this Act, the Atmospheric Pollution Prevention Act or any other legislation applicable to air quality;
- (b) that person has held a provisional atmospheric emission licence, an atmospheric emission licence or other authority that has been suspended or revoked;
- (c) that person has been a director or senior manager who is or was a director or manager of a company, a juristic person or firm to whom paragraph (a) or (b) applies; and
- (d) the management of the listed activity which is the subject of the application will or will not be in the hands of a technically competent person.

CHAPTER 6: International Air Quality Management**50. Transboundary air pollution**

(1) The Minister may investigate any situation which creates, or may reasonably be anticipated to contribute to:

- (a) air pollution across the Republic's boundaries; or
- (b) air pollution that violates, or is likely to violate, an international agreement binding on the Republic in relation to the prevention, control or correction of pollution.

(2) If the investigation contemplated in subsection (1) reveals that the release of a substance into the air from a source in the Republic may have a significant detrimental impact on air quality, the environment or health in a country other than the Republic, the Minister may prescribe measures to prevent, control or correct the releases within the Republic.

(3) Before publishing regulations under subsection (2), the Minister must consult with:

- (a) the Cabinet member responsible for foreign affairs; and
- (b) the MEC concerned.

(4) Regulations contemplated in subsection (2) may include provisions regarding:

- (a) the quantity or concentration of the substance that may be released into the air;
- (b) the manner in which and conditions under which the substance may be released into the air, either alone or in combination with any other substance;
- (c) the maintenance of records for the administration of any regulation made under this section;
- (d) the conduct of sampling, analyses, tests, measurements or monitoring of the substance and the submission of the results to the Minister; and
- (e) the conditions, test procedures and laboratory practices to be followed for conducting sampling, analyses, tests, measurements or monitoring of the substance.

(5) The Minister may, through the Cabinet member responsible for foreign affairs, advise the government of any country that would be affected by or benefit from the regulation before it is published.

CHAPTER 7: Offences and Penalties

51. Offences

- (1) A person is guilty of an offence if that person:
 - (a) contravenes a provision of section 22, 25 or 35(2);
 - (b) fails to submit or to implement a pollution prevention plan as required by section 29(1)(b) or (2);
 - (c) fails to submit an atmospheric impact report required in terms of section 30;
 - (d) fails to notify the Minister as required by section 33;
 - (e) contravenes or fails to comply with a condition or requirement of an atmospheric emission licence;
 - (f) supplies false or misleading information in any application for an atmospheric emission licence, or for the transfer, variation or renewal of such a licence;
 - (g) supplies false or misleading information to an air quality officer;
 - (h) contravenes or fails to comply with a condition subject to which exemption from a provision of this Act was granted in terms of section 59.
- (2) A person operating a controlled emitter is guilty of an offence if the emissions from that controlled emitter do not comply with the standards established under section 24(1).
- (3) A person performing a listed activity is guilty of an offence if air pollutants at concentrations above the emission limits, specified in an atmospheric emission licence, are emitted as a result of that activity.

52. Penalties

- (1) A person convicted of an offence referred to in section 51 is liable to a fine not exceeding five million rand, or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.
- (2) A fine contemplated in subsection (1) must be determined with due consideration of:
 - (a) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;
 - (b) the monetary or other benefits which accrued to the convicted person through the commission of the offence; and
 - (c) the extent of the convicted person's contribution to the overall pollution load of the area under normal working conditions.
- (3) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

CHAPTER 8: General Matters

Part 1: Regulations

53. Regulations by Minister

The Minister may make regulations that are not in conflict with this Act, regarding:

- (a) any matter necessary to give effect to the Republic's obligations in terms of an international agreement relating to air quality;
- (b) matters relating to environmental management co-operation agreements, to the extent that those agreements affect air quality;

- (c) emissions, including the prohibition of specific emissions, from point, non-point and mobile sources of emissions, including motor vehicles;
- (d) open fires and incinerators;
- (e) ozone-depleting substances;
- (f) codes of practice;
- (g) records and returns;
- (h) labelling;
- (i) trading schemes;
- (j) powers and duties of air quality officers;
- (k) appeals against decisions of officials in the performance of their functions in terms of the regulations;
- (l) incentives to encourage change in behaviour towards air pollution by all sectors in society;
- (m) requirements in respect of monitoring;
- (n) the avoidance or reduction of harmful effects on air quality from activities not otherwise regulated in terms of this Act;
- (o) any matter that may or must be prescribed in terms of this Act; or
- (p) any other matter necessary for the implementation or application of this Act.

54. Regulations by MECs responsible for air quality

The MEC may make regulations for the province concerned, not inconsistent with this Act, in respect of any matter for which the MEC may or must make regulations in terms of this Act, including a matter referred to in section 53(c) to (p).

55. General

- (1) Regulations made in terms of this Act may:
 - (a) restrict or prohibit any act, either absolutely or conditionally;
 - (b) apply:
 - (i) generally to the Republic or a province, as the case may be, or only in a specified area or category of areas; or
 - (ii) generally to all persons or only to a specified category of persons;
 - (c) differentiate between different:
 - (i) areas or categories of areas; or
 - (ii) persons or categories of persons; and
 - (d) incorporate by reference any code of practice or any national or international standard relating to air quality.
- (2) Regulations made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to:
 - (a) imprisonment for a period not exceeding five years;
 - (b) an appropriate fine; or
 - (c) both a fine and imprisonment.
- (3)(a) Before publishing any regulation made in terms of this Act, or any amendment to the regulations, the Minister or MEC must follow a consultative process in accordance with sections 56 and 57.
- (b) Paragraph (a) need not be complied with if the regulations are amended in a non-substantive way.

Part 2: Consultative process

56. Consultation

- (1) Before exercising a power which, in terms this Act, must be exercised in accordance with this section and section 57, the Minister or MEC must follow such consultative process as may be appropriate in the circumstances.

(2) When conducting the consultations contemplated in subsection (1), the Minister must:

- (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;
 - (b) in accordance with the principles of co-operative governance as set out in chapter 3 of the Constitution, consult the MEC responsible for air quality in each province that will be affected by the exercise of the power; and
 - (c) allow public participation in the process in accordance with section 57.
- (3) When conducting the consultations contemplated in subsection (1), the MEC must:

- (a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the power;
- (b) in accordance with the principles of co-operative governance as set out in chapter 3 of the Constitution, consult the Minister and all other national organs of state that will be affected by the exercise of the power; and
- (c) allow public participation in the process in accordance with section 57.

57. Public participation

(1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section, the Minister or MEC must give notice of the proposed exercise of the relevant power:

- (a) in the *Gazette*; and
- (b) in at least one newspaper distributed nationally or, if the exercise of the power will affect only a specific area, in at least one newspaper distributed in that area.

(2) The notice must:

- (a) invite members of the public to submit to the Minister or MEC, within 30 days of publication of the notice in the *Gazette*, written representations on or objections to the proposed exercise of the power; and
- (b) contain sufficient information to enable members of the public to submit meaningful representations or objections.

(3) The Minister or MEC may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or MEC, or a person designated by the Minister or MEC.

(4) The Minister or MEC must give due consideration to all representations or objections received or presented before exercising the power concerned.

Part 3: Delegations and exemptions

58. Delegations

(1) The Minister or MEC, as the case may be, may delegate or assign to an official in their respective departments:

- (a) any power or duty of the Minister or MEC contained in this Act, excluding the power to publish or amend a regulation in terms of section 53 or 54 or a notice in terms of section 7(1), 9(1), 10(1), 18(1), 21(1), 23(1) or 29(1); or
- (b) any power or duty reasonably necessary to assist the Minister or MEC in exercising a power or performing a duty of the Minister or MEC.

(2) The Minister or MEC must regularly review and, if necessary, amend or withdraw a delegation or assignment under subsection (1).

(3) A delegation or assignment to an official under subsection (1):

- (a) is subject to such limitations and conditions as the Minister or MEC may impose;

- (b) may either be to a specific individual or to the holder of a specific post in the relevant department;
 - (c) may authorise that official to subdelegate or further assign, in writing, the power or duty concerned to another official in the department, or to the holder of a specific post in the department; and
 - (d) does not divest the Minister or MEC of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (4) The Minister or MEC may confirm, vary or revoke any decision taken by an official as a result of a delegation or sub-delegation in terms of this section, subject to any rights that may have become vested as a consequence of the decision.

59. Exemptions

- (1)(a) Any person or organ of state may, in writing, apply for exemption from the application of a provision of this Act to the Minister.
- (b) No exemption from a provision of section 9, 22 or 25 may be granted in terms of paragraph (a).
- (2) An application in terms of subsection (1) must be accompanied by reasons.
- (3)(a) The Minister may require an applicant applying for exemption to take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.
- (b) The steps contemplated in paragraph (a) must include the publication of a notice in at least two newspapers circulating nationally:
 - (i) giving reasons for the application; and
 - (ii) containing such other particulars concerning the application as the Minister may require.
- (4) The Minister may:
 - (a) from time to time review any exemption granted in terms of this section; and
 - (b) on good grounds withdraw any exemption.
- (5) The Minister may on such conditions and limitations determined by the Minister delegate any of the powers contained in this section to:
 - (a) the MEC responsible for air quality in a province; or
 - (b) a metropolitan or district municipality.

CHAPTER 9: Miscellaneous

60. Repeal of legislation

- (1) The legislation mentioned in the Table in Schedule 1 is hereby repealed or amended to the extent set out in the third column of the Table, subject to subsections (2) and (3) of this section and section 61.
- (2) Anything done or deemed to have been done under a provision repealed by subsection (1) and which can be done in terms of a provision of this Act must be regarded as having been done under that provision of this Act.
- (3) Anything done or deemed to have been done under a provision repealed by subsection (1) and which can be done in terms of the constitutional or statutory powers of a municipality, remains in force in the area of a municipality until repealed by the municipality of that area.

61. Transitional arrangements in respect of registration certificates issued in terms of Atmospheric Pollution Prevention Act

- (1)(a) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, a provisional registration certificate issued in terms of that Act and which was a valid certificate immediately before

- the date on which section 60 took effect, continues to be valid for a period of two years from that date, subject to paragraph (c).
- (b) During the period for which a provisional registration certificate continues to be valid, the provisions of this Act, read with the necessary changes as the context may require, apply in respect of:
 - (i) the holder of such a certificate as if that person is the holder of a provisional atmospheric emission licence issued in terms of section 41(1) of this Act for the activity for which the certificate was issued; and
 - (ii) the certificate as if the certificate is a provisional atmospheric emission licence.
 - (c) If during the two-year period referred to in paragraph (a):
 - (i) a provisional atmospheric emission licence is issued to the holder of a provisional registration certificate following a revision in terms of section 45 or an application for renewal in terms of section 47, the certificate expires on the date of issue of the provisional licence; or
 - (ii) an atmospheric emission licence is issued to the holder of a provisional registration certificate in terms of section 42(1), the certificate expires on the date of issue of the licence.
- (2)(a) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, a registration certificate issued in terms of that Act and which was a valid certificate immediately before the date on which section 60 took effect, continues to be valid for a period of four years from that date, subject to paragraph (d).
- (b) During the period for which a registration certificate continues to be valid, the provisions of this Act, read with the necessary changes as the context may require, apply in respect of:
 - (i) the holder of such a certificate as if that person is the holder of an atmospheric emission licence issued in terms of section 42(1) of this Act for the activity for which the certificate was issued; and
 - (ii) the certificate as if the certificate is an atmospheric emission licence.
 - (c) The holder of a registration certificate must within the first three years of the four-year period referred to in paragraph (a), lodge a renewal application in terms of section 47 with the licensing authority of the area in which the activity for which the certificate was issued is carried out.
 - (d)(i) If the holder of a registration certificate fails to comply with paragraph (c), the certificate expires at the end of the three years referred to in paragraph (c).
 - (ii) If during the four-year period referred to in paragraph (a) an atmospheric emission licence is issued to the holder of a registration certificate following an application for renewal in terms of paragraph (c), the certificate expires on the date of issue of the licence.
 - (iii) If during the period before the holder of a registration certificate lodges an application for renewal in terms of paragraph (c), an atmospheric emission licence is issued to the holder of the certificate following a revision in terms of section 45, the certificate expires on the date of issue of the licence. In such event compliance with paragraph (c) falls away.
- (3) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, any application for a registration certificate made in terms of that Act which was not decided when section 60 took effect, must be proceeded with in terms of this Act as if such application was an application for an atmospheric emission licence in terms of section 37.

62. Transitional provision regarding listed activities

Pending the listing of activities by the Minister in terms of section 21, the processes identified in the Second Schedule of the Atmospheric Pollution Prevention Act must for the purposes of this Act be regarded as activities listed by the Minister in terms of that section.

63. Transitional provision regarding ambient air quality standards

Until ambient air quality standards have been established in terms of section 9, 10 or 11, the ambient air quality standards contained in Schedule 2 apply.

64. Short title and commencement

(1) This Act is called the National Environmental Management: Air Quality Act, 2004, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) for different provisions of the Act.

SCHEDULE 1

(Section 60)

Legislation repealed or amended

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	The whole
Act No. 17 of 1973	Atmospheric Pollution Prevention Amendment Act, 1973	The whole
Act No. 21 of 1981	Atmospheric Pollution Prevention Amendment Act, 1981	The whole
Act No. 15 of 1985	Atmospheric Pollution Prevention Amendment Act, 1985	The whole

SCHEDULE 2

(Section 63)

Ambient air quality standards

1. Ambient concentrations of ozone (O₃) may not exceed:
 - (a) an instant peak of 0.25 parts per million measured at 25 degree C and normal atmospheric pressure; or
 - (b) a one-hour average of 0.12 parts per million measured at 25 degree C and normal atmospheric pressure.
2. Ambient concentrations of the oxides of nitrogen (NO_x) may not exceed:
 - (a) an instant peak of 1.4 parts per million measured at 25 degree C and normal atmospheric pressure;
 - (b) a one-hour average of 0.8 parts per million measured at 25 degree C and normal atmospheric pressure;
 - (c) a 24-hour average of 0.4 parts per million measured at 25 degree C and normal atmospheric pressure and the 24-hour limit may not be exceeded more than three times in one year;

- (d) a one-month average of 0.3 parts per million measured at 25 degree C and normal atmospheric pressure; or
 - (e) an annual average of 0.2 parts per million measured at 25 degree C and normal atmospheric pressure.
 - 3. Ambient concentrations of nitrogen dioxide (NO₂) may not exceed:
 - (a) an instant peak of 0.5 parts per million measured at 25 degree C and normal atmospheric pressure;
 - (b) a one-hour average of 0.2 parts per million measured at 25 degree C and normal atmospheric pressure;
 - (c) a 24-hour average of 0.1 parts per million measured at 25 degree C and normal atmospheric pressure and the 24-hour limit may not be exceeded more than three times in one year;
 - (d) a one-month average of 0.08 parts per million measured at 25 degree C and normal atmospheric pressure; or
 - (e) an annual average of 0.05 parts per million measured at 25 degree C and normal atmospheric pressure.
 - 4. Ambient concentrations of sulphur dioxide (SO₂) may not exceed:
 - (a) a ten-minute average instant peak of 0.191 parts per million measured at 25 degree C and normal atmospheric pressure;
 - (b) an instant peak of 500 micrograms per cubic meter ((μ)g/m³) measured at 25 degree C and normal atmospheric pressure;
 - (c) a 24-hour average of 0.048 parts per million or 125 micrograms per cubic meter ((μ)g/m³) measured at 25 degree C and normal atmospheric pressure;
 - (d) an annual average of 0.019 parts per million or 50 micrograms per cubic meter ((μ)g/m³) measured at 25 degree C and normal atmospheric pressure.
 - 5. Ambient concentrations of lead (Pb) may not exceed a one-month average of 2.5 micrograms per cubic meter ((μ)g/m³).
 - 6. Ambient concentrations of particulate matter with a particle size of less than 10 microns (μ) in size (PM₁₀) may not exceed:
 - (a) a 24-hour average of 180 micrograms per cubic meter ((μ)g/m³) and the 24-hour limit may not be exceeded more than three times in one year; or
 - (b) an annual average of 60 micrograms per cubic meter ((μ)g/m³).
 - 7. Ambient concentrations of total suspended solids may not exceed:
 - (a) a 24-hour average of 300 micrograms per cubic meter ((μ)g/m³) and the 24-hour limit may not be exceeded more than three times in one year; or
 - (b) an annual average of 100 micrograms per cubic meter ((μ)g/m³).
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2.2.1.5 National Environmental Management: Waste Act

Description: This Act regulates waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. It also provides for institutional arrangements and planning matters; national norms and standards for regulating the management of waste; and specific waste management measures. It provides for the licensing and control of waste management activities, the remediation of contaminated land a national waste information system. It also deals with the issue of compliance and enforcement.

National Environmental Management: Waste Act 59 of 2008

Commencement: 1 July 2009 except for ss 28(7)(a), 35, 36, 37, 38, 39, 40, 41 and 46.

Preamble

WHEREAS everyone has the constitutional right to have an environment that is not harmful to his or her health and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that:

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

AND WHEREAS waste management practices in many areas of the Republic are not conducive to a healthy environment and the impact of improper waste management practices are often borne disproportionately by the poor;

AND WHEREAS poor waste management practices can have an adverse impact both locally and globally;

AND WHEREAS sustainable development requires that the generation of waste is avoided, or where it cannot be avoided, that it is reduced, re-used, recycled or recovered and only as a last resort treated and safely disposed of;

AND WHEREAS the minimisation of pollution and the use of natural resources through vigorous control, cleaner technologies, cleaner production and consumption practices, and waste minimisation are key to ensuring that the environment is protected from the impact of waste;

AND WHEREAS waste under certain circumstances is a resource and offers economic opportunities;

AND WHEREAS waste and management practices relating to waste are matters that:

- require national legislation to maintain essential national standards;
- in order to be dealt with effectively, require uniform norms and standards that apply throughout the Republic; and
- in order to promote and give effect to the right to an environment that is not harmful to health and well-being, have to apply uniformly throughout the Republic; and
- require strategies, norms and standards which seek to ensure best waste practices within a system of co-operative governance,

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

CHAPTER 1: Interpretation and Principles

1. Definitions

In this Act, unless the context indicates otherwise:

'acceptable exposure' means the exposure of the maximum permissible concentration of a substance to the environment that will have a minimal negative effect on health or the environment;

'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;

'best practicable environmental option' means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term;

'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;

'by-product' means a substance that is produced as part of a process that is primarily intended to produce another substance or product and that has the characteristics of an equivalent virgin product or material;

'clean production' means the continuous application of integrated preventative environmental strategies to processes, products and services to increase overall efficiency and to reduce the impact of such processes, procedures and services on health and the environment;

'commence' means the start of any physical activity, including site preparation or any other activity on the site in furtherance of a waste management activity, but does not include any activity required for investigation or feasibility study purposes as long as such investigation or feasibility study does not constitute a waste management activity;

'Constitution' means the Constitution of the Republic of South Africa, 1996;

'container' means a disposable or re-usable vessel in which waste is placed for the purposes of storing, accumulating, handling, transporting, treating or disposing of that waste, and includes bins, bin-liners and skips;

'contaminated', in relation to part 8 of chapter 4, means the presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the environment adversely;

'decommissioning', in relation to waste treatment, waste transfer or waste disposal facilities, means the planning for and management and remediation of the closure of a facility that is in operation or that no longer operates;

'Department' means the Department of Environmental Affairs and Tourism;

'disposal' means the burial, deposit, discharge, abandoning, dumping, placing or release of any waste into, or onto, any land;

'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;

'environment' has the meaning assigned to it in section 1 of the National Environmental Management Act;

'Environment Conservation Act' means the Environment Conservation Act, 1989 (Act 73 of 1989);

'environmentally sound management' means the taking of all practicable steps to ensure that waste is managed in a manner that will protect health and the environment;

'export' means to take or send waste from the Republic to another country or territory;

'extended producer responsibility measures' means measures that extend a person's financial or physical responsibility for a product to the post-consumer stage of the product, and includes:

- (a) waste minimisation programmes;
- (b) financial arrangements for any fund that has been established to promote the reduction, re-use, recycling and recovery of waste;

- (c) awareness programmes to inform the public of the impacts of waste emanating from the product on health and the environment; and
- (d) any other measures to reduce the potential impact of the product on health and the environment;

‘*Gazette*’, when used in relation to:

- (a) the Minister, means the *Government Gazette*; and
- (b) the MEC, means the *Provincial Gazette* of the province concerned;

‘*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; and
- (d) inert waste;

‘*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;

‘*high-risk activity*’ means an undertaking, including processes involving substances that present a likelihood of harm to health or the environment;

‘*holder of waste*’ means any person who imports, generates, stores, accumulates, transports, processes, treats, or exports waste or disposes of waste;

‘*import*’ means any entry into the Republic other than entry for transit;

‘*incineration*’ means any method, technique or process to convert waste to flue gases and residues by means of oxidation;

‘*industry*’ includes commercial activities, commercial agricultural activities, mining activities and the operation of power stations;

‘*industry waste management plan*’ means a plan referred to in part 7 of chapter 4;

‘*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;

‘*integrated waste management plan*’ means a plan prepared in terms of section 12;

‘*investigation area*’ means an area identified as such in terms of section 37;

‘*licensing authority*’ means an authority referred to in section 43 and that is responsible for implementing the licensing system provided for in chapter 5;

‘*life cycle assessment*’ means a process where the potential environmental effects or impacts of a product or service throughout the life of that product or service is being evaluated;

‘*MEC*’ means the Member of the Executive Council of a province who is responsible for waste management in the province;

‘*minimisation*’, when used in relation to waste, means the avoidance of the amount and toxicity of waste that is generated and, in the event where waste is generated, the reduction of the amount and toxicity of waste that is disposed of;

‘*Minister*’ means the Minister of Environmental Affairs and Tourism;

‘*municipality*’ means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

‘*Municipal Systems Act*’ means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

'National Environmental Management Act' means the National Environmental Management Act, 1998 (Act 107 of 1998);

'non-substantive', in relation to the amendment or substitution of a regulation, notice, strategy, licence, approval, or provision thereof, includes:

- (a) any clerical mistake, unintentional error or omission;
- (b) the correction of any miscalculated figure; and
- (c) the correction of any incorrect description of any person, thing, property or waste management activity;

'organ of state' has the meaning assigned to it in section 239 of the Constitution;

'person' has the meaning assigned to it in the Interpretation Act, 1957 (Act 33 of 1957), and includes an organ of state;

'pollution' has the meaning assigned to it in section 1 of the National Environmental Management Act;

'prescribe' means prescribe by regulation under this Act;

'priority waste' means a waste declared to be a priority waste in terms of section 14;

'recovery' means the controlled extraction of a material or the retrieval of energy from waste to produce a product;

'recycle' means a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material;

're-use' means to utilise articles from the waste stream again for a similar or different purpose without changing the form or properties of the articles;

'specific environmental management Act' has the meaning assigned to it in section 1 of the National Environmental Management Act;

'storage' means the accumulation of waste in a manner that does not constitute treatment or disposal of that waste;

'sustainable development' has the meaning assigned to it in section 1 of the National Environmental Management Act;

'this Act' includes:

- (a) any regulations made in terms of this Act;
- (b) any notice or other subordinate legislation issued or made in terms of this Act; and
- (c) any regulation or direction that remains in force in terms of section 81;

'transit' means the continuous passage from one border of the Republic to another such border without storage other than temporary storage incidental to transport;

'treatment' means any method, technique or process that is designed to:

- (a) change the physical, biological or chemical character or composition of a waste; or
- (b) remove, separate, concentrate or recover a hazardous or toxic component of a waste; or
- (c) destroy or reduce the toxicity of a waste, in order to minimise the impact of the waste on the environment prior to further use or disposal;

'waste' means any substance, whether or not that substance can be reduced, re-used, recycled and recovered:

- (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
 - (b) which the generator has no further use of for the purposes of production;
 - (c) that must be treated or disposed of; or
 - (d) that is identified as a waste by the Minister by notice in the *Gazette*, and includes waste generated by the mining, medical or other sector, but:
- (i) a by-product is not considered waste; and

- (ii) any portion of waste, once re-used, recycled and recovered, ceases to be waste;

'waste disposal facility' means any site or premise used for the accumulation of waste with the purpose of disposing of that waste at that site or on that premise;

'waste management activity' means any activity listed in schedule 1 or published by notice in the *Gazette* under section 19, and includes:

- (a) the importation and exportation of waste;
- (b) the generation of waste, including the undertaking of any activity or process that is likely to result in the generation of waste;
- (c) the accumulation and storage of waste;
- (d) the collection and handling of waste;
- (e) the reduction, re-use, recycling and recovery of waste;
- (f) the trading in waste;
- (g) the transportation of waste;
- (h) the transfer of waste;
- (i) the treatment of waste; and
- (j) the disposal of waste;

'waste management control officer' means a waste management control officer designated under section 58(1);

'waste management licence' means a licence issued in terms of section 49;

'waste management officer' means a waste management officer designated in terms of section 10;

'waste management services' means waste collection, treatment, recycling and disposal services;

'waste minimisation programme' means a programme that is intended to promote the reduced generation and disposal of waste;

'waste transfer facility' means a facility that is used to accumulate and temporarily store waste before it is transported to a recycling, treatment or waste disposal facility;

'waste treatment facility' means any site that is used to accumulate waste for the purpose of storage, recovery, treatment, reprocessing, recycling or sorting of that waste.

2. Objects of Act

The objects of this Act are:

- (a) to protect health, well-being and the environment by providing reasonable measures for:
 - (i) minimising the consumption of natural resources;
 - (ii) avoiding and minimising the generation of waste;
 - (iii) reducing, re-using, recycling and recovering waste;
 - (iv) treating and safely disposing of waste as a last resort;
 - (v) preventing pollution and ecological degradation;
 - (vi) securing ecologically sustainable development while promoting justifiable economic and social development;
 - (vii) promoting and ensuring the effective delivery of waste services;
 - (viii) remediating land where contamination presents, or may present, a significant risk of harm to health or the environment; and
- (ix) achieving integrated waste management reporting and planning;
- (b) to ensure that people are aware of the impact of waste on their health, well-being and the environment;
- (c) to provide for compliance with the measures set out in paragraph (a); and
- (d) generally, to give effect to section 24 of the Constitution in order to secure an environment that is not harmful to health and well-being.

3. General duty of State

In fulfilling the rights contained in section 24 of the Constitution, the State, through the organs of state responsible for implementing this Act, must put in place uniform measures that seek to reduce the amount of waste that is generated and, where waste is generated, to ensure that waste is re-used, recycled and recovered in an environmentally sound manner before being safely treated and disposed of.

4. Application of Act

- (1) This Act does not apply to:
 - (a) radioactive waste that is regulated by the Hazardous Substances Act, 1973 (Act 15 of 1973), the National Nuclear Regulator Act, 1999 (Act 47 of 1999), and the Nuclear Energy Act, 1999 (Act 46 of 1999);
 - (b) residue deposits and residue stockpiles that are regulated under the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
 - (c) the disposal of explosives that is regulated by the Explosives Act, 2003 (Act 15 of 2003); or
 - (d) the disposal of animal carcasses that is regulated by the Animal Health Act, 2002 (Act 7 of 2002).
- (2) This Act binds all organs of state.

5. Application of National Environmental Management Act

- (1) This Act must be read with the National Environmental Management Act, unless the context of this Act indicates that the National Environmental Management Act does not apply.
- (2) The interpretation and application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

CHAPTER 2: National Waste Management Strategy, Norms and Standards

Part 1: National waste management strategy

6. Establishment of national waste management strategy

- (1) The Minister must, within two years of the date on which this section takes effect, by notice in the *Gazette* establish a national waste management strategy for achieving the objects of this Act, which must include:
 - (a) objectives, plans, guidelines, systems and procedures relating to the protection of the environment and the generation (including the avoidance and minimisation of such generation), re-use, recycling, recovery, treatment, disposal, use, control and management of waste in order to achieve the objects of this Act;
 - (b) mechanisms, systems and procedures for giving effect to the Republic's obligations in terms of relevant international agreements;
 - (c) practical measures for achieving co-operative governance in waste management matters;
 - (d) guidance on raising awareness regarding the impact of waste on health and the environment;
 - (e) approaches for securing compliance with the requirements of this Act, including the monitoring of compliance; and
 - (f) any other matter that the Minister considers necessary for achieving the objects of this Act.

- (2) The national waste management strategy may include targets for waste reduction.
- (3) The national waste management strategy:
 - (a) binds all organs of state in all spheres of government, and all persons if and to the extent applicable; and
 - (b) may, subject to section 3 of the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997), allocate and delineate responsibilities for the implementation of this Act amongst:
 - (i) the different spheres of government; and
 - (ii) different organs of state.
- (4) An organ of state must give effect to the national waste management strategy when exercising a power or performing a duty in terms of this Act or any other legislation regulating waste management.
- (5) The national waste management strategy:
 - (a) may differentiate between different geographical areas;
 - (b) may differentiate between different classes or categories of waste;
 - (c) may provide for the phasing in of its provisions;
 - (d) may be amended; and
 - (e) must be reviewed by the Minister at intervals of not more than five years.
- (6) Before publishing the national strategy, or any amendment to the strategy, the Minister must follow a consultative process in accordance with sections 72 and 73.
- (7) Subsection (6) need not be complied with if the strategy is amended in a non-substantive manner.

Part 2: National norms and standards, provincial norms and standards and waste service standards

7. National norms and standards

- (1) The Minister must, by notice in the *Gazette*, set national norms and standards for the:
 - (a) classification of waste;
 - (b) planning for and provision of waste management services; and
 - (c) storage, treatment and disposal of waste, including the planning and operation of waste treatment and waste disposal facilities.
- (2) The Minister may, by notice in the *Gazette*, set national norms and standards for:
 - (a) the minimisation, re-use, recycling and recovery of waste, including the separation of waste at the point of generation;
 - (b) extended producer responsibility;
 - (c) the regionalisation of waste management services; and
 - (d) the remediation of contaminated land and soil quality.
- (3) The Minister with the concurrence of the Minister of Finance may, by notice in the *Gazette*, set national standards in respect of tariffs for waste services provided by municipalities.
- (4) The norms and standards contemplated in subsection (1) may:
 - (a) differentiate between different geographical areas;
 - (b) differentiate between different classes or categories of waste;
 - (c) provide for the phasing in of its provisions; and
 - (d) be amended.
- (5) The norms or standards contemplated in subsection (1)(b) may:
 - (a) differentiate on an equitable basis between:
 - (i) different users of waste management services; and
 - (ii) different types of waste management services;
 - (b) ensure that funds obtained from waste services are used for waste management services; and

- (c) provide for tariffs to be imposed to provide for waste management infrastructure or facilities.
- (6)(a) Before publishing a notice in terms of subsection (1), (2) or (3), or any amendment to the notice, the Minister must follow a consultative process in accordance with sections 72 and 73.
- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

8. Provincial norms and standards

- (1) The relevant MEC, within his or her jurisdiction, must ensure the implementation of the national waste management strategy and national norms and standards contemplated in sections 6 and 7, respectively.
- (2) The relevant MEC, within his or her jurisdiction, may by notice in the *Gazette* set provincial norms and standards that are not in conflict with national norms and standards contemplated in section 7.
- (3) The norms and standards contemplated in subsection (2) must amongst other things facilitate and advance:
 - (a) planning and provision of waste management services;
 - (b) regionalisation of waste management services within the province;
 - (c) minimisation, re-use, recycling and recovery of waste, with the exception of standards that may have national implications or that may have a significant impact on the national economy; and
 - (d) treatment and disposal of waste, including the planning and operation of waste treatment and waste disposal facilities, licenced by provincial authorities.
- (4) The norms and standards contemplated in subsection (2) may:
 - (a) differentiate between different geographical areas in the province;
 - (b) differentiate between different classes or categories of waste;
 - (c) provide for the phasing in of its provisions; and
 - (d) be amended.
- (5)(a) Before publishing a notice in terms of subsection (2), or any amendment to the notice, the MEC must follow a consultative process in accordance with sections 72 and 73.
- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

9. Waste service standards

- (1) A municipality must exercise its executive authority to deliver waste management services, including waste removal, waste storage and waste disposal services, in a manner that does not conflict with section 7 or 8 of this Act.
- (2) Each municipality must exercise its executive authority and perform its duty in relation to waste services, including waste collection, waste storage and waste disposal services, by:
 - (a) adhering to all national and provincial norms and standards;
 - (b) integrating its waste management plans with its integrated development plans;
 - (c) ensuring access for all to such services;
 - (d) providing such services at an affordable price, in line with its tariff policy referred to in chapter 8 of the Municipal Systems Act;
 - (e) ensuring sustainable services through effective and efficient management;
 - (f) keeping separate financial statements, including a balance sheet of the services provided.
- (3) In exercising its executive authority contemplated in subsection (1), a municipality may furthermore, amongst other things, set:

- (a) local standards for the separation, compacting and storage of solid waste that is collected as part of the municipal service or that is disposed of at a municipal waste disposal facility;
 - (b) local standards for the management of solid waste that is disposed of by the municipality or at a waste disposal facility owned by the municipality, including requirements in respect of the avoidance and minimisation of the generation of waste and the re-use, recycling and recovery of solid waste;
 - (c) local standards in respect of the directing of solid waste that is collected as part of the municipal service or that is disposed of by the municipality or at a municipal waste disposal facility to specific waste treatment and disposal facilities; and
 - (d) local standards in respect of the control of litter.
- (4) Whenever the Minister or MEC acts in terms of this Act in relation to a municipality, the Minister or MEC must seek to support and strengthen the municipality's ability or right to perform its functions in relation to waste management activities.
- (5)(a) Whenever a municipality intends passing a by-law so as to give effect to subsection (1), it must follow a consultative process provided for in chapter 4 of the Municipal Systems Act.
- (b) Paragraph (a) need not be complied with if the by-law is amended in a non-substantive manner.

CHAPTER 3: Institutional and Planning Matters

10. Designation of waste management officers

- (1) The Minister must designate in writing an officer in the Department as the national waste management officer responsible for co-ordinating matters pertaining to waste management in the national government.
- (2) The MEC must designate in writing an officer in the provincial administration as the provincial waste management officer responsible for co-ordinating matters pertaining to waste management in that province.
- (3) Each municipality authorised to carry out waste management services by the Municipal Structures Act, 1998 (Act 117 of 1998), must designate in writing a waste management officer from its administration to be responsible for co-ordinating matters pertaining to waste management in that municipality.
- (4) A power delegated or a duty assigned to a waste management officer by virtue of subsection (1), (2) or (3) may be subdelegated or further assigned by that officer to another official in the service of the same administration, subject to such limitations or conditions as may be determined by the Minister, MEC or municipality, respectively.
- (5) Waste management officers must co-ordinate their activities with other waste management activities in the manner set out in the national waste management strategy established in terms of section 6 or determined by the Minister by notice in the *Gazette*.

11. Certain organs of state to prepare integrated waste management plans

- (1) The Department and the provincial departments responsible for waste management must prepare integrated waste management plans.
- (2) A provincial department may incorporate its integrated waste management plan in any relevant provincial plan.
- (3) The Department may incorporate its integrated waste management plan in any relevant national environmental plan.
- (4)(a) Each municipality must:

- (i) submit its integrated waste management plan to the MEC for approval; and
- (ii) include the approved integrated waste management plan in its integrated development plan contemplated in chapter 5 of the Municipal Systems Act.
- (b) The MEC may within 30 days of receiving an integrated waste management plan or an amendment to an integrated waste management plan:
 - (i) request a municipality to adjust the plan or the amendment in accordance with the MEC's proposal if the plan or amendment:
 - (aa) does not comply with a requirement of this Act; or
 - (bb) is in conflict with, or is not aligned with, or negates any relevant integrated waste management plan or the national waste management strategy; or
 - (ii) request a municipality to comply with a specific provision of this Act relating to the process of drafting or amending integrated waste management plans if the municipality has failed to comply with the process or provision; or
 - (iii) approve the plan or amendment.
- (5) The Department and the provincial departments contemplated in subsection (1) must submit their integrated waste management plans to the Minister for approval.
- (6) When exercising the power to monitor and support a municipality as contemplated in section 31 of the Municipal Systems Act, the MEC for local government, in consultation with the MEC, must ensure that the municipal integrated waste management plan is co-ordinated and aligned with the plans, strategies and programmes of the Department and provincial departments.
- (7)(a) Before finalising an integrated waste management plan, the Department and every provincial department contemplated in subsection (1) must follow a consultative process in accordance with sections 72 and 73.
- (b) A municipality must, before finalising its integrated waste management plan, follow the consultative process contemplated in section 29 of the Municipal Systems Act, either as a separate process or as part of the consultative process relating to its integrated development plan contemplated in that section.
- (8) Subsection (7) need not be complied with if the integrated waste management plan is amended in a non-substantive manner.

12. Contents of integrated waste management plans

- (1) An integrated waste management plan must at least:
 - (a) contain a situation analysis that includes:
 - (i) a description of the population and development profiles of the area to which the plan relates;
 - (ii) an assessment of the quantities and types of waste that are generated in the area;
 - (iii) a description of the services that are provided, or that are available, for the collection, minimisation, re-use, recycling and recovery, treatment and disposal of waste; and
 - (iv) the number of persons in the area who are not receiving waste collection services;
 - (b) within the domain of the Department, provincial department or municipality, set out how that Department, provincial department or municipality intends:

- (i) to give effect, in respect of waste management, to chapter 3 of the National Environmental Management Act;
 - (ii) to give effect to the objects of this Act;
 - (iii) to identify and address the negative impact of poor waste management practices on health and the environment;
 - (iv) to provide for the implementation of waste minimisation, re-use, recycling and recovery targets and initiatives;
 - (v) in the case of a municipal integrated waste management plan, to address the delivery of waste management services to residential premises;
 - (vi) to implement the Republic's obligations in respect of any relevant international agreements;
 - (vii) to give effect to best environmental practice in respect of waste management;
 - (c) within the domain of the Department or provincial department, set out how the Department or provincial department intends to identify the measures that are required and that are to be implemented to support municipalities to give effect to the objects of this Act;
 - (d) set out the priorities and objectives of the Department, provincial department or municipality in respect of waste management;
 - (e) establish targets for the collection, minimisation, re-use and recycling of waste;
 - (f) set out the approach of the Department, provincial department or municipality to the planning of any new facilities for disposal and decommissioning of existing waste disposal facilities;
 - (g) indicate the financial resources that are required to give effect to the plan;
 - (h) describe how the Department, provincial department or municipality intends to give effect to its integrated waste management plan; and
 - (i) comply with the requirements prescribed by the Minister.
- (2) In the preparation of an integrated waste management plan the Department and provincial departments must give proper effect to the requirements contained in chapter 5 of the Municipal Systems Act, insofar as such plan affects a municipality.

13. Reporting on implementation of integrated waste management plans

- (1) Annual performance reports on the implementation of the integrated waste management plans must, in the case of:
- (a) a provincial department, be submitted to the MEC and the Minister for approval; and
 - (b) in the case of the Department, be submitted to the Minister for approval.
- (2) The annual performance report that the Department or provincial department must submit in terms of subsection (1) must contain information on the implementation of its integrated waste management plan, including information on:
- (a) the extent to which the plan has been implemented during the period;
 - (b) the waste management initiatives that have been undertaken during the reporting period;
 - (c) the delivery of waste management services and measures taken to secure the efficient delivery of waste management services, if applicable;
 - (d) the level of compliance with the plan and any applicable waste management standards;
 - (e) the measures taken to secure compliance with waste management standards;

- (f) the waste management monitoring activities;
 - (g) the actual budget expended on implementing the plan;
 - (h) the measures that have been taken to make any necessary amendments to the plan;
 - (i) in the case of a province, the extent to which municipalities comply with the plan and, in the event of any non-compliance with the plan, the reasons for such non-compliance; and
 - (j) any other requirements as may be prescribed by the Minister.
- (3) The annual performance report prepared in terms of section 46 of the Municipal Systems Act must contain information on the implementation of the municipal integrated waste management plan, including the information set out in paragraphs (a) to (j) of subsection (2) insofar as it relates to the performance of the municipality.
- (4) Despite subsections (1) and (2), the Minister may specify in writing a different mechanism for the reporting on integrated waste management plans if necessary to improve the co-ordination of waste management.

CHAPTER 4: Waste Management Measures

Part 1: Priority wastes

14. Declaration of priority wastes

- (1) The Minister may, by notice in the *Gazette*, declare a waste to be a priority waste if the Minister on reasonable grounds believes that the waste poses a threat to health, well-being or the environment because of the quantity or composition of the waste and:
 - (a) that specific waste management measures are required to address the threat; or
 - (b) that the imposition of specific waste management measures in respect of the waste may improve reduction, re-use, recycling and recovery rates or reduce health and environmental impacts.
- (2) The MEC may in writing request the Minister to declare a waste to be a priority waste in the manner contemplated in subsection (1).
- (3) If the declaration under subsection (1) or (2) of a waste as a priority waste is likely to have a significant impact on the national economy, such declaration may only be made after consultation with the Minister of Trade and Industry and the Minister of Finance.
- (4) A notice under subsection (1) or (2) must specify the waste management measures that must be taken.
- (5) The measures contemplated in subsection (4) may include:
 - (a) a requirement for identified persons falling within a category of persons to prepare an industry waste management plan in terms of section 28 in respect of the declared priority waste;
 - (b) a prohibition on the generation of the priority waste;
 - (c) measures for the management of the priority waste;
 - (d) measures for the minimisation, storage, re-use, recycling and recovering, treatment and disposal of the priority waste;
 - (e) requirements for the registration and monitoring of, and reporting on, priority waste; and
 - (f) any other measures that the Minister believes are necessary to manage the threat that is presented by the waste or to achieve the objects of this Act.
- (6)(a) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Minister must consult with a person or category of persons that may be affected by the notice, and follow a consultative process in accordance with sections 72 and 73.

- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

15. Consequences of declaration of priority wastes

(1) No person may import, manufacture, process, sell or export a priority waste or a product that is likely to result in the generation of a priority waste unless that waste or product complies with:

- (a) the waste management measures contemplated in section 14(4);
- (b) an industrial waste management plan which has been submitted in accordance with the requirements of a notice referred to section 28 or 29; or
- (c) any other requirement in terms of this Act.

(2) No person may recycle, recover, treat or dispose of a priority waste unless it is in accordance with this Act and the waste management measures contemplated in section 14 (4).

Part 2: General duty

16. General duty in respect of waste management

(1) A holder of waste must, within the holder's power, take all reasonable measures to:

- (a) avoid the generation of waste and where such generation cannot be avoided, to minimise the toxicity and amounts of waste that are generated;
- (b) reduce, re-use, recycle and recover waste;
- (c) where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner;
- (d) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts;
- (e) prevent any employee or any person under his or her supervision from contravening this Act; and
- (f) prevent the waste from being used for an unauthorised purpose.

(2) Any person who sells a product that may be used by the public and that is likely to result in the generation of hazardous waste must take reasonable steps to inform the public of the impact of that waste on health and the environment.

(3) The measures contemplated in this section may include measures to:

- (a) investigate, assess and evaluate the impact of the waste in question on health or the environment;
- (b) cease, modify or control any act or process causing the pollution, environmental degradation or harm to health;
- (c) comply with any norm or standard or prescribed management practice;
- (d) eliminate any source of pollution or environmental degradation; and
- (e) remedy the effects of the pollution or environmental degradation.

(4) The Minister or MEC may issue regulations to provide guidance on how to discharge this duty or identify specific requirements that must be given effect to, after following a consultative process in accordance with sections 72 and 73.

(5) Subsection (4) need not be complied with if the regulation is amended in a non-substantive manner.

Part 3: Reduction, re-use, recycling and recovery of waste

17. Reduction, re-use, recycling and recovery of waste

- (1) Unless otherwise provided for in this Act, any person who undertakes an activity involving the reduction, re-use, recycling or recovery of waste must, before undertaking that activity, ensure that the reduction, re-use, recycling or recovery of the waste:
- (a) uses less natural resources than disposal of such waste; and
 - (b) to the extent that it is possible, is less harmful to the environment than the disposal of such waste.
- (2) The Minister may, after consultation with the Minister of Trade and Industry and by notice in the *Gazette*, require any person or category of persons to:
- (a) provide for the reduction, re-use, recycling and recovery of products or components of a product manufactured or imported by that person; or
 - (b) include a determined percentage of recycled material in a product that is produced, imported or manufactured by that person or category of persons.
- (3)(a) Before publishing a notice in terms of subsection (2), or any amendment to the notice, the Minister must follow a consultative process in accordance with sections 72 and 73.
- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

18. Extended producer responsibility

- (1) The Minister after consultation with the Minister of Trade and Industry may, in order to give effect to the objects of this Act, by notice in the *Gazette*:
- (a) identify a product or class of products in respect of which extended producer responsibility applies;
 - (b) specify the extended producer responsibility measures that must be taken in respect of that product or class of products; and
 - (c) identify the person or category of persons who must implement the extended producer responsibilities measures contemplated in paragraph (b).
- (2) The Minister may in a notice under subsection (1) specify:
- (a) the requirements in respect of the implementation and operation of an extended producer responsibility programme, including the requirements for the reduction, re-use, recycling, recovery, treatment and disposal of waste;
 - (b) the financial arrangements of a waste minimisation programme, with the concurrence of the Minister of Finance;
 - (c) the institutional arrangements for the administration of a waste minimisation programme;
 - (d) the percentage of products that must be recovered under a waste minimisation programme;
 - (e) the labelling requirements in respect of waste;
 - (f) that the producer of a product or class of products identified in that notice must carry out a life cycle assessment in relation to the product, in such manner or in accordance with such standards or procedures as may be prescribed; and
 - (g) the requirements that must be complied with in respect of the design, composition or production of a product or packaging, including a requirement that:
 - (i) clean production measures be implemented;
 - (ii) the composition, volume or weight of packaging be restricted; and

- (iii) packaging be designed so that it can be reduced, re-used, recycled or recovered.
- (3) Before publishing a notice under subsection (1) or any amendment to the notice, the Minister must:
 - (a) consult affected producers;
 - (b) follow a consultative process in accordance with sections 72 and 73, unless the notice is amended in a non-substantive manner;
 - (c) take into account the Republic's obligations in terms of any applicable international agreements; and
 - (d) consider relevant scientific information.

Part 4: Waste management activities

19. Listed waste management activities

- (1) The Minister may by notice in the *Gazette* publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment.
- (2) The Minister may amend the list by:
 - (a) adding other waste management activities to the list;
 - (b) removing waste management activities from the list; or
 - (c) making other changes to the particulars on the list.
- (3) A notice referred to in subsection (1):
 - (a) must indicate whether a waste management licence is required to conduct the activity or, if a waste management licence is not required, the requirements or standards that must be adhered to when conducting the activity;
 - (b) may exclude certain quantities or categories of waste or categories of persons from the application of the notice if the waste in question is:
 - (i) of such a small quantity or temporary nature that it is unlikely to cause pollution to the environment or harm to human health; or
 - (ii) adequately controlled by other legislation;
 - (c) may contain transitional and other special arrangements in respect of waste management activities that are carried out at the time of their listing; and
 - (d) must determine the date on which the notice takes effect.
- (4) Until such time as the Minister has published a notice contemplated in subsection (1), schedule 1 of this Act is applicable.
- (5) The MEC, with the concurrence of the Minister, may by notice in the *Gazette*:
 - (a) publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment in the province concerned; and
 - (b) when necessary, amend the list by:
 - (i) adding other waste management activities to the list;
 - (ii) removing waste management activities from the list; or
 - (iii) making other changes to the particulars on the list.
- (6) A list published under subsection (5) by the MEC must include waste management activities listed in schedule 1 or listed under section (1), if applicable.
- (7) A list published under subsection (5) by the MEC applies to the relevant province only.
- (8) A notice under subsection (1) or (5):
 - (a) may contain transitional and other special arrangements in respect of waste management activities that are carried out at the time of their listing; and
 - (b) must determine the date on which the notice takes effect.

(9) For the purposes of administrative efficiency, the lists published under subsection (1) or (5) or schedule 1 may divide the waste management activities into different categories.

(10)(a) Before publishing a notice under subsection (1) or (5), or any amendment to such notice, the Minister or MEC, as the case may be, must follow a consultative process in accordance with sections 72 and 73.

(b) Paragraph (a) need not be complied with if the list contemplated in subsection (1) or (5) is amended in a non-substantive manner.

20. Consequences of listing waste management activities

No person may commence, undertake or conduct a waste management activity, except in accordance with:

- (a) the requirements or standards determined in terms of section 19 (3) for that activity; or
- (b) a waste management licence issued in respect of that activity, if a licence is required.

Part 5: Storage, collection and transportation of waste

21 General requirements for storage of waste

Any person who stores waste must at least take steps, unless otherwise provided by this Act, to ensure that:

- (a) the containers in which any waste is stored, are intact and not corroded or in any other way rendered unfit for the safe storage of waste;
- (b) adequate measures are taken to prevent accidental spillage or leaking;
- (c) the waste cannot be blown away;
- (d) nuisances such as odour, visual impacts and breeding of vectors do not arise; and
- (e) pollution of the environment and harm to health are prevented.

22. Storage of general waste

(1) Any person who generates general waste that is collected by a municipality must place the waste in a container approved, designated or provided by the municipality for that purpose and in a location approved or authorised by the municipality.

(2) Waste that is reusable, recyclable or recoverable and that is intended to be reduced, re-used, recycled or recovered in accordance with this Act or any applicable by-laws need not be placed in a container contemplated in subsection (1).

23. Waste collection services

(1) Waste collection services are subject to:

- (a) the need for an equitable allocation of such services to all people in a municipal area;
- (b) the obligation of persons utilising the service to pay any applicable charges;
- (c) the right of a municipality to limit the provision of general waste collection services if there is a failure to comply with reasonable conditions set for the provision of such services, but where the municipality takes action to limit the provision of services, the limitation must not pose a risk to health or the environment; and
- (d) the right of a municipality to differentiate between categories of users and geographical areas when setting service standards and levels of service for the provision of municipal services.

(2) Every municipality must, subject to this Act, and as far as is reasonably possible, provide containers or receptacles for the collection of recyclable waste that are accessible to the public.

24. Collection of waste

No person may collect waste for removal from premises unless such person is:

- (a) a municipality or municipal service provider;
- (b) authorised by law to collect that waste, where authorisation is required; or
- (c) not prohibited from collecting that waste.

25. Duties of persons transporting waste

(1) The Minister, an MEC or a municipality may, by notice in the *Gazette*, require any person or category of persons who transports waste for gain to:

- (a) register with the relevant waste management officer in the Department, province or municipality, as the case may be; and
- (b) furnish such information as is specified in that notice or as the waste management officer may reasonably require.

(2) Any person engaged in the transportation of waste must take all reasonable steps to prevent any spillage of waste or littering from a vehicle used to transport waste.

(3) Where waste is transported for the purposes of disposal, a person transporting the waste must, before offloading the waste from the vehicle, ensure that the facility or place to which the waste is transported, is authorised to accept such waste.

(4) Where hazardous waste is transported for purposes other than disposal, a person transporting the waste must, before offloading the waste from the vehicle, ensure that the facility or place to which the waste is transported, is authorised to accept such waste and must obtain written confirmation that the waste has been accepted.

(5) In the absence of evidence to the contrary which raises a reasonable doubt, a person who is in control of a vehicle, or in a position to control the use of a vehicle, that is used to transport waste for the purpose of offloading that waste, is considered to knowingly cause that waste to be offloaded at the location where the waste is deposited.

Part 6: Treatment, processing and disposal of waste

26. Prohibition of unauthorised disposal

(1) No person may:

- (a) dispose of waste, or knowingly or negligently cause or permit waste to be disposed of, in or on any land, waterbody or at any facility unless the disposal of that waste is authorised by law; or
- (b) dispose of waste in a manner that is likely to cause pollution of the environment or harm to health and well-being.

(2) Subsection (1) need not be complied with if:

- (a) the waste was generated as a result of normal household activities and:
 - (i) the municipality does not render a waste collection service in that area; and
 - (ii) the most environmentally and economically feasible option for the management of the waste was adopted; or
- (b) the disposal of the waste was done to protect human life or as a result of an emergency beyond that person's control.

27. Littering

- (1) An owner of privately owned land to which the general public has access, must ensure:
 - (a) that sufficient containers or places are provided to contain litter that is discarded by the public; and
 - (b) that the litter is disposed of before it becomes a nuisance, a ground for a complaint or causes a negative impact on the environment.
- (2) No person may:
 - (a) throw, drop, deposit, spill or in any other way discard any litter into or onto any public place, land, vacant erf, stream, watercourse, street or road, or on any place to which the general public has access, except in a container or a place specifically provided for that purpose; or
 - (b) allow any person under that person's control to do any of the acts contemplated in paragraph (a).

Part 7: Industry waste management plans

28. Preparation of industry waste management plans by certain persons

- (1) Where any activity results in the generation of waste that affects more than one province or where such activity is conducted in more than one province, the Minister may by written notice require a person, or by notice in the *Gazette* require a category of persons or an industry, that generates waste to prepare and submit an industry waste management plan to the Minister for approval.
- (2) The MEC may, in respect of any activity within the province concerned that results in the generation of waste, by written notice require a person, or by notice in the *Gazette* require a category of persons or an industry, that generates waste to prepare and submit an industry waste management plan to the MEC for approval.
- (3) Despite subsection (2), the MEC may not require a person, category of persons or industry who has submitted an industry waste management in compliance with subsection (1), to prepare and submit an industry waste management plan in respect of the same matter.
- (4) When exercising a power under subsection (1) or (2), the Minister or MEC, as the case may be, must consider:
 - (a) the impact or potential impact of the waste on health and the environment that is generated by the applicable person, category of persons or industry;
 - (b) the environmentally sensitive nature of a natural resource or the amount of natural resources that is consumed in the manufacturing or production processes that result in the waste; and
 - (c) the manner in which an industry waste management plan may contribute to:
 - (i) the avoidance or minimisation of the generation of waste;
 - (ii) the reduction of negative impacts on health and the environment; and
 - (iii) the conserving of natural resources.
- (5) The Minister or MEC must, before exercising a power under subsection (1) or (2), as the case may be, consult the person, category of persons or industry to be affected.
- (6) The Minister or MEC, as the case may be, may give directions that an industry waste management plan must be prepared by an independent person for the cost of the person, category of persons or industry contemplated in subsection (1) or (2).
- (7)(a) A person, category of persons or industry contemplated in subsection (1) or (2) may elect to prepare an industry waste management plan for

approval in terms of this part without being required to do so by the Minister or MEC.

- (b) When a person, category of persons or industry submits an industry waste management plan in terms of paragraph (a):
 - (i) subsections (4), (5) and (6) apply with the changes required by the context; and
 - (ii) the Minister or MEC to whom the plan is submitted may exercise any of their respective powers set out in this part in respect of that plan.

29. Preparation of industry waste management plans by organs of state

(1) The Minister may, by notice in writing, require an industry waste management plan to be prepared by an organ of state, excluding a municipality, within a stipulated timeframe.

(2) An MEC may, by notice in writing, require an industry waste management plan to be prepared by the provincial department responsible for environmental affairs, within a stipulated timeframe.

(3) When exercising a power under subsection (1) or (2), the Minister or MEC must consider whether:

- (a) the diversity, complexity and competitive nature of the industry concerned would make it impractical for a category of persons other than an organ of state or provincial department responsible for environmental affairs to prepare the plan;
 - (b) the knowledge or experience of the persons who are likely to be affected by the plan in the areas of waste reduction, re-use, recycling and recovery is limited;
 - (c) the persons who are likely to be affected by the plan comprise of small, medium or micro enterprises; or
 - (d) the person required to prepare a plan in accordance with section 28, or to revise or amend the plan in terms of section 32(1), has failed to do so.
- (4) The Minister or MEC, as the case may be, may recover the costs of preparing an industry waste management plan from:

- (a) the person contemplated in section 28 who, after written notice, failed to prepare the plan; or
- (b) the person who is required to revise or amend the plan in terms of section 32 (1), but has failed to do so.

(5) Any organ of state or provincial department contemplated in subsection (1) and (2), respectively, may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan.

(6) An organ of state or provincial department contemplated in subsection (1) and (2), respectively, must follow a consultative process in accordance with sections 72 and 73, unless that plan is being prepared as a result of a person who was required to prepare that plan failing to do so, in which case section 31(2) applies.

30. Contents of industry waste management plans

(1) The Minister, in a notice contemplated in section 28 (1) or 29 (1), or the MEC, in a notice contemplated in section 28 (2) or 29 (2), must specify the information that must be included in the industry waste management plan.

(2) The information that the Minister or MEC specifies in terms of subsection (1) may include:

- (a) the amount of waste that is generated;
- (b) measures to prevent pollution or ecological degradation;
- (c) targets for waste minimisation through waste reduction, re-use, recycling and recovery;

- (d) measures or programmes to minimise the generation of waste and the final disposal of waste;
- (e) measures or actions to be taken to manage waste;
- (f) the phasing out of the use of specified substances;
- (g) opportunities for the reduction of waste generation through changes to packaging, product design or production processes;
- (h) mechanisms for informing the public of the impact of the waste-generating products or packaging on the environment;
- (i) the extent of any financial contribution to be made to support consumer-based waste reduction programmes;
- (j) the period that is required for implementation of the plan;
- (k) methods for monitoring and reporting; and
- (l) any other matter that may be necessary to give effect to the objects of this Act.

31. Notification of industry waste management plans

- (1) Any person required to produce an industry waste management plan in terms of section 28 must take appropriate steps to bring the contents of a proposed industry waste management plan to the attention of relevant organs of state, interested persons and the public and must follow any directions given by the Minister or MEC, as the case may be, regarding the consultation process that must be followed.
- (2) An organ of state required to prepare an industry waste management plan in terms of section 29 as a result of a person who was required to prepare that plan failing to do so must bring the contents of a proposed industry waste management plan to the attention of relevant organs of state, interested persons and the public.
- (3) Any comments submitted in respect of an industry waste management plan must be considered by the person responsible for preparing the plan, and a copy of all comments must be submitted to the Minister or MEC, as the case may be, together with the plan.

32. Consideration of industry waste management plans

- (1) The Minister, acting in terms of section 28 (1) or 29 (1), or the MEC acting in terms of section 28 (2) or 29 (2), may on receipt of an industry waste management plan:
 - (a) approve the plan in writing, with any amendments or conditions, and give directions for the implementation of the plan;
 - (b) require additional information to be furnished and a revised plan to be submitted within timeframes specified by the Minister or MEC for approval;
 - (c) require amendments to be made to the plan within timeframes specified by the Minister or MEC; or
 - (d) reject the plan with reasons if it does not comply with the requirements of a notice in terms of section 28(1) or (2) or 29(1) or (2), as the case may be, or if a consultation process in accordance with section 31 was not followed.
- (2) Any failure to comply with a requirement referred to in subsection (1) (b) or (c) within the timeframes specified by the Minister or the MEC is regarded as constituting a failure to submit an industry waste management plan
- (3) An industry waste management plan that has been rejected in terms of subsection (1)(d) may be amended and resubmitted to the Minister or MEC.
- (4) On receipt of any information or amendments requested in terms of subsection (1)(b) or (c), or any amended industry waste management plan

resubmitted in terms of subsection (2) for the first time, the Minister or MEC must reconsider the plan.

(5) An approval in terms of subsection (1)(a) must at least specify the period for which the approval is issued, which period may be extended by the Minister or MEC.

(6) Notice must be given in the relevant *Gazette* of any industry waste management plan that has been prepared in terms of section 28 and that has been approved by the Minister or MEC, as the case may be.

(7) An industry waste management plan that has been prepared by an organ of state or provincial department responsible for environmental affairs in terms of section 29 and that has been approved by the Minister or MEC, as the case may be, must be published in the relevant *Gazette*, together with an indication of when and how the plan must be implemented, if applicable.

33. Specification of measures to be taken

(1) If the Minister or MEC rejects an industry waste management plan in terms of section 32 more than once, or if any person who is required in terms of section 28(1) or (2) to prepare an industry waste management plan fails to do so, or if a person fails to revise or amend a plan as required by the Minister or the MEC in terms of section 32(1), the Minister or MEC, as the case may be, may, by notice in writing and without any criminal proceedings being affected, specify the waste management measures that must be taken by that person to ensure that that person is not unduly advantaged by the failure to submit a plan.

(2) When specifying the waste management measures to be taken in terms of subsection (1), the Minister or MEC, as the case may be, must consider, and to the extent possible, align the measures to be taken with the measures that are set out in any other approved industry waste management plan and that is related to the activities of the person whose plan has been rejected more than once or who failed to submit a plan.

34. Review of industry waste management plans

(1) An industry waste management plan that has been required by the Minister in terms of section 28 (1) or 29 (1), or by the MEC in terms of section 28 (2) or 29 (2), must be reviewed at intervals specified in the approval or at intervals specified by the Minister or MEC by notice in writing or in the relevant *Gazette*.

(2) When specifying a review period for an industry waste management plan prepared by a person, the Minister or MEC, as the case may be, must take cognisance of the review periods that have been specified in any related waste management licence.

Part 8: Contaminated land

35. Application of this part

This part applies to the contamination of land even if the contamination:

- (a) occurred before the commencement of this Act;
- (b) originated on land other than land referred to in section 38;
- (c) arises or is likely to arise at a different time from the actual activity that caused the contamination; or
- (d) arises through an act or activity of a person that results in a change to pre-existing contamination.

36. Identification and notification of investigation areas

(1) The Minister, or the MEC in respect of an area which affects the relevant province, may, after consultation with the Minister of Water Affairs and

Forestry and any other organ of state concerned, by notice in the *Gazette*, identify as investigation areas:

- (a) land on which high-risk activities have taken place or are taking place that are likely to result in land contamination;
 - (b) land that the Minister or MEC, as the case may be, on reasonable grounds believes to be contaminated.
- (2) A notice under subsection (1) by the Minister applies nationally, and a notice under that subsection by the MEC applies to the relevant province only.
- (3) Before publishing a notice under subsection (1), or any amendment to the notice, the Minister or MEC, as the case may be, must follow a consultative process in accordance with sections 72 and 73.
- (4) Subsection (3) need not be complied with if the notice is amended in a non-substantive manner.
- (5) An owner of land that is significantly 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.
- (6) Despite subsection (1), the Minister or MEC may issue a written notice to a particular person identifying specific land as an investigation area if the Minister or MEC on reasonable grounds believes that the land is or is likely to be contaminated.

37. Consequences of identification and notification of investigation areas.

(1) The Minister or MEC, as the case may be, may in respect of an investigation area contemplated in section 36, after consultation with the Minister of Water Affairs and Forestry:

- (a) cause a site assessment to be conducted in respect of the relevant investigation area; or
 - (b) in a notice published under section 36 (1) or issued under section 36 (6):
 - (i) direct the owner of the investigation area; or
 - (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 a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report to the Minister or MEC within a period specified in the notice.
- (2)(a) A site assessment report 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.
- (b) Where the findings of the site assessment report are that the investigation area is contaminated, the site assessment report must at least contain information on whether:
 - (i) the contamination has already impacted on health or the environment;
 - (ii) the substances present in or on the land are toxic, persistent or bio-accumulative or are present in large quantities or high concentrations or occur in combinations;
 - (iii) there are exposure pathways available to the substances;
 - (iv) the use or proposed use of the land and adjoining land increases or is likely to increase the risk to health or the environment;
 - (v) the substances have migrated or are likely to migrate from the land;
 - (vi) the acceptable exposure for human and environmental receptors in that environment have been exceeded;
 - (vii) any applicable standards have been exceeded; and
 - (viii) the area should be remediated or any other measures should be taken to manage or neutralise the risk.

(3) For the purposes of this section, land may be regarded as being contaminated at any particular time if the risk of harm to health or the environment could eventuate only in certain circumstances and those circumstances do not exist at the time that the site assessment is undertaken, but those circumstances are reasonably foreseeable.

38. Consideration of site assessment reports

(1) On receipt of a site assessment report contemplated in section 37, the Minister or MEC, as the case may be, may, after consultation with the Minister of Water Affairs and Forestry and any other organ of state concerned, decide that:

- (a) the investigation area is contaminated, presents a risk to health or the environment, and must be remediated urgently;
- (b) the investigation area is contaminated, presents a risk to health or the environment, and must be remediated within a specified period;
- (c) the investigation area is contaminated and does not present an immediate risk, but that measures are required to address the monitoring and management of that risk; or
- (d) the investigation area is not contaminated.

(2) If the Minister or MEC, as the case may be, decides that an investigation area is contaminated and requires remediation, the Minister or MEC must declare the land to be a remediation site and make such remediation order as is necessary to neutralise that risk.

(3) If the Minister or MEC, as the case may be, decides that the investigation area does not present an immediate risk, but that measures are required to address the monitoring and management of that risk, the Minister or MEC may make an order specifying the measures that must be taken.

(4) Unless otherwise directed, a remediation order under subsection (2), an order under subsection (3) or a directive under section 37(1) must be complied with at the cost of the person against whom the order or directive is issued.

(5) The Minister or MEC, as the case may be, may amend a remediation order if:

- (a) ownership of the land is transferred and the new owner in writing assumes responsibility for the remediation; or
- (b) new information or evidence warrants an amending the order.

39. Orders to remediate contaminated land

(1) A remediation order issued under section 38(2) or an order issued under section 38 (3) must describe, to the extent that it is applicable:

- (a) the person who is responsible for undertaking the remediation;
- (b) the land to which the order applies;
- (c) the nature of the contamination;
- (d) the measures that must be taken to remediate the land or the standards that must be complied with when remediating the land;
- (e) the period within which the order must be complied with;
- (f) whether any limitations in respect of the use of the land are imposed;
- (g) the measures that must be taken to monitor or manage the risk; and
- (h) any other prescribed matter.

(2) Before issuing a remediation order or an amended remediation order, the Minister or MEC, as the case may be, must consult with the Minister of Water Affairs and Forestry and any other organ of state concerned.

(3) The Minister or MEC, as the case may be, may instruct any official within his or her Department to ensure that the remediation order is complied with.

40. Transfer of remediation sites

- (1) No person may transfer contaminated land without informing the person to whom that land is to be transferred that the land is contaminated and, in the case of a remediation site, without notifying the Minister or MEC and complying with any conditions that are specified by the Minister or MEC, as the case may be.
- (2)(a) For the purposes of ensuring compliance with this section, the Minister must notify the relevant Registrar of Deeds appointed in terms of the Deeds Registries Act, 1937 (Act 47 of 1937), of any land that has been declared as a remediation site.
- (b) The notification contemplated in paragraph (a) must identify the land sufficiently to enable the Registrar of Deeds to enter the necessary information in or on registers and documents kept by his or her Office.

41. Contaminated land register

- (1) The Minister must keep a national contaminated land register of investigation areas that includes information on:
 - (a) the owners and any users of investigation areas;
 - (b) the location of investigation areas;
 - (c) the nature and origin of the contamination;
 - (d) whether an investigation area:
 - (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;
 - (iii) is contaminated and does not present an immediate risk, but measures are required to address the monitoring and management of that risk; or
 - (iv) is not contaminated;
 - (e) the status of any remediation activities on investigation areas; and
 - (f) restrictions of use that have been imposed on investigation areas.
- (2) The Minister may change the status of an investigation 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.
- (3) An MEC who has identified an investigation area must furnish the relevant information to the Minister for recording in the national contaminated land register.

Part 9: Other measures

42. Recognition programmes

- (1) A waste management officer may establish a programme for the public recognition of significant achievements in the area of waste avoidance, minimisation or other forms of waste management.
- (2) The programme contemplated in subsection (1) may contain mechanisms to make the public aware of sound waste management practices.

CHAPTER 5: Licensing of Waste Management Activities

43. Licensing authority

- (1) The Minister is the licensing authority where:
 - (a) unless otherwise indicated by the Minister by notice in the *Gazette*, the waste management activity involves the establishment, operation, cessation or decommissioning of a facility at which hazardous waste has been or is to be stored, treated or disposed of;

- (b) the waste management activity involves obligations in terms of an international obligation, including the importation or exportation of hazardous waste;
 - (c) the waste management activity is to be undertaken by:
 - (i) a national department;
 - (ii) a provincial department responsible for environmental affairs; or
 - (iii) a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government;
 - (d) the waste management activity will affect more than one province or traverse international boundaries; or
 - (e) two or more waste management activities are to be undertaken at the same facility and the Minister is the licensing authority for any one of those activities.
- (2) Subject to subsection (1), the MEC of the province in which the waste management activity is being or is to be carried out is the licensing authority.
- (3) Despite subsections (1) and (2), the Minister 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
 - (b) in respect of which the MEC has been identified as the licensing authority, may be dealt with by the Minister.

44. Co-operative governance in waste management licence applications

- (1) For the purposes of issuing a licence for a waste management activity, the licensing authority must as far as practicable in the circumstances co-ordinate or consolidate the application and decision-making processes contemplated in this chapter with the decision-making process in chapter 5 of the National Environmental Management Act and other legislation administered by other organs of state, without whose authorisation or approval or consent the activity may not commence, or be undertaken or conducted.
- (2) If the licensing authority decides to issue a licence it may, for the purposes of achieving coordination:
- (a) issue an integrated licence jointly with the other organs of state contemplated in subsection (1), which licence grants approval in terms of this Act and any other legislation specified in the licence; or
 - (b) issue the licence as part of a consolidated authorisation consisting of different authorisations issued under different legislation by the persons competent to do so, that have been consolidated into a single document in order to ensure that the conditions that are imposed by each competent authority are comprehensive and mutually consistent.
- (3) If an integrated licence contemplated in subsection (2)(a) is to be regarded as a valid authorisation or approval for the purposes of other legislation specified in the integrated licence, then the decision-making process for issuing that integrated licence must comply with both the requirements of this Act and of that other legislation.
- (4) An integrated licence must:
- (a) specify the statutory provisions in terms of which it has been issued;
 - (b) identify the authority or authorities that have issued it;
 - (c) indicate to whom applications for any amendment or cancellation of the integrated licence must be made; and
 - (d) indicate the appeal procedure to be followed.
- (5) An integrated licence may be enforced in terms of this Act and any other Act in terms of which it has been issued: Provided that a condition of an integrated licence may only be enforced in terms of the legislation that authorises the imposition of such a condition.

(6) Where an integrated licence procedure or a consolidated authorisation procedure is established in terms of this section, the provisions of this chapter must be read with the necessary changes as the context may require to enable a single application procedure or combined application procedure to be followed.

(7) An integrated licence must be regarded as an integrated environmental authorisation contemplated in section 24L of the National Environmental Management Act.

45. Application for waste management licences

(1) A person who requires a waste management licence must apply for the licence by lodging an application with the licensing authority.

(2) An application for a waste management licence must be accompanied by:

- (a) the prescribed processing fee; and
- (b) such documentation and information as may be reasonably required by the licensing authority.

(3) A person who requires a waste management licence for a waste management activity which involves the treatment of waste by incineration must submit, together with any documentation or information contemplated in subsection (2), information on:

- (a) the types of waste that will be incinerated;
- (b) the existence of any incinerators in the jurisdiction of the licensing authority which are authorised to incinerate waste which is substantially similar to that waste; and
- (c) alternative environmentally sound methods, if any, that could be used to treat that waste.

46. Appointment of persons to manage waste management licence applications

(1) The licensing authority may by written notice to an applicant require that applicant, or by notice in the *Gazette* require applicants, at own cost, to appoint an independent and suitably qualified person to manage an application.

(2) If an applicant is required to appoint an independent person, the applicant must:

- (a) take all reasonable steps to verify that the person to be appointed is independent and has expertise in the managing of waste management licence applications; and
- (b) provide the appointed person with access to all information at the disposal of the applicant reasonably required for the application, whether or not that information is favourable to the applicant.

47. Procedure for waste management licence applications

(1) The licensing authority:

- (a) may, by written notice, require the applicant, at the applicant's cost, to obtain and provide it within a specified period with any other information in addition to the information contained in or submitted in connection with the application;
- (b) may conduct its own investigation on the likely effect of the waste management activity on health and the environment;
- (c) must invite written comments from any organ of state that has an interest in the matter; and
- (d) must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.

- (2) An applicant must take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.
- (3) The steps contemplated in subsection (2) must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity applied for is to be carried out.
- (4) The notice contemplated in subsection (3) must:
 - (a) describe the nature and purpose of the waste management licence applied for;
 - (b) give particulars of the waste management activity, including the place where it is or is to be carried out;
 - (c) state where further information on the waste management activity can be obtained;
 - (d) stating a reasonable period within which written representations on, or objections to, the application may be submitted, and the address or place where representations or objections must be submitted; and
 - (e) contain such other particulars as the licensing authority may require.

48. Factors to be taken into account by licensing authority

When considering an application for a waste management licence, the licensing authority must take into account all relevant matters, including:

- (a) the need for, and desirability of, the waste management activity and alternatives considered, including similar waste management activities, if any, that have already been licensed;
- (b) the pollution caused or likely to be caused by the activity that is the subject of the application, whether alone or together with existing operations or pollution and the effect or likely effect of that pollution on the environment, including health, social conditions, economic conditions and cultural heritage;
- (c) the best practicable environmental options available and alternatives that could be taken:
 - (i) to prevent, control, abate or mitigate pollution; and
 - (ii) to protect the environment, including health, social conditions, economic conditions and cultural heritage from harm as a result of the undertaking of the waste management activity;
- (d) any increased health and environmental risks that may arise as a result of the location where the waste management activity will be undertaken;
- (e) any reasons for a decision made in terms of regulations issued under section 24 of the National Environmental Management Act;
- (f) whether the applicant is a fit and proper person as contemplated in section 59;
- (g) the applicant's submissions;
- (h) any submissions received from organs of state, interested persons and the public; and
- (i) any guidelines the licensing authority may wish to issue relevant to the application.

49. Decision of licensing authorities on waste management licence applications

- (1) The licensing authority may in respect of an application for a waste management licence:
 - (a) grant the application;
 - (b) refuse the application; or
 - (c) reject the application where it does not comply with the requirements of this Act.

(2) A decision to grant a application for a waste management licence in respect of a waste disposal facility is subject to the concurrence of the Minister of Water Affairs and Forestry.

(3) Any decision by a licensing authority to grant an application for a waste management licence must be consistent with:

- (a) this Act, including any integrated waste management plans prepared in terms of this Act;
- (b) any applicable national environmental management policies and, where the MEC is the licensing authority, any applicable provincial environmental management policies;
- (c) the national environmental management principles set out in section 2 of the National Environmental Management Act;
- (d) any applicable industry waste management plan;
- (e) the objectives of any applicable waste management plan; and
- (f) any standards or requirements that have been set in terms of this Act or the waste management licence.

(4) After a licensing authority has reached a decision in respect of an application for a waste management licence, it must within 20 days:

- (a) notify the applicant of the decision and give written reasons for the decision;
- (b) if the decision is to grant the application, issue a waste management licence; and
- (c) in a manner determined by the licensing authority, instruct the applicant to notify any persons who have objected to the application of the decision and the reasons for the decision.

(5) An application which is substantially similar to a previous application that has been refused in terms of subsection (1)(b) may only be resubmitted if:

- (a) the new application contains new and material information not previously submitted to the licensing authority; or
- (b) a period of three years has elapsed since the application was lodged.

(6) An application which is rejected in terms of subsection (1)(c) may be amended and resubmitted to the licensing authority for reconsideration.

50. Issuing of waste management licences

(1) A waste management licence is subject to such conditions and requirements:

- (a) as specified in terms of section 51;
- (b) as the licensing authority may determine and specify in the licence; and
- (c) as the Minister or MEC has prescribed for the waste management activity in question.

(2) The licensing authority may issue a single waste management licence where the applicant has applied to undertake more than one waste management activity at the same location.

(3) The issuing of a waste management licence for a waste disposal facility is subject to the inclusion in the licence of any conditions contained in a Record of Decision issued by the Minister of Water Affairs and Forestry regarding any measures that the Minister of Water Affairs and Forestry considers necessary to protect a water resource as defined in the National Water Act, 1998 (Act 36 of 1998).

51. Contents of waste management licences

(1) A waste management licence must specify:

- (a) the waste management activity in respect of which it is issued;
- (b) the premises or area of operation where the waste management activity may take place;

- (c) the person to whom it is issued;
 - (d) the period from which the waste management activity may commence;
 - (e) the period for which the licence is issued and period within which any renewal of the licence must be applied for;
 - (f) the name of the licensing authority;
 - (g) the periods at which the licence may be reviewed, if applicable;
 - (h) the amount and type of waste that may be generated, handled, processed, stored, reduced, re-used, recycled, recovered or disposed of;
 - (i) if applicable, the conditions in terms of which salvaging of waste may be undertaken;
 - (j) any other operating requirements relating to the management of the waste; and
 - (k) monitoring, auditing and reporting requirements.
- (2) A waste management licence may:
- (a) specify conditions in respect of the reduction, re-use, recycling and recovery of waste;
 - (b) specify conditions for the decommissioning of a waste disposal facility or cessation of the waste management activity;
 - (c) require the holder of a waste management licence to establish committees for the participation of interested and affected parties;
 - (d) provide that the licence is subject to the holder of a waste management licence providing an environmental management plan, contemplated in section 11 of the National Environmental Management Act, to the satisfaction of the licensing authority;
 - (e) require the holder of a waste management licence to undertake remediation work;
 - (f) specify the financial arrangements that the holder of a waste management licence must make for the undertaking of remediation work during the operation of the waste management activity or on decommissioning of the waste management activity;
 - (g) require the holder of the waste management licence to comply with all lawful requirements of an environmental management inspector carrying out his or her duties in terms of the National Environmental Management Act, including a requirement that the licence holder must, on request, submit to the inspector a certified statement indicating:
 - (i) the extent to which the conditions and requirements of the licence have or have not been complied with;
 - (ii) particulars of any failure to comply with any of those conditions or requirements;
 - (iii) the reasons for any failure to comply with any of those conditions or requirements; and
 - (iv) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure; and
 - (h) include any other matters which are necessary for the protection of the environment.

52. Transfer of waste management licences

- (1) If ownership of a waste management activity for which a waste management licence was issued is transferred, the holder may, with the permission of a licensing authority, transfer the licence to the new owner of the waste management activity.
- (2) A person applying for permission to transfer a waste management licence must lodge the application with the licensing authority.
- (3) The application must be in the form required by the licensing authority.

- (4) An application for the transfer of a waste management licence must be accompanied by:
 - (a) the prescribed processing fee; and
 - (b) such documentation and information as may be reasonably required by the licensing authority.
- (5) If the environment or the rights or interests of other parties are likely to be adversely affected, the Minister or MEC 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.
- (6) When considering an application for the transfer of a waste management licence, the licensing authority may request any additional information, and must take into account all relevant matters, including whether the person to whom the licence is to be transferred is a fit and proper person as contemplated in section 59.
- (7) If the licensing authority's decision is to grant permission for the transfer of the waste management licence, the licensing authority:
 - (a) must issue an amended licence which reflects the details of the person to whom the licence is being transferred; and
 - (b) may make such amendments to the licence as are necessary to ensure that the purpose of any financial arrangements that are required in that licence are given effect to.
- (8) The transfer of a waste management licence does not relieve the holder of the licence from whom the licence was transferred of any liability that the licence holder may have incurred whilst he or she was the holder of that licence.

53. Review of waste management licences

- (1) A licensing authority must review a waste management licence at intervals specified in the licence, or when circumstances demand that a review is necessary.
- (2) The licensing authority must inform the holder of the waste management licence, in writing, of any proposed review and the reason for such review if the review is undertaken at another interval than is provided for in a waste management licence.
- (3) For purposes of the review, a waste management officer may require the holder of the waste management licence to compile and submit a waste impact report contemplated in section 66.

54. Variation of waste management licences

- (1) A licensing authority may, by written notice to the holder of a waste management licence, vary the licence:
 - (a) if it is necessary or desirable to prevent pollution;
 - (b) if it is necessary or desirable for the purposes of achieving waste management standards or minimum requirements;
 - (c) if it is necessary or desirable to accommodate demands brought about by impacts on socioeconomic circumstances and it is in the public interest to meet those demands;
 - (d) to make a non-substantive amendment;
 - (e) at the written request of the holder of the waste management licence; or
 - (f) if it is reviewed in terms of section 53.
- (2) The variation of a waste management licence includes:
 - (a) the attaching of an additional condition or requirement to the waste management licence;

- (b) the substitution of a condition or requirement;
 - (c) the removal of a condition or requirement; or
 - (d) the amendment of a condition or requirement.
- (3) If a licensing authority receives a request from the holder of a waste management licence in terms of subsection (1)(e), the licensing authority must require the licence holder to take appropriate steps to bring the request to the attention of relevant organs of state, interested persons and the public if the variation of the licence is to authorise an increase in the environmental impact regulated by the waste management licence.
- (4) Steps in terms of subsection (3) must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity authorised by the waste management licence is or is to be carried out.
- (5) The notice contemplated in subsection (4) must:
- (a) describe the nature and purpose of the request;
 - (b) give particulars of the waste management activity, including the place where it is, or is to be, carried out;
 - (c) state a reasonable period within which written representations on, or objections to, the request may be submitted, and the address or place where representations or objections must be submitted; and
 - (d) contain such other particulars as the licensing authority may require.
- (6) Sections 47, 48 and 49 apply with the changes required by the context to the variation of a waste management licence.

55. Renewal of waste management licences

- (1) A waste management licence may, on application by the holder of the licence, be renewed by a licensing authority.
- (2) The holder of a waste management licence must, before the expiry date of the licence and within the period specified in the licence, apply for the renewal of the licence to the licensing authority of the area in which the activity is carried out by lodging an application with the licensing authority in the form required by the licensing authority.
- (3) An application for the renewal of a waste management licence must be accompanied by:
- (a) the prescribed processing fee; and
 - (b) such documentation and information as may reasonably be required by the licensing authority.
- (4) If the environment or the rights or interests of other parties are likely to be adversely affected, the licensing authority must, before deciding the application, request the applicant to conduct a consultation process that may be appropriate in the circumstances to bring the application for the renewal of a waste management licence to the attention of relevant organs of state, interested persons and the public.
- (5) Sections 47, 48, 49 and 51 apply with the changes required by the context to an application for the renewal of a waste management licence.
- (6) If the holder of a waste management licence does not apply for renewal of that licence, the licence holder remains liable for taking all measures that are necessary to ensure that the cessation of the activity that was authorised by the licence is done in a manner that does not result in harm to health or the environment.

56. Revocation and suspension of waste management licences

- (1) The licensing authority may, by written notice to the holder of a waste management licence, revoke or suspend that licence if the licensing authority is of the opinion 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 effect on health or the environment.

(2) The licensing authority may not revoke or suspend a waste management licence before it has:

- (a) consulted relevant organs of state;
 - (b) afforded the holder of the waste management licence an opportunity to make a submission in respect of the intended revocation or suspension; and
 - (c) in the event that the holder has made a submission contemplated in paragraph (b), the licensing authority has considered that submission.
- (3) Despite subsection (2), if urgent action is necessary for the protection of the environment, the licensing authority may immediately issue a notice of revocation or suspension and, as soon thereafter as is possible, consult with relevant organs of state and give the holder of the waste management licence an opportunity to make a submission.

57. Surrender of waste management licences

(1) A holder of a waste management licence may surrender that licence with the permission of the licensing authority.

(2) In considering a request to surrender a waste management licence, the licensing authority may:

- (a) request such information as it requires to consider the request; and
- (b) require the licence holder to take such steps as it considers necessary for the protection of the environment before accepting that surrender of the licence.

(3) The surrender of a waste management licence does not relieve the holder of the licence of any liability that the licence holder may have incurred whilst he or she was the holder of that licence.

58. Waste management control officers

(1) A waste management officer may require the holder of a waste management licence to designate a waste management control officer, having regard to the size and nature of the waste management activity for which the licence was granted.

(2) A waste management control officer must:

- (a) work towards the development and introduction of clean production technologies and practices to achieve waste minimisation;
- (b) identify and submit potential measures in respect of waste minimisation, including the reduction, recovery, re-use and recycling of waste to the waste management licence holder and the licensing authority;
- (c) take all reasonable steps to ensure compliance by the holder of the waste management licence with the licence conditions and requirements and the provisions of this Act; and
- (d) promptly report any non-compliance with any licence conditions or requirements or provisions of this Act to the licensing authority through the most effective means reasonably available.

(3) This section does not affect the liability of the holder of a waste management licence or the liability of that licence holder to comply with the conditions and requirements of the licence.

59. Criteria for fit and proper persons

In order to determine whether a person is a fit and proper person for the purposes of an application in terms of this chapter, a licensing authority must take into account all relevant facts, including whether:

- (a) that person has contravened or failed to comply with this Act, the Environment Conservation Act, the National Environmental Management Act or any other legislation applicable to waste management;
- (b) that person has held a waste management licence or other authorisation that has been suspended or revoked or that person has not complied with a material condition of such waste management licence or authorisation;
- (c) that person is or has been a director or senior manager of a company, firm or entity to whom paragraph (a) or (b) applies;
- (d) that person has the ability to comply with this Act and any conditions subject to which the application may be granted; and
- (e) the management of the waste management activity that is the subject of the application will be in the hands of a technically competent person.

CHAPTER 6: Waste Information

60. Establishment of national waste information systems

- (1) The Minister must establish a national waste information system for the recording, collection, management and analysis of data and information that must include:
 - (a) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, re-used, recycled, recovered and disposed of; and
 - (b) a register of:
 - (i) waste management activities that have been licensed;
 - (ii) the holders of waste management licences authorised to commence the waste management activities recorded in terms of subparagraph (i); and
 - (iii) the locations where the licensed waste management activities are or may be conducted.
- (2) The waste information system may include information on:
 - (a) the levels and extent of waste management services provided by municipalities;
 - (b) information on compliance with this Act; and
 - (c) any other information that is necessary for the purposes of effective administration of this Act.
- (3) The national waste information system may be implemented incrementally.

61. Objectives of national waste information system

The objective of the national waste information system is to:

- (a) store, verify, analyse, evaluate and provide data and information for the protection of the environment and management of waste;
- (b) provide information for the development and implementation of any integrated waste management plan required in terms of this Act; and
- (c) provide information to organs of state and the public—
 - (i) for education, awareness raising, research and development purposes;
 - (ii) for planning, including the prioritisation of regulatory, waste minimisation and other initiatives;
 - (iii) for obligations to report in terms of any legislation;
 - (iv) for public safety management;
 - (v) on the status of the generation, collection, reduction, re-use, recycling and recovery, transportation, treatment and disposal of waste; and
 - (vi) the impact of waste on health and the environment.

62. Establishment of provincial waste information system

- (1) The MEC may establish a provincial waste information system.
- (2) A provincial waste information system must at least include the information required by the national information system.
- (3) The Minister may, by notice in the *Gazette*, and for the purposes of ensuring efficient administration, exempt a category of persons who must furnish information to the provincial waste information system established in terms of subsection (1) from furnishing that information to the national waste information system established in terms of section 60.
- (4) If the Minister exercises a power under subsection (3), the MEC is responsible for furnishing that information to the Minister, unless otherwise directed by the Minister by notice in the *Gazette*.

63. Provision of information

- (1) The Minister may, by notice in the *Gazette* or in writing, require any person to provide, within a reasonable time or on a regular basis, any data, information, documents, samples or materials to the Minister that are reasonably required for the purposes of the national waste information system established in terms of section 60 or the management of waste.
- (2) The MEC may, by notice in the *Gazette* or in writing, require any person or organ of state to provide, within a reasonable time or on a regular basis, any data, information, documents, samples or materials to the MEC that are reasonably required for the purposes of a provincial waste information system established in terms of section 62 or the management of waste in the province.
- (3) A notice under subsection (1) or (2) may also indicate the manner in which the information must be furnished and, if required, how the information must be verified.
- (4) Where the Minister or MEC requires a municipality to furnish data, information, documents, samples or materials in terms of subsection (1) or (2), the municipality concerned may, by notice in the *Gazette* or in writing, require any person or organ of state to provide, within a reasonable time or on a regular basis, such data, information, documents, samples or materials, and the verification of such information, to the municipality that are reasonably required to discharge its obligations in terms of subsection (1) or (2).

64. Access to information

Information contained in the national waste information system or a provincial waste information system established in terms of section 60 or 62, as the case may be, must be made available by the Minister or MEC, subject to the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

CHAPTER 7: Compliance and Enforcement

65. Compliance powers of Minister of Water Affairs and Forestry

- (1) Despite the powers conferred on the Minister or MEC by or under this Act, the Minister of Water Affairs and Forestry may exercise any powers conferred on him or her by section 19, 53 and 155 of the National Water Act, 1998 (Act 36 of 1998), in respect of a person who contravenes or fails to comply with any condition of a waste management licence, a remediation order or measures specified in terms of section 38 (3) that may lead to an impact on a water resource.
- (2) The Minister of Water Affairs and Forestry must exercise the powers contemplated in subsection (1) after consultation with the Minister or MEC.

66. Waste impact reports

(1) An environmental management inspector appointed in terms of the National Environmental Management Act may, in writing, require any person to submit a waste impact report in a specified form and within a specified period to the environmental management inspector if the environmental management inspector on reasonable grounds suspects that such person has on one or more occasions contravened or failed to comply with this Act or any conditions of a waste management licence or exemption and that the contravention or failure has had or is likely to have a detrimental effect on health or the environment, including social conditions, economic conditions, ecological conditions or cultural heritage, or has contributed to the degradation of the environment.

(2) A waste management officer may, in writing, require any person to submit a waste impact report in a specified form and within a specified period to the waste management officer if a review of a waste management licence is undertaken in terms of section 53.

(3) An environmental management inspector or waste management officer must stipulate the documentation and information that should be included in a report submitted in terms of subsection (1) or (2).

(4) Before making a request in terms of subsection (1) an environmental management inspector must afford the person to whom the request is to be made an opportunity to show cause why a waste impact report should not be required.

(5) A waste management officer may indicate that a waste impact report to be submitted in terms of subsection (1) or (2) must be compiled by an independent person.

(6) The costs incurred in compiling a waste impact report, including any costs of an independent person, are the liability of the person required to submit the report.

(7) If the person who is required to submit a waste impact report in terms of subsection (1) or (2) fails to submit the report within the specified period, the waste management officer may:

- (a) appoint an independent person to compile the report; and
- (b) recover the cost of compiling the report from the person required to submit the report.

67. Offences

(1) A person commits an offence if that person:

- (a) contravenes or fails to comply with a provision of section 15, 16(1)(c), (d), (e) or (f), 20, 26 (1), or any order under section 38 (2) or (3) or a notice under section 17 (2) or 18 (1);
- (b) contravenes or fails to comply with a provision of section 21, 22(1), 24, 27(2), 36(5) or 40(1);
- (c) fails to submit or to prepare an industry waste management plan when required to do so in terms of section 28;
- (d) contravenes or fails to comply with an industry waste management plan;
- (e) contravenes or fails to comply with a waste management measure specified in terms of section 14(4) or 33(1);
- (f) contravenes or fails to comply with a norm or standard established in terms of this Act;
- (g) fails to conduct a site assessment or to submit a site assessment report in terms of section 37(1);
- (h) contravenes or fails to comply with a condition or requirement of a waste management licence or an integrated licence contemplated in section 44;

- (i) fails to submit a waste impact report required in terms of section 66(1) or (2);
 - (j) contravenes or fails to comply with a condition subject to which exemption from a provision of this Act was granted in terms of section 76(3)(c);
 - (k) knowingly supplies false or misleading information in any application made in terms of this Act;
 - (l) knowingly supplies false or misleading information to a waste management officer or environmental management inspector for the purpose of this Act;
 - (m) fails to provide the information contemplated in section 29(5) or 63(4).
- (2) A person who is in control of a vehicle, or in a position to control the use of a vehicle, that is used to transport waste for the purpose of offloading that waste, is guilty of an offence if that person:
- (a) fails to take all reasonable steps to prevent spillage of waste or littering from the vehicle;
 - (b) intentionally or negligently cause spillage or littering from the vehicle;
 - (c) dispose of waste at a facility which is not authorised to accept such waste;
 - (d) fails to ensure that waste is disposed of at a facility that is authorised to accept such waste; or
 - (e) fails to comply with any duty set out in section 25(4).

68. Penalties

- (1) A person convicted of an offence referred to in section 67(1)(a), (g) or (h) is liable to a fine not exceeding R10 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the National Environmental Management Act.
- (2) A person convicted of an offence referred to in section 67(1)(b), (c), (d), (e), (f), (i), (j), (k) or (l) or section 67(2)(a), (b), (c), (d) or (e) is liable to a fine not exceeding R5 000 000 or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the National Environmental Management Act.
- (3) Any person convicted of an offence referred to in section 67(1)(m) is liable to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.
- (4) A person who is convicted of an offence in terms of this Act and who persists after conviction in the act or omission that constituted the offence commits a continuing offence and is liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 20 days, or to both such fine and such imprisonment, in respect of each day that person persists with that act or omission.
- (5) A fine contemplated in subsection (1), (2), (3) or (4) must be determined with due consideration of:
 - (a) the severity of the offence in terms of its impact or potential impact on health, well-being, safety and the environment; and
 - (b) the monetary or other benefits that accrued to the convicted person through the commission of the offence.

CHAPTER 8: General Matters

Part 1: Regulations

69. Regulations by Minister

- (1) The Minister may make regulations regarding:
 - (a) the identification and categorisation of waste;
 - (b) the manner in which particular waste types must be dealt with and managed;
 - (c) the manner in which priority waste must be dealt with and managed;
 - (d) requirements for monitoring of compliance with this Act or any licence issued in terms of this Act;
 - (e) waste management planning;
 - (f) the exercise of the duty of care;
 - (g) measures that are required for the environmentally sound management of waste;
 - (h) requirements in respect of waste management activities;
 - (i) measures that must be taken in respect of the implementation of waste minimisation, including the separation of waste at the point of generation and setting of targets or percentage of products that must be recovered under a re-use, recycling, refundable deposit or take-back programme;
 - (j) the control of the import or export of waste;
 - (k) the obligation of producers of a specified product or class of product to carry out a life cycle assessment in relation to the product, in such manner or in accordance with such standards or procedures as may be specified;
 - (l) the requirements that must be complied with in respect of the design, composition or production of a product or packaging, including requirements in respect of:
 - (i) the restriction of the composition, volume or weight of packaging;
 - (ii) the reduction, re-use, recycling and recovery of packaging; and
 - (iii) the use of alternate materials that are less harmful to the environment;
 - (m) the utilisation of waste by way of recovery, re-use and recycling;
 - (n) the reduction of waste by:
 - (i) the adoption of certain manufacturing processes; and
 - (ii) the use of alternative materials or products;
 - (o) the financial arrangements of waste minimisation programmes;
 - (p) the institutional arrangements for the administration of waste minimisation programmes;
 - (q) the control over waste management facilities;
 - (r) labelling requirements in respect of waste management;
 - (s) the location, planning and design of waste management activities;
 - (t) the registration of persons transporting waste;
 - (u) the manner in which a site assessment in terms of section 37 must be conducted and the person who may conduct such assessments;
 - (v) the contents of a site assessment report contemplated in section 37, including persons who may undertake such site assessments;
 - (w) the manner in which an application for a waste management licence must be made, including the persons who may manage such applications;
 - (x) requirements in respect of the funding or insuring of a waste management activity;
 - (y) the nature, type, time period and format of data and information to be submitted in terms of a waste information system established in terms of this Act;

- (z) the procedure for the institution of appeals against decisions of officials in the performance of their functions in terms of this Act;
 - (aa) the dissemination of information to the public;
 - (bb) incentives and disincentives to encourage a change in behaviour towards the generation of waste and waste management by all sectors of society;
 - (cc) matters that must be regulated by a contract between a municipality and any waste management service provider;
 - (dd) any matter that may or must be prescribed in terms of this Act; and
 - (ee) any other administrative or procedural matter that it is necessary for the proper administration and implementation of this Act.
- (2) A regulation under subsection (1)(i), (j), (k), (l), (n) and (r) may only be made after consultation with the Minister of Trade and Industry.
- (3) A regulation under subsection (1)(o) and (x), and a regulation in respect of financial incentives and disincentives made under subsection (1) (bb), may only be made with the concurrence of the Minister of Finance.
- (4) A regulation under subsection (1)(cc) may only be made after consultation with the Minister for Provincial and Local Government.
- (5) A regulation under subsection (1)(u), (v) and (w) may only be made after consultation with the Minister of Water Affairs and Forestry.
- (6) Any regulation which pertains to the treatment of waste by means of incineration must be submitted to the National Assembly 30 days prior to publication.

70. Regulations by MECs

- (1) The MEC with the concurrence of the Minister may make regulations for the province concerned in respect of any matter for which the MEC may or must make regulations in terms of this Act, including any matter referred to in section 69(1)(b) to (h), inclusive, (m), (p), (q), (s) to (w), inclusive, and (y) to (dd), inclusive.
- (2) A regulation in respect of a matter referred to in section 69(1)(cc) may only be made after consultation with the Minister for Provincial and Local Government.
- (3) A regulation in respect of a matter referred to in terms of section 69(1)(u), (v) and (w) may only be made after consultation with the Minister of Water Affairs and Forestry.

71. General regulatory powers

- (1) Regulations made under this Act may:
 - (a) restrict or prohibit any act, either absolutely or conditionally;
 - (b) apply:
 - (i) generally to the Republic or a province, or only in a specified areas or category of areas; or
 - (ii) generally to all persons or only to a specified category of persons;
 - (c) differentiate between different:
 - (i) areas or category of areas;
 - (ii) persons or categories of persons; or
 - (iii) types, classes or categories of waste;
 - (d) incorporate by reference any guideline, minimum requirements, code of practice or any national or international standard relating to waste management.
- (2) Regulations made under this Act may provide that any person who contravenes or fails to comply with a provision thereof commits an offence and is liable on conviction to:
 - (a) imprisonment for a period not exceeding 15 years;
 - (b) an appropriate fine; or

- (c) both a fine and imprisonment.
- (3)(a) Before publishing any regulation under this Act, or any amendment to the regulations, the Minister or MEC, as the case may be, must follow a consultative process in accordance with sections 72 and 73.
- (b) Paragraph (a) need not be complied with if the regulations are amended in a non-substantive manner.

Part 2: Consultative process

72. Consultation

- (1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section and section 73, the Minister or MEC must follow such consultative process as may be appropriate in the circumstances.
- (2) When conducting the consultations contemplated in subsection (1), the Minister must:
 - (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the powers;
 - (b) in accordance with the principles of co-operative governance as set out in chapter 3 of the Constitution and subject to the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005), consult the MEC responsible for waste management in each province that will be affected by the exercise of the power; and
 - (c) conduct a public participation process in accordance with section 73.
- (3) When conducting the consultations contemplated in subsection (1), the MEC must:
 - (a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the powers;
 - (b) in accordance with the principles of co-operative governance as set out in chapter 3 of the Constitution and subject to the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005), consult the Minister and all other national organs of state that will be affected by the exercise of the power; and
 - (c) conduct a public participation process in accordance with section 73.

73. Public participation

- (1) Before exercising a power that, in terms of this Act, must be exercised in accordance with this section, the Minister or MEC, as the case may be, must give notice of the proposed exercise of the relevant power:
 - (a) in the *Gazette*; and
 - (b) in at least one newspaper distributed nationally or, if the exercise of power will only affect a specific area, in at least one newspaper distributed in that area.
- (2) The notice must:
 - (a) invite members of the public to submit to the Minister or MEC, as the case may be, within no less than 30 days of publication of the notice in the *Gazette*, written representations on or objections to the proposed exercise of power; and
 - (b) contain sufficient information to enable members of the public to submit representations or objections.
- (3) The Minister or MEC, as the case may be, may, in appropriate circumstances, allow any interested person or community to present oral representations or objections to the Minister or MEC, or a person designated by the Minister or MEC.
- (4) The Minister or MEC, as the case may be, must give due consideration to all representations or objections received or presented before exercising the relevant power.

Part 3: Exemptions and appeals

74. Applications for exemption

- (1) Any person may apply in writing for exemption from the application of a provision of this Act to the Minister or, 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.
- (2) An application in terms of subsection (1) must be accompanied by:
 - (a) an explanation of the reasons for the application; and
 - (b) any applicable supporting documents.

75. Consideration of applications for exemption

- (1) The Minister 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 or MEC's decision.
- (2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister or MEC, as the case may be, must, before deciding the application, request the applicant to:
 - (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 or MEC; and
 - (b) to submit any comments received from the public following such process to the Minister or MEC.

76. Decisions on applications for exemption

- (1) The Minister or the MEC, as the case may be, may:
 - (a) grant an exemption from the application of a provision of this Act; or
 - (b) refuse to grant such exemption.
- (2) Sections 48 and 49(2) to (6), inclusive, apply with the changes required by the context to the consideration of applications for exemptions.
- (3) If an application is granted, the Minister or MEC must issue a written exemption notice to the applicant stating:
 - (a) the name, address and telephone number of the person to whom the exemption is granted;
 - (b) the provision of this Act from which exemption is granted;
 - (c) the conditions subject to which the exemption is granted, if the exemption is granted subject to conditions; and
 - (d) the period for which exemption is granted, if the exemption is granted for a period.
- (4) The Minister 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:
 - (a) the provision, but for the definition of 'person' contained in section (1), clearly should not apply to an organ of state;
 - (b) the exemption would not defeat the objects of this Act; and
 - (c) it is in the public interest to grant the exemption.

77. Review and transfer of exemptions

- (1) The Minister or MEC may:
 - (a) from time to time review any exemption granted in terms of section 76; and
 - (b) on good grounds suspend or withdraw such exemption or amend the exemption, or any part thereof.
- (2) Before suspending, withdrawing or amending an exemption, the Minister 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.

(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 or MEC, be transferred by the holder of the exemption to the new owner of the waste management activity.

(4) Section 52 applies with the changes required by the context to the transfer of exemptions.

78. Appeals

(1) An appeal under section 43 of the National Environmental Management Act in respect of a decision made under a power delegated by the Minister or MEC in terms of this Act or another specific environmental management Act where the Minister or MEC is responsible for considering the appeal, may be considered jointly with any other appeal involving a related matter.

(2) Where the Minister or MEC exercises his or her discretion to consider appeals jointly under subsection (1), the Minister or MEC may indicate the process that must be followed to give effect to that decision.

CHAPTER 9: Miscellaneous

79. Delegation and assignment

(1) The Minister or MEC, respectively, may delegate or assign to an official in their respective departments any power or duty conferred on the Minister or MEC, by or under this Act, except:

(a) the power conferred on the Minister or MEC, respectively, by section 7(2) or (3), 8(1), 14, 18, 19, 28, 69 or 70; or

(b) the duty imposed on the Minister by section 6 or 7(1).

(2) The Minister or MEC must regularly review and, if necessary, amend or withdraw a delegation or assignment under subsection (1).

(3) A delegation or assignment to an official under subsection (1):

(a) is subject to such limitations and conditions as the Minister or MEC may impose;

(b) may either be to a specific official or to the holder of a specific post in the relevant department;

(c) may authorise that official to subdelegate or further assign, in writing, the power or duty to another official in the Department, or to the holder of a specific post in the Department;

(d) does not prevent the exercise of that power or the performance of that duty by the Minister or MEC; and

(e) does not divest the Minister or MEC of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(4) The Minister or MEC may confirm, vary or revoke any decision taken by an official as a result of a delegation or subdelegation under this section, subject to any rights that may have become vested as a consequence of that decision.

80. Repeal and amendment of laws, and savings

(1) Subject to subsections (2) and (3) and section 81, the laws set out in schedule 2 are hereby repealed or amended to the extent set out in the third column thereof.

(2) Any regulation or direction made in terms of a provision of the Environment Conservation Act repealed by section (1) and in force immediately before the date of the coming into effect of this Act, remains in

force and is considered to have been made under this Act until anything done under this Act overrides it.

(3) Anything lawfully done under a provision repealed by subsection (1) remains valid until anything done under this Act overrides it.

(4) A person operating a waste disposal facility that was established before the coming into effect of the Environment Conservation Act and that is operational on the date of the coming into effect of this Act may continue to operate the facility until such time as the Minister, by notice in the *Gazette*, calls upon that person to apply for a waste management licence.

(5) Any criminal proceedings instituted under section 19, 19A or 20(1) of the Environment Conservation Act that have not been finalised on the date of coming into effect of this Act, must be finalised as if those sections had not been repealed.

81. Transitional provisions in respect of permits issued in terms of Environment Conservation Act

(1) Despite the repeal of section 20 of the Environment Conservation Act by this Act, a permit issued in terms of that section remains valid subject to subsections (2) and (3).

(2) The holder of a permit issued in terms of section 20 of the Environment Conservation Act must apply for a waste management licence in terms of this Act, when required to do so by the licensing authority, in writing, and within the period stipulated by the licensing authority.

(3) A permit issued in terms of section 20 of the Environment Conservation Act lapses:

- (a) if a waste management licence is issued in terms of this Act to the same person in respect of the same waste management activity;
- (b) if the holder of the permit did not apply, within the stipulated period, for a waste management licence within the period contemplated in subsection (2); or
- (c) if the licensing authority refuses an application contemplated in subsection (2).

(4) If a permit issued in terms of section 20 of the Environment Conservation Act lapses as contemplated in subsection (3)(b) or (c), the permit holder remains liable for taking all measures that are necessary to ensure that the cessation of the activity is done in a manner that does not result in harm to health or the environment.

(5) During the period for which a permit issued in terms of section 20 of the Environment Conservation Act continues to be valid, the provisions of this Act apply in respect of the holder of such a permit, as if that person were the holder of a waste management licence issued in terms of this Act.

(6) Despite the repeal of section 20 of the Environment Conservation Act by this Act, an application for a permit made in terms of section 20 of the Environment Conservation Act that was not decided when section 81 of this Act took effect, must be proceeded with in terms of this Act as if that application were an application for a waste management licence in terms of this Act.

82. Transitional provision regarding listed waste management activities

A person who conducts a waste management activity listed in schedule 1 on the date of coming into effect of this Act, and who immediately before that date lawfully conducted that waste management activity under Government Notice No. 91 of 1 February 2002, may continue with the activity until such time that the Minister by notice in the *Gazette* directs that person to apply for a waste management licence under this Act.

83. Act regarded as specific environmental management Act

This Act must be regarded as a specific environmental management Act for the purposes of the definition of 'specific environmental management Act' contained in section 1 of the National Environmental Management Act.

84. Short title and commencement

- (1) This Act is called the National Environmental Management: Waste Act, 2008, and takes effect on a date determined by the Minister by proclamation in the *Gazette*.
- (2) Different dates may be so determined for different provisions of this Act.

Schedule 1

Waste management activities in respect of which a waste management licence is required (section 19)

Category A

The activities listed under Category A are equivalent to those that require a basic assessment process as stipulated in the environmental impact assessment regulations made under section 24(5) of the National Environmental Management Act, 1998 (Act 107 of 1998)

Storage and transfer of waste

1. The temporary storage of general waste at a facility, including a waste transfer facility and container yard, that has the capacity to receive in excess of 30 tonnes of general waste per day or that has a throughput capacity in excess of 20 m³ per day, including the construction of a facility and associated structures and infrastructure for such storage.
2. The temporary storage of hazardous waste at a facility, including a waste transfer facility and container yard, that has the capacity to receive in excess of three tonnes of hazardous waste per day, including the construction of a facility and associated structures and infrastructure for such storage.

Recycling and recovery

3. The sorting and shredding of general waste at a facility that has the capacity to receive in excess of one ton of general waste per day, including the construction of a facility and associated structures and infrastructure for such sorting or shredding.
4. The recovery of waste, excluding recovery that takes place as an integral part of an internal manufacturing process, at a facility that has the capacity to receive in excess of three tonnes of general waste or 100 kilograms of hazardous waste per day, including the construction of a facility and associated structures and infrastructure for such recovery.

Treatment of waste

5. The biological, physical or physicochemical treatment of general waste or the autoclaving, drying or microwaving of general waste at a facility that has the capacity to receive in excess of 10 tonnes of general waste per day, including the construction of a facility and associated structures and infrastructure for such treatment.
6. The biological or physicochemical treatment of hazardous waste or the autoclaving, drying or microwaving of hazardous waste, including the

construction of a facility and associated structures and infrastructure for such treatment.

7. The treatment of waste in sludge lagoons.

Disposal of waste on land

8. The disposal of inert waste, excluding the disposal of less than 25 tonnes of inert waste for the purposes of levelling and building that has been authorised by or under legislation, including the construction of a facility and associated structures and infrastructure for such disposal.

9. The disposal of general waste to land covering an area of less than 100 m² or 200 m³ air space, including the construction of a facility and associated structures and infrastructure for such disposal.

Storage, treatment and processing of animal waste

10. The storage, treatment or processing of animal manure, including the composting of animal manure, at a facility that has a throughput capacity in excess of 10 tonnes per month, including the construction of a facility and associated structures and infrastructure for such storage, treatment or processing.

11. The processing of waste at biogas installations with a capacity for receiving five tonnes or more per day of animal waste, animal manure, abattoir waste or vegetable waste, including the construction of a facility and associated structures and infrastructure for such processing animal manure and abattoir waste.

Expansion or decommissioning of facilities and associated structures and infrastructure

12. The expansion or decommissioning of facilities and associated structures and infrastructure for activities listed in this schedule.

Category B

The activities listed under Category B are equivalent to those that require an environmental impact assessment process stipulated in the environmental impact assessment regulations made under section 24(5) of the National Environmental Management Act, 1998 (Act 107 of 1998).

Treatment of waste

1. The treatment of general waste by a method other than biological, physical or physicochemical treatment at a facility with the capacity to receive in excess of 10 tonnes of general waste per day, including the construction of a facility and associated structures and infrastructure for such treatment.

2. The treatment of hazardous waste by a method other than biological or physicochemical treatment, including the construction of a facility and associated structures and infrastructure for such treatment.

3. The incineration of waste, including the construction of a facility and associated structures and infrastructure for the incineration of waste.

Disposal of waste on land

4. The disposal of hazardous waste to land, including the construction of a facility and associated structures and infrastructure for such disposal.

5. The disposal of general waste to land covering an area of more than 100 m² or 200 m³ of air space, including the construction of a facility and associated structures and infrastructure for such disposal.

Schedule 2: LAWS AMENDED OR REPEALED
(Section 80)

No. and year of Law	Short title	Extent of repeal or amendment
Act 73 of 1989	Environment Conservation Act, 1989	<p>1. The amendment of section 1 by the deletion of the definitions of 'disposal site' and 'waste'.</p> <p>2. The repeal of sections 19, 19A, 20, 24, 24A, 24B and 24C.</p> <p>3. The amendment of section 29:</p> <p>(a) by the substitution for subsection (3) of the following subsection:</p> <p>'(3) Any person who [contravenes a provision of section 19 or 19A or fails to comply therewith, or] fails to comply with a direction in terms of section 31A(1) or (2), or prevents any person authorised in terms of section 41A to enter upon such land or hinders him [or her] in the execution of his [or her] powers, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months.'; and</p> <p>(b) by the substitution for subsection (4) of the following subsection:</p> <p>'(4) Any person who contravenes a provision of section [20(1), 20(9)] 22(1) or 23(2) [or a direction issued under section 20(8)] or fails to comply with [a condition of a permit, permission or] [an] authorisation [or direction] issued [or granted] under the said provisions shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such time and such imprisonment, and to a time not exceeding three times the commercial value of any thing in respect of which the offence was committed.'.</p>
Act 79 of 1992	Environment Conservation Amendment Act, 1992	The repeal of sections 8 and 9.
Government Notice No. 1986, 1 August 1990	-	The repeal of the whole.

Government Notice No. 292, 28 February 2003	-	The repeal of the whole.
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2.2.1.6 National Environmental Management: Integrated Coastal Management Act

Description: This Act establishes a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable. It also defines rights and duties in relation to coastal areas and determines the responsibilities of organs of state in relation to coastal areas. It furthermore prohibits incineration at sea, controls dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment. Finally the Act gives effect to South Africa's international obligations in relation to coastal matters.

National Environmental Management: Integrated Coastal Management Act 24 of 2008

Preamble

WHEREAS everyone has the constitutional right to have the environment, including the coastal environment, protected for the benefit of present and future generations;

AND WHEREAS integrated management of the coastal zone as a system is essential to achieve the constitutional commitment to improving the quality of life of all citizens, while protecting the natural environment for the benefit of present and future generations;

AND WHEREAS the coastal zone is a unique part of the environment in which biophysical, economic, social and institutional considerations interconnect in a manner that requires a dedicated and integrated management approach;

AND WHEREAS much of the rich natural heritage of our coastal zone is being squandered by overuse, degradation and inappropriate management;

AND WHEREAS the economic, social and environmental benefits of the coastal zone have been distributed unfairly in the past;

AND WHEREAS the conservation and sustainable use of the coastal zone requires the establishment of an innovative legal and institutional framework that clearly defines the status of coastal land and waters and the respective roles of the public, the State and other users of the coastal zone and that facilitates a new co-operative and participatory approach to managing the coast;

AND WHEREAS integrated coastal management should be an evolving process that learns from past experiences, that takes account of the functioning of the coastal zone as a whole and that seeks to co-ordinate and regulate the various human activities that take place in the coastal zone in order to achieve its

conservation and sustainable use, BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

CHAPTER 1: Interpretation, Objects and Application of Act

1. Definitions

(1) In this Act, unless the context indicates otherwise:

'admiralty reserve' means any strip of land adjoining the inland side of the high-water mark which, when this Act took effect, was land reserved or designated on an official plan, deed of grant, title deed or other document evidencing title or land-use rights as *'admiralty reserve'*, *'government reserve'*, *'beach reserve'*, *'coastal forest reserve'* or other similar reserve; *'adverse effect'* means any actual or potential impact on the environment that impairs, or may impair, the environment or any aspect of it to an extent that is more than trivial or insignificant and, without limiting the term, includes any actual or potential impact on the environment that results in:

- (a) a detrimental effect on the health or well-being of a person;
- (b) an impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or
- (c) a detrimental effect on the environment due to a significant impact or cumulative effect of that impact taken together with other impacts;

'aircraft' means an aircraft as defined in terms of section 1 of the National Environmental Management Act;

'authorisation' means an authorisation under this Act, and includes a coastal waters discharge permit, a general authorisation, a dumping permit, a coastal lease, a coastal concession and any authorisation that is regarded as being an authorisation under this Act, but excludes an environmental authorisation;

'Biodiversity Act' means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

'biodiversity' or *'biological diversity'* has the same meaning ascribed to it in the Biodiversity Act;

'coastal access land' means land designated as coastal access land in terms of section 18(1), read with section 26;

'coastal activities' means coastal activities listed or specified in terms of chapter 5 of the National Environmental Management Act which take place in the coastal zone;

'coastal concession' means a concession awarded in terms of section 65 read with section 95;

'coastal environment' means the environment within the coastal zone;

'coastal lease' means a lease awarded in terms of section 65 read with section 95;

'coastal management' includes:

- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;
- (b) the regulation and management of the use and development of the coastal zone and coastal resources;
- (c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and
- (d) planning in connection with the activities referred to in paragraphs (a), (b) and (c);

'coastal management objective' means a clearly defined objective established by a coastal management programme for a specific area within the coastal zone which coastal management must be directed at achieving;

'coastal management programme' means the national or a provincial or municipal coastal management programme established in terms of chapter 6;

'coastal planning scheme' means a scheme that:

- (a) reserves defined areas within the coastal zone to be used exclusively or mainly for specified purposes; and
- (b) prohibits or restricts any use of these areas in conflict with the terms of the scheme:

'coastal protected area' means a protected area that is situated wholly or partially within the coastal zone and that is managed by, or on behalf of an organ of state, but excludes any part of such a protected area that has been excised from the coastal zone in terms of section 22;

'coastal protection zone' means the coastal protection zone contemplated in section 17;

'coastal public property' means coastal public property referred to in section 7;

'coastal resources' means any part of:

- (a) the cultural heritage of the Republic within the coastal zone, including shell middens and traditional fish traps; or
- (b) the coastal environment that is of actual or potential benefit to humans;

'coastal set-back line' means a line determined by an MEC in accordance with section 25 in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal management objectives;

'coastal waters' means:

- (a) marine waters that form part of the internal waters or territorial waters of the Republic referred to in sections 3 and 4 of the Maritime Zones Act 1994 (Act 15 of 1994) respectively; and
- (b) subject to section 26, any estuary;

'coastal wetland' means:

- (a) any wetland in the coastal zone; and
- (b) includes:
 - (i) land adjacent to coastal waters that is regularly or periodically inundated by water, salt marshes, mangrove areas, inter-tidal sand and mud flats, marshes, and minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature; and
 - (ii) the water, the subsoil and substrata beneath, and bed and banks of, any such wetland;

'coastal zone' means the area comprising coastal public property, the coastal protection zone, coastal access land and coastal protected areas, the seashore, coastal waters and the exclusive economic zone and includes any aspect of the environment on, in, under and above such area;

'competent authority' means a competent authority identified in terms of section 24C of the National Environmental Management Act;

'cultural heritage' means any place or object of aesthetic, architectural, historical, scientific, social or spiritual value or significance;

'Department' means the national department responsible for environmental affairs;

'development', in relation to a place, means any process initiated by a person to change the use, physical nature or appearance of that place, and includes:

- (a) the construction, erection, alteration, demolition or removal of a structure or building;
- (b) a process to rezone, subdivide or consolidate land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of indigenous or protected vegetation;

'Director-General' means the Director-General of the Department;

'dumping at sea' means:

- (a) any deliberate disposal into the sea of any waste or material other than operational waste from a vessel, aircraft, platform or other man-made structure at sea;

- (b) any deliberate disposal into the sea of a vessel, aircraft, platform or other man-made structure at sea;
- (c) any storage of any waste or other material on or in the seabed, its subsoil or substrata; or
- (d) any abandonment or toppling at site of a platform or other structure at sea, for the sole purpose of deliberate disposal, but 'dumping at sea' does not include:
 - (i) the lawful disposal at sea through sea out-fall pipelines of any waste or other material generated on land;
 - (ii) the lawful depositing of any substance or placing or abandoning of anything in the sea for a purpose other than mere disposal of it; or
 - (iii) disposing of or storing in the sea any tailings or other material from the bed or subsoil of coastal waters generated by the lawful exploration, exploitation and associated off-shore processing of mineral resources from the bed, subsoil or substrata of the sea;

'*dumping permit*' means a permit granted under section 71;

'*dynamic coastal processes*' means all natural processes continually reshaping the shoreline and near shore seabed and includes:

- (a) wind action;
- (b) wave action;
- (c) currents;
- (d) tidal action; and
- (e) river flows;

'*effluent*' means:

- (a) any liquid discharged into the coastal environment as waste, and includes any substance dissolved or suspended in the liquid; or
- (b) liquid which is a different temperature from the body of water into which it is being discharged;

'*environment*' means '*environment*' as defined in the National Environmental Management Act;

'*environmental authorisation*' means an authorisation granted in respect of coastal activities by a competent authority in terms of chapter 5 of the National Environmental Management Act; '*estuary*' means a body of surface water:

- (a) that is part of a water course that is permanently or periodically open to the sea;
- (b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the sea; or
- (c) in respect of which the salinity is measurably higher as a result of the influence of the sea;

'*exclusive economic zone*' means the exclusive economic zone of the Republic; referred to in section 7 of the Maritime Zones Act 1994 (Act 15 of 1994);

'*Gazette*', when used in relation to:

- (a) the Minister, means the *Government Gazette*;
- (b) the MEC, means the *Provincial Gazette*; and
- (c) a municipality, means the *Provincial Gazette* of the province in which the municipality is situated;

'*general authorisation*' means an authorisation under section 69(2);

'*high-water mark*' means the highest line reached by coastal waters, but excluding any line reached as a result of:

- (a) exceptional or abnormal floods or storms that occur no more than once in ten years; or
- (b) an estuary being closed to the sea;

'*incinerate at sea*' means the deliberate combustion of any material on board a vessel, platform or other man-made structure at sea for the purpose of

disposing of it by thermal destruction, but does not include the combustion of operational waste from a vessel, aircraft, platform or other man-made structure at sea; 'interests of the whole community' means the collective interests of the community determined by:

- (a) prioritising the collective interests in coastal public properly of all persons living in the Republic over the interests of a particular group or sector of society;
- (b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public properly and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and
- (c) taking into account the interests of other living organisms that are dependent on the coastal environment;

'issuing authority' means the authority designated in terms of this Act to issue authorisations;

'land development plan' means any plan that is prepared or approved in terms of legislation regulating land development and that indicates the desirable uses for areas of land but does not create legal rights to use land;

'Land Survey Act' means the Land Survey Act, 1997 (Act 8 of 1997);

'land use scheme', in relation to an area, means a scheme established by or under legislation and that creates or regulates the use of land in that area, and includes a land use scheme, a town planning scheme, a zoning scheme and any other similar instrument that identifies or regulates rights to use land;

'littoral active zone' means any land forming part of, or adjacent to, the seashore that is:

- (a) unstable and dynamic as a result of natural processes; and
- (b) characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated;

'local community' means any community of people living, or having rights or interests, in a distinct geographical area within the coastal zone;

'low-water mark' means the lowest line to which coastal waters recede during spring tides;

'Marine Living Resources Act' means the Marine Living Resources Act 1998 (Act 18 of 1998);

'MEC' means the member of the Executive Council of a coastal province who is responsible for the designated provincial lead agency in terms of this Act;

'Minister' means the Minister of Environmental Affairs and Tourism;

'municipality':

- (a) means a metropolitan, district or local municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998); or
- (b) in relation to the implementation of a provision of this Act in an area which falls within both a local municipality and a district municipality, means:
 - (i) the district municipality; or
 - (ii) the local municipality, if the district municipality, by agreement with the local municipality, has assigned the implementation of that provision in that area to the local municipality;

'Municipal Systems Act' means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

'National Environmental Management Act' means the National Environmental Management Act, 1998 (Act 107 of 1998);

'national estuarine management protocol' means the national protocol concerning the management of estuaries contemplated in section 33;

'National Water Act' means the National Water Act, 1998 (Act 36 of 1998);
'operational waste':

- (a) means any waste or other material that is incidental to or derived from, the normal operation of a vessel, aircraft, platform or other man-made structure and its equipment; and
- (b) excludes any waste or other material that is transported by or to a vessel, aircraft, platform or other man-made structure which is operated for the purpose of disposing of that waste or other material, including any substances derived from treating it on board, at sea;

'organ of state' has the meaning assigned to it in section 239 of the Constitution;

'pollution' has the meaning assigned to it in section 1 of the National Environmental Management Act;

'prescribe' means prescribe by regulation;

'protected area' means a protected area referred to in section 9 of the Protected Areas Act;

'Protected Areas Act' means the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003);

'provincial lead agency' means a provincial organ of State designated by the Premier of the province in terms of section 38 as the lead agency for coastal management in the province;

'sea' means all marine waters, including:

- (a) the high seas;
- (b) all marine waters under the jurisdiction of any State; and
- (c) the bed, subsoil and substrata beneath those waters, but does not include estuaries;

'seashore', subject to section 26, means the area between the low-water mark and the high-water mark;

'South African aircraft' means any aircraft registered in the Republic in terms of applicable legislation;

'South African vessel' means any vessel registered or deemed to be registered in the Republic in terms of applicable legislation;

'special management area' means an area declared as such in terms of section 23;

'this Act' includes any regulation made in terms of this Act;

'traditional council' means a traditional council established and recognised in terms of section 3 of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003);

'vessel' means a waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transport by water;

'waste' means any substance, whether or not that substance can be re-used, recycled or recovered:

- (i) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (ii) that the generator has no further use of, for the purposes of production, reprocessing or consumption; and
- (iii) that is discharged or deposited in a manner that may detrimentally impact on the environment;

'Waste Assessment Guidelines' means the guidelines set out in Schedule 2; and

'wetland' means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates otherwise.

2. Objects of Act

The objects of this Act are:

- (a) to determine the coastal zone of the Republic;
- (b) to provide, within the framework of the National Environmental Management Act, for the co-ordinated and integrated management of the coastal zone by all spheres of government in accordance with the principles of co-operative governance;
- (c) to preserve, protect, extend and enhance the status of coastal public property as being held in trust by the State on behalf of all South Africans, including future generations;
- (d) to secure equitable access to the opportunities and benefits of coastal public property; and
- (e) to give effect to the Republic's obligations in terms of international law-regarding coastal management and the marine environment.

3. State's duty to fulfil environmental rights in coastal environment

In fulfilling the rights contained in section 24 of the Constitution of the Republic of South Africa, the State:

- (a) through its functionaries and institutions implementing this Act, must act as the trustee of the coastal zone; and
- (b) must, in implementing this Act, take reasonable measures to achieve the progressive realisation of those rights in the interests of every person.

4. Application of Act

- (1) This Act applies to the Republic, including:
 - (a) its internal waters, territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act 15 of 1994); and
 - (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act 43 of 1948).
- (2) A provision of this Act which relates to dumping and incineration at sea applies to South African aircraft and vessels also when outside the Republic.

5. Application of National Environmental Management Act

- (1) This Act must, in relation to coastal management, be read, interpreted and applied in conjunction with the National Environmental Management Act.
- (2) This Act must be regarded as a 'specific environmental management Act' as defined in section 1 of the National Environmental Management Act.
- (3) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

6. Conflicts with other legislation

- (1) If there is a conflict relating to coastal management between a section of this Act and any other legislation existing when this Act takes effect, the section of this Act prevails.
- (2) A provision contained in this Act or the National Environmental Management Act, or in regulations made or authorisations issued under either Act, prevails if there is a conflict between that provision and a provision contained in regulations or in an authorisation that has been saved in terms of section 99.

(3) Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament:

- (a) by the Minister only; or
- (b) only after the Minister has been consulted on the contents of the draft legislation.

CHAPTER 2: Coastal Zone

Part 1: Coastal public property

7. Composition of coastal public property

Coastal public property consists of:

- (a) coastal waters;
- (b) land submerged by coastal waters, including:
 - (i) land flooded by coastal waters which subsequently becomes part of the bed of coastal waters; and
 - (ii) the substrata beneath such land;
- (c) any island, whether natural or artificial, within coastal waters, but excluding:
 - (i) any part of an island that was lawfully alienated before this Act commenced; or
 - (ii) any part of an artificially created island (other than the seashore of that island) that is proclaimed by the Minister to be excluded from coastal public property;
- (d) the seashore, but excluding:
 - (i) any portion of the seashore below the high-water mark which was lawfully alienated before the Sea-Shore Act, 1935 (Act 21 of 1935), took effect or which was lawfully alienated in terms of that Act and which has not subsequently been re-incorporated into the seashore; and
 - (ii) any portion of a coastal cliff that was lawfully alienated before this Act took effect and is not owned by the State;
- (e) the seashore of a privately owned island within coastal waters;
- (f) any admiralty reserve owned by the State;
- (g) any State-owned land declared under section 8 to be coastal public property; or
- (h) any natural resources on or in:
 - (i) any coastal public property of a category mentioned in paragraph (a) to (g);
 - (ii) the exclusive economic zone, or in or on the continental shelf as contemplated in sections 7 and 8 of the Maritime Zones Act, 1994 (Act 15 of 1994). Respectively; or
 - (iii) any harbour, work or other installation on or in any coastal public property of a category mentioned in paragraphs (a) to (it) that is owned by an organ of State.

8. Extending coastal public property

(1) The Minister may, by notice in the *Gazette*, declare in the manner contemplated in subsection (2) any state-owned land as coastal public property in order:

- (a) to improve public access to the seashore;
- (b) to protect sensitive coastal ecosystems;
- (c) to secure the natural functioning of dynamic coastal processes;
- (d) to facilitate the achievement of any of the objects of this Act; or

- (e) to protect people, properly and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise.
- (2) Before declaring state-owned land as coastal public property in terms of subsection (1), the Minister must:
 - (a) consult with interested and affected parties; and
 - (b) obtain the concurrence of the Minister, or of the MEC of the province, responsible for managing that state-owned land.
- (3) The declaration of state-owned land as coastal public property in terms of subsection (1) may only be withdrawn by the Minister by notice in the *Gazette* with the prior approval of Parliament.
- (4) This section does not affect the application of section 26.

9. Acquisition of private land by State

- (1) The Minister, acting with the concurrence of the Minister of Land Affairs, may acquire private land for the purpose of declaring that land as coastal public property, by:
 - (a) purchasing the land;
 - (b) exchanging the land for other land; or
 - (c) if no agreement is reached with the owner, by expropriating the land in accordance with the Expropriation Act, 1975 (Act 63 of 1975).
- (2) Land may be acquired in terms of this section only if it is being expropriated for a purpose set out in section 8(1).

10. Designation of state-owned land for certain purposes

- (1) The Minister may, by notice in the *Gazette*:
 - (a) designate state-owned land vested in the national government for the purpose of facilitating any of the matters mentioned in section 8(1); or
 - (b) at any time withdraw a designation in terms of paragraph (a) by following the process described in subsection (2).
- (2) Before designating state-owned land in terms of subsection (1)(a) or withdrawing a designation in terms of subsection (1)(b) the Minister must:
 - (a) consult the MEC of the province concerned;
 - (b) consult the persons responsible for managing the state-owned land and interested and affected parties in terms of Part 5 of chapter 6; and
 - (c) obtain the concurrence of the Minister responsible for managing that state-owned land.
- (3) The MEC may, by notice in the *Gazette*:
 - (a) designate State owned land vested in the provincial government for the purpose of facilitating any of the matters mentioned in section 8(1); or
 - (b) at any time withdraw a designation in terms of paragraph (a) in the manner contemplated in subsection (4).
- (4) Before designating State-owned land in terms of subsection (3)(a) or withdrawing a designation in terms of subsection (3)(b) the MEC must:
 - (a) consult the Minister;
 - (b) consult the persons responsible for managing the state-owned land and interested and affected parties in terms of Part 5 of chapter 6; and
 - (c) obtain the concurrence of the MEC responsible for managing that state-owned land.
- (5) State-owned land designated in terms of subsection (1)(a) or (3)(a) must be regarded as coastal public property.

11. Ownership of coastal public property

- (1) The ownership of coastal public property vests in the citizens of the Republic and coastal public property must be held in trust by the State on behalf of the citizens of the Republic.

(2) Coastal public property is inalienable and cannot be sold, attached or acquired by prescription and rights over it cannot be acquired by prescription.

12. State public trustee of coastal public property

The State, in its capacity as the public trustee of all coastal public property, must:

- (a) ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community; and
- (b) take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property for the benefit of present and future generations.

13. Access to coastal public property

(1) Subject to this Act and any other applicable legislation, any natural person in the Republic:

- (a) has a right of reasonable access to coastal public property; and
- (b) is entitled to use and enjoy coastal public property, provided such use:
 - (i) does not adversely affect the rights of members of the public to use and enjoy the coastal public property;
 - (ii) does not hinder the State in the performance of its duty to protect the environment; and
 - (iii) does not cause an adverse effect.

(2) This section does not prevent prohibitions or restrictions on access to, or the use of, any part of coastal public property:

- (a) which is or forms part of a protected area;
- (b) to protect the environment, including biodiversity;
- (c) in the interests of the whole community;
- (d) in the interests of national security; or
- (e) in the national interest.

(3) No fee may be charged for access to coastal public property without the approval of the Minister.

(4) The Minister, before granting approval for the imposition of a fee, must require a public participation process in accordance with Part 5 of chapter 6 to enable interested and affected parties to make representations.

(5) Subsections (3) and (4) do not apply to coastal public property:

- (a) that has been leased; or
- (b) that is, or forms part of a protected area or the sea that forms part of a harbour or a proclaimed fishing harbour.

14. Position of high-water mark

(1) If land has a curvilinear boundary extending to, or a stated distance from, the high-water mark that curvilinear boundary may be substituted by a boundary of another character by following the procedure prescribed by section 34 of the Land Survey Act, provided that in addition to the requirements of that section the written agreement referred to in that section must be signed by:

- (a) the Minister; and
- (b) the holder of real rights in the land or in land contiguous to it whose rights would be adversely affected by the replacement of the curvilinear boundary.

(2) If a written agreement is not concluded in accordance with subsection (1) and section 34 as read with section 29 of the Land Survey Act, subsections (3) to (5) of section 29 of that Act apply with the necessary changes.

(3) Once a boundary line has been established in terms of subsection (1) it shall be regarded as the high-water mark as defined in this Act unless a new boundary is established in terms of subsection (4).

(4) If the high-water mark moves inland of the natural curvilinear boundary or the boundary line established in terms of subsection (1) and remains there for at least two years, a new boundary line on or inland of the high-water mark as determined by natural indications, may be determined in accordance with this section at the initiative of the Surveyor-General or by a written agreement referred to in subsection (1) being lodged with the Surveyor-General by:

- (a) the Minister;
- (b) the municipality within whose area of jurisdiction the boundary line is situated;
- (c) the owner of a land unit affected by the movement of the high-water mark; or
- (d) the holder of real rights in a land unit affected by the movement of the high-water mark.

(5) If the high-water mark moves inland of the boundary line of a land unit due to the erosion of the coast, sea level rise or other causes, and remains inland of that boundary line for a period of three years, the owner of that land unit:

- (a) loses ownership of any portion of that land unit that is situated below the high-water mark; and
- (b) is not entitled to compensation from the State for that loss of ownership, unless the movement of the high-water mark was caused by an intentional or negligent act or omission by an organ of state and was a reasonably foreseeable consequence of that act or omission.

(6) If accretion occurs, whether as a result of natural processes or human activities, land which formed part of the seashore when this Act took effect and which subsequently becomes situated inland of the high-water mark as a result of a change in the position of the high-water mark, remains coastal public property, and does not become part of any adjoining property unless the property is bounded by the high-water mark or extends to a Stated distance from the high-water mark.

15. Measures affecting erosion and accretion

(1) No person, owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion or accretion may require any organ of state or any other person to take measures to prevent the erosion or accretion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is caused by an intentional act or omission of that organ of state or other person.

(2) No person may construct, maintain or extend any structure, or take other measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for in this Act.

Part 2: Coastal protection zone

16. Composition of coastal protection zone

(1) Subject to subsection (2), the coastal protection zone consists of:

- (a) land falling within an area declared in terms of the Environment Conservation Act, 1999 (Act 73 of 1989), as a sensitive coastal area within which activities identified in terms of section 21(1) of that Act may not be undertaken without an authorisation;
- (b) any part of the littoral active zone that is not coastal public property;
- (c) any coastal protection area, or part of such area, which is not coastal public property;

- (d) any land unit situated wholly or partially within one kilometre of the high-water mark which, when this Act came into force:
 - (i) was zoned for agricultural or undetermined use; or
 - (ii) was not zoned and was not part of a lawfully established township, urban area or other human settlement;
 - (e) any land unit not referred to in paragraph (d) that is situated wholly or partially within 100 metres of the high-water mark;
 - (f) any coastal wetland, lake, lagoon or dam which is situated wholly or partially within a land unit referred to in paragraph (d)(i) or (e);
 - (g) any part of the seashore which is not coastal public property, including all privately owned land below the high-water mark;
 - (h) any admiralty reserve which is not coastal public property; or
 - (i) any land that would be inundated by a 1:50 year flood or storm event.
- (2) An area forming part of the coastal protection zone, except an area referred to in subsection (1)(g) or (h), may be excised from the coastal protection zone in terms of section 26.

17. Purpose of coastal protection zone

The coastal protection zone is established for enabling the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted in order to:

- (a) protect the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property;
- (b) avoid increasing the effect or severity of natural hazards in the coastal zone;
- (c) protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise;
- (d) maintain the natural functioning of the littoral active zone;
- (e) maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
- (f) make land near the seashore available to organs of state and other authorised persons for:
 - (i) performing rescue operations; or
 - (ii) temporarily depositing objects and materials washed up by the sea or tidal waters.

Part 3: Coastal access land

18. Designation of coastal access land

- (1) Each municipality whose area includes coastal public property must within four years of the commencement of this Act, make a by law that designates strips of land as coastal access land in order to secure public access to that coastal public property.
- (2) Coastal access land is subject to a public access servitude in favour of the local municipality within whose area of jurisdiction it is situated and in terms of which members of the public may use that land to gain access to coastal public property.
- (3) A municipality must implement subsection (1) subject to:
 - (a) the other provisions of this Act, including:
 - (i) any prohibitions or restrictions referred to in section 13(2); and
 - (ii) the national and applicable provincial coastal management programmes; and
 - (b) any other applicable national or provincial legislation.

(4) No land within a harbour, defence or other strategic facility may be designated as coastal access land without the consent of the Minister responsible for that facility.

(5) Subject to section 19, a municipality may, on its own initiative or in response to a request from an organ of state or any other interested and affected party, withdraw the designation of any land as coastal access land.

19. Process for designating and withdrawing designation of coastal access land

Before designating land as coastal access land or withdrawing any such designation, a municipality must:

- (a) assess the potential environmental impacts of doing so;
- (b) consult with interested and affected parties in accordance with Part 5 of chapter 6; and
- (c) give notice of the intended designation or withdrawal of the designation to the owner of the land.

20. Responsibilities of municipalities with regard to coastal access land

- (1) A municipality in whose area coastal access land falls, must:
 - (a) signpost entry points to that, coastal access land;
 - (b) control the use of, and activities on, that land;
 - (c) protect and enforce the rights of the public to use that land to gain access to coastal public property;
 - (d) maintain that land so as to ensure that the public has access to the relevant coastal public property;
 - (e) where appropriate and within its available resources, provide facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of physically disabled persons;
 - (f) ensure that the provision and use of coastal access land and associated infrastructure do not cause adverse effects to the environment;
 - (g) remove any public access servitude that is causing or contributing to adverse effects that the municipality is unable to prevent or to mitigate adequately;
 - (h) describe or otherwise indicate all coastal access land in any municipal coastal management programme and in any municipal spatial development frame-work prepared in terms of the Municipal Systems Act;
 - (i) perform any other actions that may be prescribed; and
 - (j) report to the MEC within two years of this Act coming into force on the measures taken to implement this section.
- (2) A municipality may make by-laws for the proper implementation of subsection

Part 4: Coastal waters

21. Control and management of coastal waters

An organ of state that is legally responsible for controlling or managing any activity on or in coastal waters, must control and manage that activity:

- (a) in the interests of the whole community; and
- (b) in accordance with the Republic's obligations under international law.

Part 5: Coastal protected areas

22. Excision of protected areas from coastal protection zone

- (1) Subject to section 87, the MEC may by notice in the *Gazette* declare that with effect from a specified date the whole or any part of a protected area that is not coastal public property, will not form part of the coastal protection zone.
- (2) The MEC may only publish a notice referred to in subsection (1) after consultation with the management authority of the protected area, if he or she on reasonable grounds believes that doing so will not prejudice the effective management of the coastal zone.

Part 6: Special management areas

23. Declaration of special management areas

- (1) The Minister may, after consultation with the MEC by notice in the *Gazette*:
 - (a) declare an area that is wholly or partially within the coastal zone to be a special management area; or
 - (b) withdraw or amend any declaration made in terms of paragraph (a).
- (2) Before declaring an area to be a special management area, the Minister must give interested and affected parties an opportunity to make representations in accordance with Part 5 of chapter 6.
- (3) An area may be declared as a special management area only if environmental, cultural or socio-economic conditions in that area require the introduction of measures which are necessary in order to more effectively:
 - (a) attain the objectives of any coastal management programme in the area;
 - (b) facilitate the management of coastal resources by a local community;
 - (c) promote sustainable livelihoods for a local community; or
 - (d) conserve, protect or enhance coastal ecosystems and biodiversity in the area.
- (4) The Minister may prescribe specified activities which are prohibited in special management areas taking into account the purpose for which the special management area was declared.

24. Management of special management areas

- (1) The Minister may, by notice in the *Gazette*, appoint a manager for each special management area.
- (2) The manager must have sufficient expertise and capacity to manage the special management area in a manner that will achieve the objectives for which it was established and may be:
 - (a) a juristic person constituted for that purpose;
 - (b) an organ of state;
 - (c) a traditional council; or
 - (d) any other person with appropriate expertise and capacity.
- (3) Before authorising the manager to begin managing the special management area, the Minister must make regulations that:
 - (a) define the duties and powers of the manager; and
 - (b) prescribe rules to facilitate the achievement of the objectives for which the special management area was declared.

Part 7: Coastal set-back lines

25. Establishment of coastal set-back lines

- (1) An MEC must in regulations published in the *Gazette*:
 - (a) establish or change coastal set-back lines:
 - (i) to protect coastal public property, private property and public safety;
 - (ii) to protect the coastal protection zone;
 - (iii) to preserve the aesthetic values of the coastal zone; or
 - (iv) for any other reason consistent with the objectives of this Act; and
 - (b) prohibit or restrict the building, erection, alteration or extension of structures that are wholly or partially seaward of that coastal set-back line.
- (2) Before making or amending the regulations referred to in subsection (1), the MEC must:
 - (a) consult with any local municipality within whose area of jurisdiction the coastal set-back line is, or will be, situated; and
 - (b) give interested and affected parties an opportunity to make representations in accordance with Part 5 of chapter 6.
- (3) A local municipality within whose area of jurisdiction a coastal set-back line has been established must delineate the coastal set-back line on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the set-back line in relation to existing cadastral boundaries.
- (4) A coastal set-back line may be situated wholly or partially outside the coastal zone.

CHAPTER 3: Boundaries of Coastal Areas

26. Determination and adjustment of coastal boundaries

- (1) The coastal boundaries of:
 - (a) coastal public property may be determined or adjusted by the Minister in accordance with section 27 by notice in the *Gazette*;
 - (b) the coastal protection zone may be determined or adjusted by the MEC in accordance with section 28 by notice in the *Gazette*;
 - (c) a special management area may be determined or adjusted by the Minister in accordance with section 23 by notice in the *Gazette*; and
 - (d) coastal access land may be determined or adjusted by the municipality in accordance with section 29 by notice in the *Gazette*.
- (2) The power of the Minister to determine or adjust the inland coastal boundary of coastal public property in terms of section 27 includes the power to make any consequential change to an adjoining coastal boundary of the coastal protection zone or coastal access land.
- (3) The coastal boundaries referred to in subsection (1) may be determined or adjusted if:
 - (a) that coastal boundary:
 - (i) is uncertain or undefined;
 - (ii) is subject to disputing claims; or
 - (iii) has shifted due to natural or artificial processes; or
 - (b) the Minister, MEC or municipality concerned on reasonable grounds believes that the objects of this Act will be achieved more effectively by doing so.
- (4) When determining or adjusting a coastal boundary in terms of subsection (1), the Minister, MEC or municipality in question must:
 - (a) give interested and affected parties an opportunity to make representations in accordance with Part 5 of chapter 6;
 - (b) take into account:

- (i) any representations made by interested and affected parties;
 - (ii) the interests of any affected local community;
 - (iii) any applicable coastal management programme; and
 - (c) comply with any other requirements that may be prescribed.
- (5) If the Minister or MEC determines or adjusts any coastal boundary under this section, he or she must immediately inform any municipality within whose area of jurisdiction the coastal boundary is situated to enable the municipality to reflect that coastal boundary on its zoning maps in accordance with section 31.

27. Determining and adjusting coastal boundary of coastal public property

- (1) When determining or adjusting the inland coastal boundary of coastal public property, the Minister must take into account:
- (a) the dynamic nature of the shoreline;
 - (b) the need to make appropriate allowance for:
 - (i) the periodic natural movements in the high-water mark; and
 - (ii) the erosion and accretion of the seashore;
 - (c) the importance of ensuring the natural functioning of dynamic coastal processes and of extending the coastal boundaries of coastal public property to include the littoral active zone and sensitive coastal ecosystems, including coastal wetlands;
 - (d) the potential effects of projected rises in sea-level; and
 - (e) any other factor that may be prescribed.
- (2) The Minister may exclude any area from coastal public property for government purposes, by proclamation.
- (3) Before excluding any area from coastal public property in terms of subsection (2), the Minister must consult with interested and affected parties in terms of Part 5 of chapter 6.
- (4) The Minister may exclude any area from coastal public property for any other purpose with the ratification of Parliament.
- (5) Land excluded from coastal public property forms part of state owned land.
- (6) The Minister may on application approve the reclamation of land. Such reclaimed land shall, unless excluded from coastal public property in terms of subsection (5), form part of coastal public property.
- (7) For purposes of this section, 'government purposes' means the exercise of functions by an organ of state that are in the national interest or in the interest of national security but does not include donation, leases of more than 20 years or alienation by that organ of state.

28. Determining and adjusting coastal boundaries of coastal protection zone

- (1) The MEC may not determine or adjust the coastal boundaries of the coastal protection zone in a manner that changes the coastal boundaries of coastal public property.
- (2) The MEC may include land that is not adjacent to coastal public property in the coastal protection zone.
- (3) When determining or adjusting the coastal boundary of the coastal protection zone the MEC must take into account:
- (a) the purpose for which the coastal protection zone is established;
 - (b) the importance for coastal management to incorporate into the coastal protection zone land inland of the high-water mark that is not coastal public property but that should be maintained in, or restored to, a natural or semi-natural State;

- (c) the need to avoid risks posed by natural hazards to people, biodiversity, coastal public property and private property;
- (d) the potential for the number and severity of natural disasters to increase due to the effects of global climate change and other impacts on the environment, and the importance of taking preventive measures to address these threats;
- (e) the importance of allowing for the movement of the position of the high water mark over time and of protecting the inland coastal boundary of coastal public property by demarcating a continuous strip of land adjacent to it; and
- (f) any other factor that may be prescribed.

29. Determining and adjusting coastal boundaries of coastal access land

When determining or adjusting a coastal boundary of coastal access land a municipality must take into account:

- (a) the kind of public access required, and whether it is for-
 - (i) pedestrians;
 - (ii) vehicles;
 - (iii) vessels; or
 - (iv) any other kind of access:
- (b) any potential adverse effects that public access may cause, including those caused by:
 - (i) associated infrastructure;
 - (ii) vehicles, vessels or other conveyances; and
 - (iii) increased numbers of people:
- (c) the need for parking, recreational and ablution facilities;
- (d) any existing rights of way, public servitudes or customary means of gaining access to the seashore and coastal waters;
- (e) the need to protect any coastal protected areas; and
- (f) the importance of not restricting the rights of land owners unreasonably.

30. Entry onto land

(1) The Minister, an MEC or a municipality may, for the purpose of determining or adjusting a coastal boundary in terms of section 26, authorise any person to enter at any reasonable time, after reasonable notice to the owner or occupier of land or premises, other than residential premises, without a warrant, to:

- (a) conduct any survey;
- (b) gather data;
- (c) undertake an environmental assessment;
- (d) erect a beacon; or
- (e) take any other steps that may be necessary under this section.

(2) Any person authorised in terms of subsection (1) to enter land or premises must on demand by any person, produce proof of his or her identity and authority to enter such land or premises.

(3) Where the owner of any land or premises has refused entrance or cannot be found, the Minister, an MEC or a municipality may apply to the High Court for an appropriate order.

(4) The Minister, an MEC or a municipality must compensate the owner for any damage, or repair any damage, arising from any act performed or carried out on the land or premises in the exercise of any power conferred in terms of this section.

31. Marking coastal boundaries on zoning maps

If the Minister, an MEC or a municipality determines or adjusts a coastal boundary in accordance with section 26, a local municipality within whose area of jurisdiction the coastal boundary is situated must delineate that coastal boundary on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the coastal boundary in relation to existing cadastral boundaries.

32. Endorsements by Registrar of Deeds

(1) The Minister, an MEC or a municipality, as may be appropriate, must notify the relevant Registrar of Deeds in writing whenever a coastal boundary has been determined or adjusted in terms of section 26 (1) or an area or land has been demarcated in terms of section 26(2).

(2) The notification to the relevant Registrar of Deeds must:

- (a) include a description of the land involved; or
- (b) be accompanied by a diagram as defined in section 1 of the Land Survey Act, 1997 (Act 8 of 1997), of the land involved which is signed by a land surveyor.

(3) On receipt of the notification contemplated in subsection (2), the relevant Registrar of Deeds must in accordance with section 3(1)(w) of the Deeds Registries Act, 1937 (Act 47 of 1937) make a note in the relevant register of the determination or adjustment of a coastal boundary or a demarcation.

CHAPTER 4: Estuaries**33. National estuarine management protocol**

(1) Estuaries within the Republic must be managed in a co-ordinated and efficient manner and in accordance with a national estuarine management protocol.

(2) The Minister, with the concurrence of the Minister responsible for water affairs, must within four years of the commencement of this Act prescribe a national estuarine management protocol.

(3) The national estuarine management protocol must:

- (a) determine a strategic vision and objectives for achieving effective integrated management of estuaries;
- (b) set standards for the management of estuaries;
- (c) establish procedures or give guidance regarding how estuaries must be managed and how the management responsibilities are to be exercised by different organs of state and other parties;
- (d) establish minimum requirements for estuarine management plans;
- (e) identify who must prepare estuarine management plans and the process to be followed in doing so;
- (f) specify the process for reviewing estuarine management plans to ensure that they comply with the requirements of this Act; and
- (g) be published for public comment in accordance with the procedure set out in Part 5 of chapter 6.

34. Estuarine management plan

(1) The responsible body contemplated in section 33(3)(e) who develops an estuarine management plan must:

- (a) follow a public participation process in accordance with Part 5 of chapter 6; and
- (b) ensure that the estuarine management plan and the process by which it is developed are consistent with:
 - (i) the national estuarine management protocol; and

- (ii) the national coastal management programme and with the applicable provincial coastal management programme and municipal coastal management programme referred to in Parts 1, 2 and 3 of chapter 6.
- (2) An estuarine management plan may form an integral part of a provincial coastal management programme or a municipal coastal management programme.

CHAPTER 5: Institutional Arrangements

Part 1: National Coastal Committee

35. Establishment and functions of National Coastal Committee

- (1) The Minister must by notice in the *Gazette* establish a National Coastal Committee and determine its powers.
- (2) The Department must provide administrative support to the National Coastal Committee.
- (3) The National Coastal Committee must promote integrated coastal management in the Republic and effective co-operative governance by co-ordinating the effective implementation of this Act and of the national coastal management programme, and in particular must:
 - (a) promote integrated coastal management:
 - (i) within each sphere of government;
 - (ii) between different spheres of government; and
 - (iii) between organs of state and other parties concerned with coastal management;
 - (b) promote the integration of coastal management concerns and objectives into:
 - (i) those environmental implementation plans and environmental management plans referred to in chapter 3 of the National Environmental Management Act to which they are relevant;
 - (ii) national, provincial and municipal development policies, plans and strategies;
 - (iii) other plans, programmes and policies of organs of State whose activities may create adverse effects on the coastal environment; and
 - (c) perform any function delegated to it.

36. Composition of National Coastal Committee

- (1) The Minister appoints the members of the National Coastal Committee.
- (2)(a) The persons to be appointed in terms of subsection (1) must, by virtue of the office that they hold or their expertise, be able to assist the National Coastal Committee in fulfilling its functions.
- (b) When appointing persons in terms of subsection (1), the Minister must ensure that the National Coastal Committee includes:
 - (i) persons with expertise in fields relevant to coastal management and coastal ecosystems;
 - (ii) a representative from each Provincial Coastal Committee;
 - (iii) one or more members representing municipalities in the coastal zone;
 - (iv) representatives of national government departments which play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment, including representatives of the departments responsible for agriculture, minerals and energy, transport, public works, provincial and local government, land affairs, water affairs and forestry and trade and industry; and
 - (v) one or more members representing the management authorities of coastal protected areas.

- (3) The Minister may, on the basis of the criteria referred to in subsection (2), appoint:
 - (a) an alternate member for any member of the National Coastal Committee; and
 - (b) a replacement for any member who vacates his or her office.
- (4) The Minister must, with the consent of the Minister of Finance, determine the rate of remuneration and the allowances payable to any member of the National Coastal Committee who is not an employee of an organ of State.

37. Vacation of office and termination of membership

- (1) A member of the National Coastal Committee vacates office if he or she:
 - (a) becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the National Coastal Committee;
 - (b) ceases to hold any office necessary for his or her appointment to the National Coastal Committee; or
 - (c) tenders his or her resignation and a Minister accepts it.
- (2) The Minister may terminate membership of a member of the National Coastal Committee where:
 - (a) that member fails to perform the duties of a member as required in terms of this Act;
 - (b) that member obstructs or impedes the National Coastal Committee in the performance of its functions in terms of this Act;
 - (c) that member brings the National Coastal Committee into disrepute; or
 - (d) such termination is in the interest of the public.

Part 2: Provincial lead agencies

38. Designation and functions of provincial lead agency

- (1) The Premier of each coastal province must, within two months of the commencement of this Act, designate a provincial organ of state to function as the lead agency for coastal management in the province and must ensure that there is at all times a lead agency for coastal management in the province which is responsible to the MEC.
- (2) Each provincial lead agency must, within the province:
 - (a) co-ordinate the implementation of the provincial coastal management programme referred to in Part 2 of chapter 6;
 - (b) monitor coastal management in the province to ensure that it is undertaken in an integrated, effective and efficient manner and in accordance with the objects of this Act;
 - (c) monitor the state of the environment in the coastal zone and relevant trends affecting that environment, and identify provincial priority issues;
 - (d) co-ordinate the preparation of a provincial state of the coast report required by section 93(2);
 - (e) provide logistical and administrative support to the Provincial Coastal Committee established in accordance with section 39;
 - (f) review reports that relate to determinations and adjustments under chapter 3 or that concern policies that may impact on the coastal zone;
 - (g) promote, in collaboration with other appropriate bodies and organisations, (training, education and public awareness programmes relating to the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources;
 - (h) take all reasonably practical measures to monitor compliance with, and to enforce, this Act, either alone or in co-operation with other enforcement agencies; and

- (i) perform any other functions assigned to it by the Minister or the MEC under this Act.
- (3) The Premier may assign some of the functions referred to in subsection (1) to any organ of state other than the lead agency in the province.

Part 3: Provincial Coastal Committees

39. Establishment and functions of Provincial Coastal Committees

- (1) Each MEC must within 12 months of the commencement of this Act establish a Provincial Coastal Committee for the province.
- (2) A Provincial Coastal Committee must:
 - (a) promote integrated coastal management in the province and the co-ordinated and effective implementation of this Act and the provincial coastal management programme;
 - (b) advise the MEC, the provincial lead agency and the National Coastal Committee on matters concerning coastal management in the province;
 - (c) advise the MEC on developing, finalising, reviewing and amending the provincial coastal management programme;
 - (d) promote a co-ordinated, inclusive and integrated approach to coastal management within the province by providing a forum for, and promoting, dialogue, co-operation and co-ordination between the key organs of State and other persons involved in coastal management in the province;
 - (e) promote the integration of coastal management concerns and objectives into the plans, programmes and policies of other organs of state whose activities may have caused or may cause adverse effects on the coastal environment; and
 - (f) perform any function delegated to it.

40. Composition of Provincial Coastal Committees.

- (1) Subject to subsection (5), the MEC must determine the composition of the Provincial Coastal Committee, and in doing so must take account of the desirability of ensuring the representation on the Provincial Coastal Committee of organs of state and community groups or bodies which have a material and direct interest in the conservation and management of the coast or the use of coastal resources including representatives of government who play a significant role in undertaking or regulating activities that may have an adverse impact on the coastal environment.
- (2) The MEC must:
 - (a) appoint persons to the Provincial Coastal Committee who by virtue of the office that they hold or their expertise are able to assist the Provincial Coastal Committee in fulfilling its functions; and
 - (b) when appointing persons in terms of paragraph (a), ensure that the Provincial Coastal Committee includes:
 - (i) persons with expertise in fields relevant to coastal management;
 - (ii) one or more members representing municipalities in the coastal zone;
 - (iii) one or more members representing community based and non-government organisations; and
 - (iv) one or more members representing scientific or coastal research institutes.
- (3) The MEC may, on the basis of the criteria referred to in subsections (1) and (2), appoint:
 - (a) an alternate member for any member of the Provincial Coastal Committee; and
 - (b) a replacement for any member who vacates his or her office.

(4) The MEC must, with the consent of the MEC responsible for finance in the province, determine the rate of remuneration and the allowances payable to any member of the Provincial Coastal Committee who is not an employee of an organ of state.

(5) The Director-General may appoint a member of the Department to participate as a non-voting member of a Provincial Coastal Committee and may appoint an alternate or replacement for any such member.

41. Vacation of office and termination of membership

(1) A member of a Provincial Coastal Committee vacates office if he or she:

- (a) becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the Provincial Coastal Committee;

- (b) ceases to hold any office necessary for his or her appointment to the Provincial Coastal Committee; or

- (c) tenders his or her resignation and the MEC accepts it.

(2) The MEC may terminate membership of the member of the Provincial Coastal Committee where:

- (a) he or she fails to perform the duties of a member as required in terms of this Act;

- (b) he or she obstructs or impedes the Provincial Coastal Committee in the performance of its functions in terms of this Act;

- (c) he or she brings the Provincial Coastal Committee into disrepute; or (d) such termination is in the interest of the public.

Part 4: Municipal Coastal Committees coastal committees

42. Establishment and functions of municipal

(1) Each metropolitan municipality and each district municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and, subject to subsection (4), determine its powers.

(2) Any local municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and subject to subsection (4), determine its powers, which may include the power to establish local subcommittees of the municipal coastal committee.

(3) A municipal coastal committee contemplated in subsections (1) and (2) may include:

- (a) persons with expertise in fields relevant to coastal management; and

- (b) representatives of the management authorities of coastal protected areas or special management areas within the municipality; and

- (c) representatives of communities or organisations with a particular interest in contributing to effective coastal management, such as port authorities, organs of state, persons whose livelihoods or businesses rely on the use of coastal resources, environmental interest groups and research organisations.

(4) A municipal coastal committee contemplated in subsections (1) and (2) may:

- (a) promote integrated coastal management in the municipality and the co-ordinated and effective implementation of this Act and the municipal coastal management programme;

- (b) advise the municipal manager, the municipal council and the provincial coastal committee on matters concerning coastal management within the area of jurisdiction of the municipal coastal committee;

- (c) advise the municipality on developing, finalising, reviewing and amending the municipal coastal management programme;

- (d) promote a co-ordinated, inclusive and integrated approach to coastal management within the municipality by providing a forum for, and promoting, dialogue, co-operation and co-ordination between the key organs of state and other persons involved in coastal management within its area of jurisdiction;
- (e) promote the integration of coastal management concerns and objectives into the municipality's integrated development plan and spatial development framework and into other municipal plans, programmes and policies that affect the coastal environment; and
- (f) perform any coastal governance function delegated to it.

Part 5: Voluntary Coastal Officers

43. Voluntary coastal officers

- (1) The MEC of a coastal province may appoint any member of the public who has appropriate expertise as a voluntary coastal officer.
- (2) A voluntary coastal officer must exercise the powers and perform the duties assigned to him or her by the MEC in a manner that conserves and protects coastal public property.
- (3) The MEC must:
 - (a) prescribe the powers and duties of voluntary coastal officers;
 - (b) clearly define the responsibilities and duties of each voluntary coastal officer in his or her letter of appointment; and
 - (c) issue each voluntary coastal officer with an identity card that confirms his or her appointment.
- (4) A voluntary coastal officer who is exercising powers or performing functions in terms of this Act must produce his or her identity card at the request of a member of the public.

CHAPTER 6: Coastal Management

Part 1: National coastal management programme

44. Preparation and adoption of national coastal management programme

- (1) The Minister:
 - (a) must within four years after this Act takes effect, prepare and adopt a national coastal management programme for managing the coastal zone;
 - (b) must review the programme at least once every five years; and
 - (c) may, when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), the Minister must by notice in the *Gazette* invite members of the public to submit to the Minister, within 30 days of such notice, written representations on or objections to the programme.
- (3) The Minister must, within 60 days of the adoption of the national coastal management programme or of any substantial amendment to it:
 - (a) give notice to the public:
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from, the programme are available for public-inspection at specified places; and
 - (b) publicise a summary of the programme.

45. Contents of national coastal management programme

- (1) The national coastal management programme must:

- (a) be a policy directive on integrated coastal management; and
- (b) provide for an integrated, co-ordinated and uniform approach to coastal management by organs of state in all spheres of government, nongovernmental organisations, the private sector and local communities.
- (2) The national coastal management programme must include the following components;
 - (a) A national vision for coastal management in the Republic, including the sustainable use of coastal resources;
 - (b) national coastal management objectives;
 - (c) priorities and strategies to achieve those objectives;
 - (d) performance indicators to measure progress with the achievement of those objectives;
 - (e) norms and standards for the management of-
 - (i) the coastal zone generally;
 - (ii) the specific components of the coastal zone; and
 - (f) a framework for co-operative governance to implement measures concerning coastal management that:
 - (i) identifies the responsibilities of different organs of state, including their responsibilities in relation to marginalised or previously disadvantaged communities that are dependent on coastal resources for their livelihood; and
 - (ii) facilitates co-ordinated and integrated coastal management.

Part 2: Provincial coastal management programmes

46. Preparation and adoption of provincial coastal management programmes

- (1) The MEC of each coastal province:
 - (a) must within four years of the commencement of this Act, prepare and adopt a provincial coastal management programme for managing the coastal zone in the province;
 - (b) must review the programme at least once every five years; and
 - (c) may when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), the MEC must by notice in the *Gazette* invite members of the public to submit to the MEC. within 30 days of such notice, written representations on or objections to the programme.
- (3) The MEC must, within 60 days of the adoption of the provincial coastal management programme or of any substantial amendment to it:
 - (a) give notice to the public:
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from, the programme are available for public inspection at specified places; and
 - (b) publicise a summary of the programme.
- (4) If the province has a provincial land development plan or an integrated development plan, programme or strategy, its coastal management programme may form part of that plan, programme or strategy.

47. Contents of provincial coastal management programmes

- (1) A provincial coastal management programme must:
 - (a) be a provincial policy directive for the management of the coastal zone in the province;
 - (b) provide for an integrated, coordinated and uniform approach to coastal management in the province; and
 - (c) be consistent with:

- (i) the national coastal management programme; and
- (ii) the national estuarine management protocol.
- (2) A provincial coastal management programme must include:
 - (a) a vision for the management of the coastal zone in the province, including the sustainable use of coastal resources;
 - (b) the coastal management objectives for the coastal zone in the province and for specific parts of the coastal zone;
 - (c) priorities and strategics:
 - (i) to achieve the coastal management objectives of the province;
 - (ii) to assist in the achievement of the national coastal management objectives as applicable in the province;
 - (iii) to develop estuarine management plans for estuaries in the province; and
 - (d) performance indicators to measure progress with the achievement of those objectives.
- (3) A provincial coastal management programme may include a programme of projected expenditure and investment by the provincial government in order to implement the provincial coastal management programme.

Part 3: Municipal coastal management programmes

48. Preparation and adoption of municipal coastal management programmes

- (1) A coastal municipality:
 - (a) must, within four years of the commencement of this Act, prepare and adopt a municipal coastal management programme for managing the coastal zone or specific parts of the coastal zone in the municipality;
 - (b) must review any programme adopted by it at least once every five years; and
 - (c) may, when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), a municipality must by notice in the *Gazette* invite members of the public to submit written representations on or objections to the programme in accordance with the procedure contemplated in chapter 4 of the Municipal Systems Act.
- (3) A municipality must, within 60 days of the adoption of the municipal coastal management programme or of any substantial amendment to it:
 - (a) give notice to the public:
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from the programme are available for public inspection at specified places; and
 - (b) publicise a summary of the programme.
- (4) A municipality may prepare and adopt a coastal management programme as part of an integrated development plan and spatial development framework adopted in accordance with the Municipal Systems Act and if it does so, compliance with the public participation requirements prescribed in terms of the Municipal Systems Act for the preparation and adoption of integrated development plans will be regarded as compliance with public participation requirements in terms of this Act.

49. Contents of municipal coastal management programmes

- (1) A municipal coastal management programme must:
 - (a) be a coherent municipal policy directive for the management of the coastal zone within the jurisdiction of the municipality; and
 - (b) be consistent with:
 - (i) the national and provincial coastal management programmes; and

- (ii) the national estuarine management protocol.
- (2) A municipal coastal management programme must include:
 - (a) a vision for the management of the coastal zone within the jurisdiction of the municipality, including the sustainable use of coastal resources;
 - (b) the coastal management objectives for the coastal zone within the jurisdiction of the municipality;
 - (c) priorities and strategies:
 - (i) to achieve the coastal management objectives of the municipality; and
 - (ii) to assist in the achievement of the national and provincial coastal management objectives as may be applicable in the municipality;
 - (iii) to address the high percentage of vacant plots and the low occupancy levels of residential dwellings;
 - (iv) to equitably designate zones as contemplated in section 56(1)(a)(i) for the purposes of mixed cost housing and taking into account the needs of previously disadvantaged individuals;
 - (v) to address coastal erosion and accretion; and
 - (vi) to deal with access issues.
- (d) performance indicators to measure progress with the achievement of those objectives.
- (3) A municipal coastal management programme may include:
 - (a) a programme of projected expenditure and investment by the municipality in coastal management infrastructure or in order to implement any coastal management programme;
 - (b) a description of specific areas within the coastal zone that require special coastal management, and management strategies for those areas;
 - (c) estuarine management plans; and
 - (d) any other matter that may be prescribed.

50. By-laws

A municipality may administer its coastal management programme and may make by-laws to provide for the implementation, administration and enforcement of the coastal management programme.

Part 4: Co-ordination and alignment of plans and coastal management programmes

51. Alignment of certain plans with coastal management programmes

An environmental implementation or environmental management plan in terms of chapter 3 of the National Environmental Management Act an integrated development plan in terms of the Municipal Systems Act and a provincial or municipal land development plan must:

- (a) be aligned with the national coastal management programme and any applicable provincial coastal management programme;
- (b) contain those provisions of the national coastal management programme and any applicable provincial coastal management programme that specifically applies to it; and
- (c) give effect to the national coastal management programme and any applicable provincial coastal management programme.

52. Ensuring consistency between coastal management programmes and other statutory plans

(1) For the purposes of this section, 'statutory plan' means a plan, policy or programme adopted by an organ of state that may affect coastal management, and without limitation, may include:

- (a) an environmental implementation or environmental management plan pre-pared in terms of chapter 3 of the National Environmental Management Act;
 - (b) an integrated development plan adopted by a municipality in terms of the Municipal Systems Act;
 - (c) the national biodiversity framework referred to in section 38 of the Biodiversity Act and a bioregional plan prepared in terms of that Act;
 - (d) a provincial or municipal land development plan;
 - (e) a provincial strategic policy and plan concerned with promoting sustainable development; and
 - (f) the national estuarine management protocol.
- (2) The Minister must ensure that there is consistency between the national coastal management plan and other statutory plans adopted by a national organ of state.
- (3) The MEC must ensure (hat there is consistency between the provincial coastal management plan and other statutory plans adopted by either a national or a provincial organ of state.
- (4) Each municipality in the coastal zone must ensure that its integrated development plan (including it spatial development framework) is consistent with other statutory plans adopted by either a national or a provincial organ of State.
- (5) If there is a conflict between the provisions of a coastal management programme and the provisions of another statutory plan, the person responsible under subsections (2), (3) or (4) to ensure consistency must discuss the conflict with the organ of State responsible for that statutory plan in order to resolve the conflict, failing which the conflict must be dealt with in accordance with chapter 4 of the National Environmental Management Act.
- (6) Conflicts between a coastal management programme and other statutory plans must he resolved in a manner that best promotes the objects of this Act.
- (7) Once the parties referred to in subsection (5) have resolved the conflict they must make appropriate amendments to one or more of such conflicting plans.

Part 5: Public participation

53. Consultation and public participation

- (1) Before exercising a power, which this Act requires to be exercised in accordance with this section, the Minister, MEC, municipality or other person exercising that power must:
- (a) consult with all Ministers, MECs or municipalities whose areas of responsibilities will be affected by the exercise of the powers in accordance with the principles of co-operative governance as set out in chapter 3 of the Constitution;
 - (b) publish or broadcast his or her intention to do so in a manner that is reasonably likely to bring it to the attention of the public; and
 - (c) by notice in the *Gazette*:
 - (i) invite members of the public to submit, within no less than 30 days of such notice, written representations or objections to the proposed exercise of power; and
 - (ii) contain sufficient information to enable members of the public to submit representations or objections.

Part 6: Review of coastal management programmes

54. Powers of Minister to review coastal management programmes

- (1) The Minister may at any time review any provincial coastal management programme.
- (2) The Minister must, in reviewing the provincial coastal management programme, determine whether or not it:
 - (a) meets the requirements specified in section 47;
 - (b) is consistent with the national coastal management programme;
 - (c) gives adequate protection to coastal public property; and
 - (d) provides an appropriate policy framework for establishing an effective and efficient system of coastal management.
- (3) If the Minister believes that a provincial coastal management programme does not meet all the criteria referred to in subsection (2), the Minister must by notice to the MEC of the province concerned, require the MEC to amend or replace the provincial coastal management programme within a reasonable period, which must be specified in the notice.
- (4) An MEC who receives a notice in terms of subsection (3) must amend or replace the provincial coastal management programme by following the same procedure used to prepare and adopt it in terms of this Act, except that the new or amended coastal management programme may not be finally adopted without the consent of the Minister.
- (5)(a) The Minister may request an MEC to review a municipal coastal management programme under section 55;
- (b) If the MEC is unable or unwilling to review the municipal coastal management programme within a reasonable period, the Minister may do so, in which case section 55 applies with the necessary changes.

55. Review of municipal coastal management programmes

- (1) The MEC may at any time review a municipal coastal management programme.
- (2) The MEC must, in reviewing the municipal coastal management programme, determine whether or not it:
 - (a) meets the requirements specified in section 49;
 - (b) is consistent with the national and the provincial coastal management programmes;
 - (c) gives adequate protection to coastal public property; and
 - (d) was prepared in a manner that allowed for effective participation by interested and affected parties.
- (3) If, after considering the advice of the Provincial Coastal Committee, the MEC believes that a municipal coastal management programme does not meet all the criteria referred to in subsection (2), the MEC must, by notice to the municipality concerned, require the municipality to amend or replace the municipal coastal management programme within a reasonable period, which must be specified in the notice.
- (4) A municipality that receives a notice in terms of subsection (3), must amend or replace the municipal coastal management programme by following the same procedure used to prepare and adopt it in terms of this Act except that the new or amended coastal management programme may not be finally adopted without the consent of the MEC.

Part 7: Coastal planning schemes

56. Planning schemes for areas within coastal zone

- (1) A coastal planning scheme is a scheme that facilitates the attainment of coastal management objectives by:
 - (a) defining areas within the coastal zone or coastal management area which may:
 - (i) be used exclusively or mainly for specified purposes or activities; or
 - (ii) not be used for specified purposes or activities; and
 - (b) prohibiting or restricting activities or uses of areas that do not comply with the rules of the scheme.
- (2) A coastal planning scheme must:
 - (a) be established by notice in the *Gazette*;
 - (b) be consistent with:
 - (i) this Act;
 - (ii) the national coastal management programme;
 - (iii) the applicable provincial coastal management programme; and
 - (iv) any estuarine management plan applicable in the area; and
 - (c) take into account any other applicable coastal management programmes.
- (3) A coastal planning scheme may be established and implemented for an area within the coastal zone by:
 - (a) the Minister, after consultation with the MEC and with any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme applies to:
 - (i) an area of coastal public property and is established to protect and control the use of marine living resources or to implement national norms or standards; or
 - (ii) an area of the coastal zone that straddles the border between two provinces, or adjoins or straddles the borders of the Republic of South Africa;
 - (b) the person in which the authority to manage a coastal protected area is vested, if the planning scheme only applies within that protected area;
 - (c) the MEC, after consultation with the Minister and any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme is not one referred to in paragraph (a) or (b) and applies to an area of the coastal zone within the province;
 - (d) the municipality, in consultation with the MEC and after consultation with any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme is not one referred to in paragraphs (a) or (b) and applies to an area falling within its jurisdiction; and
 - (e) the management authority of a special management area, in consultation with the MEC and after consultation with the municipality, if the planning scheme only applies within that management area.
- (4) A coastal planning scheme established by:
 - (a) the Minister takes precedence over any other coastal planning scheme;
 - (b) the person in which the authority to manage a coastal protected area is vested, takes precedence within that protected area over any other coastal planning scheme except one established by the Minister;
 - (c) an MEC takes precedence over any other coastal planning scheme except one established by the Minister or the management authority for a coastal protected area; or
 - (d) a municipality takes precedence over any other coastal planning scheme except one established by the Minister or the MEC, or established within

a coastal protected area by the management authority for that protected area.

- (5) A coastal planning scheme may only be established with the consent of:
 - (a) the Minister, if the scheme applies to an area that extends into the sea further than 500 metres from the high-water mark or affects the protection or use of marine living resources; or
 - (b) the Minister of Transport, if the scheme:
 - (i) affects the navigation of vessels on the sea; or
 - (ii) restricts vessels entering or leaving a harbour.
- (6) A coastal planning scheme may not create any rights to use land or coastal waters.

57. Coastal planning and land use schemes of municipalities

- (1) Subject to section 56(5), a coastal planning scheme of a municipality may form, and be enforced as part of, any land use scheme adopted by the municipality.
- (2)(a) A municipality may not adopt a land use scheme that is inconsistent with a coastal planning scheme established in terms of this Act.
- (b) If there is a conflict between a municipal land use scheme established after the commencement of this Act and a coastal planning scheme made in terms of this Act, the coastal planning scheme shall prevail.

CHAPTER 7: Protection of Coastal Environment

Part 1: Assessing, avoiding and minimising adverse effects

58. Duty to avoid causing adverse effects on coastal environment

- (1)(a) Section 28 of the National Environmental Management Act applies, subject to the necessary changes, to any impact caused by any person and that has an adverse effect on the coastal environment.
- (b) For the purposes of the application of section 28 a reference in that section to:
 - (i) 'significant pollution or degradation of the environment' must be read as including an adverse effect on the coastal environment;
 - (ii) 'environment' must be read as including the coastal environment; and
 - (iii) 'environmental management plan' must be read as including a coastal management programme applicable in the area concerned.
- (2) For the purposes of subsection (1):
 - (a) the Minister may, by notice in the *Gazette*, determine that an impact or activity described in the notice must be presumed, until the contrary is proved, to result in an adverse effect; and
 - (b) the persons to whom section 28(1) and (2) of the National Environmental Management Act applies must be regarded as including:
 - (i) a user of coastal public property;
 - (ii) the owner, occupier, person in control of or user of land or premises on which an activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
 - (iii) the owner or person in charge of a vessel, aircraft, platform or structure at sea, or the owner or driver of a vehicle, in respect of which any activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
 - (iv) the operator of a pipeline that ends in the coastal zone; or
 - (v) any person who produced or discharged a substance which caused, is causing or is likely to cause, an adverse effect.

59. Coastal protection notice and coastal access notice

(1) If the Minister has reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the coastal environment then, subject to subsection (2), he or she may issue a written coastal protection notice to the person responsible for that activity:

- (a) prohibiting the activity if it is not already prohibited in terms of this Act; and
- (b) instructing that person:
 - (i) to take appropriate steps in terms of this Act or any other applicable legislation to protect the environment;
 - (ii) to investigate and evaluate the impact of an activity on an aspect of the coastal environment in accordance with chapter 5 of the National Environmental Management Act; or
 - (iii) to skip or postpone the activity for a reasonable period to allow for the investigation to be carried out and for the Minister or MEC to evaluate the report.

(2) Before exercising a power to issue a coastal protection notice under subsection (1), the Minister must:

- (a) consult with any other organ of state that authorised, or is competent to authorise, the undertaking of the activity or proposed activity concerned; and
- (b) give the person to whom the coastal protection notice is to be addressed, an opportunity of making representations.

(3) Notwithstanding section 87, the power of the Minister to issue a coastal protection notice in terms of subsection (1) may only be delegated to:

- (a) the MEC, who may subdelegate this power to a municipality in that province; or
 - (b) an official in the Department.
- (4) A coastal protection notice in terms of subsection (1):

- (a) must state:
 - (i) the reasons for the notice;
 - (ii) the period within which anything required by the notice must be carried out; and
- (ii) that the person to whom it is addressed may appeal against the notice in terms of chapter 9;
- (b) may instruct the person to whom it is addressed, among other matters:
 - (i) to build, maintain or demolish any specified works;
 - (ii) to close a public access or prevent unauthorised access to coastal public property at a specified place;
 - (iii) to plant, cultivate, preserve or stop damaging indigenous vegetation at a specified place;
 - (iv) to stop altering the geographical features of land at a specified place;
 - (v) to build or maintain any specified works at a specified place to protect land from wind erosion;
 - (vi) to rehabilitate land at a specified place;
 - (vii) to remove stock from land; or
 - (viii) to take measures to protect indigenous fauna.

(5) If the Minister has reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, the Minister may issue a written coastal access notice to that person:

- (a) prohibiting the activity if it is not already prohibited in terms of this Act; and

- (b) instructing that person to take appropriate steps in terms of this Act or any other applicable legislation to allow natural persons access to the coastal public properly.
- (6) When issuing a notice contemplated in subsection (5), subsections (2), (3) and (4) apply with the necessary changes.

60. Repair or removal of structures within coastal zone

(1) 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:

- (a) 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
- (b) has been erected, constructed or upgraded in contravention of this Act or any other law.

(2) Before exercising a power to issue a repair and removal notice under subsection (1), the Minister or MEC must:

- (a) consult with any other organ of State that authorised or is competent to authorise the undertaking of the activity or proposed activity concerned; and
- (b) give the person to whom the repair and removal notice is to be addressed an opportunity to make representations.

(3) Notwithstanding section 89 the power instead of issuing a notice in accordance with subsection (4) of the Minister to issue a repair and removal notice in terms of subsection (1) may only be delegated to:

- (a) the MEC who may subdelegate this power to a municipality in that province; or
- (b) an official in the relevant department.

4) A repair and removal notice in terms of subsection (1):

- (a) must state:
 - (i) the reasons for the notice; and
 - (ii) that the person to whom it is addressed may appeal against the notice in terms of chapter 9; and
- (b) may instruct the person responsible for the structure:
 - (i) to remove the structure from the coastal zone or place where it is situated within a specified period;
 - (ii) to rehabilitate the site and as far as is reasonable, to restore it to a natural state;
 - (iii) to repair the structure to the satisfaction of the Minister or the MEC within the time stated in the notice; or
 - (iv) to take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure.

(5) If a person responsible for a structure referred to in subsection (1) cannot readily be found, the Minister or the MEC, instead of issuing a notice in accordance with subsection (4), may:

- (a) publish a notice that complies with the provisions of subsection (2) once in the *Gazette* and once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and
- (b) affix a copy of the notice to the structure in question during the period of advertisement.

61. Failure to comply with certain notices

If a person fails to comply with a notice issued in terms of section 59(1) or (5) or section 60(1) which requires that person to carry out any specific action, or if the person responsible is not identified after publication of a notice in

terms of section 60(5), the Minister or the MEC who issued the notice may instruct appropriate persons to:

- (a) carry out what is required by the notice; and
- (b) recover from the person to whom the notice was addressed, or in the circumstances referred to in section 60(4) from any person subsequently found to be responsible for the structure, the costs reasonably incurred in carrying out the required action.

Part 2: Regulation of coastal zone

62. Implementation of land use legislation in coastal protection zone

(1) An organ of state that is responsible for implementing national, provincial or municipal legislation that regulates the planning or development of land must, in a manner that conforms to the principles of co-operative governance contained in chapter 3 of the Constitution, apply that legislation in relation to land in the coastal protection zone in a way that gives effect to the purposes for which the protection zone is established as set out in section 17.

(2) An organ of state may not authorise land within the coastal protection zone to be used for any activity that may have an adverse effect on the coastal environment without first considering an environmental impact assessment report.

Part 3: Environmental authorisations

63. Environmental authorisations for coastal activities

(1) Where an environmental authorisation in terms of chapter 5 of the National Environmental Management Act is required for coastal activities, the competent authority must take into account all relevant factors, including:

- (a) the representations made by the applicant and by interested and affected parties;
- (b) the extent to which the applicant has in the past complied with similar authorisations;
- (c) whether coastal public property, the coastal protection zone or coastal access land will be affected, and if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;
- (d) the estuarine management plans, coastal management programmes and coastal management objectives applicable in the area;
- (e) the socio-economic impact if the activity:
 - (i) is authorised;
 - (ii) is not authorised;
- (f) the likely impact of the proposed activity on the coastal environment, including the cumulative effect of its impact together with those of existing activities;
- (g) the likely impact of coastal environmental processes on the proposed activity; and
- (h) the objects of this Act, where applicable.

(2) The competent authority may not issue an environmental authorisation if the development or activity for which authorisation is sought:

- (a) is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;

- (b) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;
 - (c) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;
 - (d) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
 - (e) is likely to be significantly damaged or prejudiced by dynamic coastal processes;
 - (f) would substantially prejudice the achievement of any coastal management objective; or
 - (g) would be contrary to the interests of the whole community.
- (3) Notwithstanding subsection (2), the competent authority may issue an environmental authorisation in respect of an activity or a development that does not meet the criteria referred to in subsection (2)(a), (b) or (c) if:
- (a) the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land; or
 - (b) the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area.
- (4) If an application for an environmental authorisation cannot be approved by the competent authority because of a provision of subsection (2), but the competent authority believes that issuing the authorisation would be in the public interest, the competent authority may refer the application for consideration by the Minister in terms of section 64.
- (5) The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.
- (6) Where an environmental authorisation is not required for coastal activities, the Minister may, by notice in the *Gazette* list such activities requiring a permit or licence.

64. Minister may grant environmental authorisation in interests of whole community

- (1) If an application for an environmental authorisation is referred to the Minister in terms of section 63(4) the Minister may, after consultation with the MEC of the relevant province, issue or authorise the other relevant competent authority to issue the environmental authorisation:
 - (a) if the activity for which the environmental authorisation is required is overwhelmingly in the interests of the whole community despite the adverse effect it is likely to cause to the coastal zone; and
 - (b) on condition that any irreversible or long-lasting adverse effects must be mitigated as far as is reasonably possible.
- (2) Before deciding the application, the Minister may require the applicant to furnish additional information, including the results of any further studies undertaken.

Part 4: Coastal leases and coastal concessions on coastal public property

65. Award of leases and concessions on coastal public property

- (1) Subject to sections 67 and 95, no person may occupy any part of, or site on, or construct or erect any building, road, barrier or structure on or in, coastal public property except under and in accordance with a coastal lease awarded by the Minister in terms of this chapter.
- (2) Subject to section 95, no person may claim an exclusive right to use or exploit any specific coastal resource in any part of, or that is derived from, coastal public property unless he or she:
 - (a) is empowered by national legislation to do so; or
 - (b) is authorised to do so in terms of:
 - (i) a coastal concession awarded by the Minister in terms of this chapter; or
 - (ii) an authorisation issued under the Marine Living Resources Act.
- (3) A coastal lease or coastal concession may be awarded by the Minister either:
 - (a) on application by a person; or
 - (b) if the Minister so determines in any specific case, through a prescribed bid process.
- (4) An application for a coastal lease or coastal concession must be lodged in the prescribed manner.
- (5) A coastal lease or coastal concession awarded in terms of this chapter does not relieve the lessee or concessionaire from the obligation to:
 - (a) obtain any other authorisation that may be required in terms of this Act or other legislation; or
 - (b) comply with any other legislation.

66. Terms of coastal leases and coastal concessions

- (1) A coastal lease or coastal concession:
 - (a) must be awarded for a fixed period of time of not more than 20 years;
 - (b) is subject to any prescribed conditions or as may be determined by the Minister in any specific case; and
 - (c) must provide for the payment by the lessee or concessionaire of a reasonable rent.
- (2) A coastal lease or coastal concession on land that is partially or completely submerged by coastal waters may authorise the lessee to use the water either exclusively or for specified purposes.

Part 5: General provisions

67. Temporary occupation of land within coastal zone

- (1) Subject to the Expropriation Act, 1975 (Act 63 of 1975), the Minister may direct that land within the coastal zone be temporarily occupied to build, maintain or repair works to implement a coastal management programme, or to respond to pollution incidents or emergency situations, and may for this purpose:
 - (a) take from the land stone, gravel, sand, earth or other material;
 - (b) deposit materials on it; and
 - (c) construct and use temporary works on it, including roads.
- (2) Notwithstanding section 89, the powers of the Minister in terms of subsection (1) may be delegated to:
 - (a) the MEC, who may subdelegate this power to a municipality in that province; or
 - (b) an official in that Department.

(3) If the land is private property, the Minister or the MEC, acting in terms of subsection (1), must, before the land is occupied, give the occupier and the owner of the land reasonable notice, in writing, of the intention to occupy and the purpose of the occupation.

68. Amendment, revocation, suspension or cancellation of authorisations

(1) An issuing authority may amend, revoke, suspend or cancel an authorisation issued in terms of this Act, if:

- (a) the holder of the authorisation contravenes or fails to comply with a condition subject to which the authorisation was issued;
- (b) it is in conflict with a coastal management programme or will significantly prejudice the attainment of a coastal management objective;
- (c) changes in circumstances require such amendment, revocation, suspension or cancellation; or
- (d) it is necessary to meet the Republic's international obligations.

(2) An issuing authority must by written notice delivered to the holder of the authorisation, or sent by registered post to the holder's last known address, request the holder to make written representations within a period of 30 days from the date of the notice as to why the authorisation should not be amended, revoked, suspended or cancelled, as the case may be.

(3) After the expiry of the period referred to in subsection (2) the issuing authority must consider the matter in the light of all relevant circumstances, including any representations made by the holder, and may:

- (a) revoke the authorisation;
- (b) suspend the authorisation for a period determined by the issuing authority;
- (c) cancel the authorisation from a date determined by the issuing authority;
- (d) alter the terms or conditions of the authorisation; or
- (e) decide not to amend, revoke, suspend or cancel the authorisation.

(4) Notwithstanding subsections (2) and (3), the issuing authority may, whenever it is in the interests of the promotion, protection or utilisation on a sustainable basis of the coastal zone, at any time by written notice to the holder of an authorisation amend, revoke, suspend or cancel the authorisation.

(5) If the issuing authority intends to exercise the powers under subsection (4), subsection (2) apply with the necessary changes.

(6) If the Minister or an issuing authority has reason to believe that it is urgently necessary to exercise powers under subsections (1), (3) or (4) in order to protect the coastal environment or human health and well-being, the Minister or issuing authority may, by notice to the holder of an authorisation, temporarily suspend the authorisation and then follow the procedure referred to in subsection (3).

(7) A competent authority, when exercising the power to amend, withdraw or suspend an environmental authorisation in terms of the National Environmental Management Act, must consider the factors referred to in subsections (1), (4), (5) and (6) with the necessary changes.

CHAPTER 8: Marine and Coastal Pollution Control

69. Discharge of effluent into coastal waters

(1) No person may discharge effluent that originates from a source on land into coastal waters except in terms of a general authorisation contemplated in subsection (2) or a coastal waters discharge permit issued under this section by the Minister after consultation with the Minister responsible for water affairs in instances of discharge of effluent into an estuary.

(2) The Minister may by notice in the *Gazette* authorise persons in general, or a category of persons, to discharge effluent into coastal waters, and in instances of discharge of effluent into an estuary, only after consultation with the Minister responsible for water affairs.

(3) Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a general authorisation referred to in subsection (2) must apply to the Department for a coastal waters discharge permit.

(4) Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general authorisation under subsection (2) must apply to the Department for a coastal waters discharge permit:

(a) within 24 months of the date of commencement of this Act if the discharge is in terms of a licence or authorisation under the National Water Act; or

(b) within 36 months of the date of commencement of this Act if the discharge is a continuation of an existing lawful water use within the meaning of section 32 or 33 of the National Water Act.

(5) Unless a person referred to in subsection (4) is directed otherwise by a person acting in terms of this Act or the National Water Act, it is not an offence for that person to discharge effluent that originates from a source on land into coastal waters if:

(a) that person has made an application under subsection (4) but has not yet been notified whether the application has been granted or refused; or

(b) the applicable period referred to in subsection (4)(a) or (b) has not yet expired.

(6) A person who discharges effluent into coastal waters:

(a) must not waste water;

(b) may only do so to the extent that it is not reasonably practicable to return any freshwater in that effluent to the water resource from which it was taken;

(c) must discharge the effluent subject to any condition contained in the relevant authorisation;

(d) must comply with any applicable waste standards or water management practices prescribed under this Act or under section 29 of the National Water Act or any Act of Parliament specifically dealing with waste, unless the conditions of the relevant authorisation provide otherwise; and

(e) must register the discharge with the department responsible for water affairs.

(7) The Minister, and in instances of discharge of effluent into an estuary, with the concurrence of the Minister responsible for water affairs, must, when deciding whether or not to issue a general authorisation contemplated in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including:

(a) the interests of the whole community;

(b) the socio-economic impact if the disposal:

(i) is authorised;

- (ii) is not authorised;
- (c) the coastal management programmes and estuarine management plans applicable in the area;
- (d) the likely impact of the proposed disposal on the coastal environment, including, the cumulative effect of its impact together with those of existing point and non-point discharges.
- (e) the Republic's obligations under international law;
- (f) the factors listed in section 27 of the National Water Act; and
- (g) any other factors that may be prescribed.
- (8) The Minister may not grant an application in terms of subsection (3) for a coastal waters discharge permit if doing so is likely:
 - (a) to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
 - (b) to prejudice significantly the achievement of any coastal management objective contained in a coastal management programme; or
 - (c) to be contrary to the interests of the whole community.
- (9)(a) The Director-General must within five years of the date of commencement of this Act:
 - (i) review all authorisations issued before the commencement of this Act that authorise the discharge of effluent into coastal waters; and
 - (ii) in consultation with the director-general of the department responsible for water affairs undertake a joint review of all authorisations issued before the commencement of this Act that authorised the discharge of effluent into estuaries, in order to determine the extent to which those authorisations comply with the requirements of this Act and of other applicable legislation.
- (b) After any such review the Director-General must make recommendations to the Minister and to the Minister responsible for water affairs as to whether or not:
 - (i) the discharge should be prohibited;
 - (ii) in the case of a discharge into the sea, whether or not a permit should be issued under subsection (1);
 - (iii) in the case of a discharge into an estuary, whether or not the discharge should be authorised in terms of a permit issued under subsection (1) and a permit issued under the National Water Act.
- (10) The Minister, and in instances where the discharge takes place into an estuary, with the concurrence of the Minister responsible for water affairs, must as soon as possible after recommendations contemplated in section (9)(b) have been received, decide whether or not to issue a permit or permits referred to in subsection (9) and the conditions that will apply to any permits issued, but before doing so, must give the holders of the authorisations a reasonable opportunity of making representations.
- (11) An organ of state that issues a permit under subsection (1) must report every three years in the prescribed form to the National Coastal Committee on the status of each pipeline that discharges effluent into coastal waters and its impact on the coastal environment.
- (12) The Minister may, when performing functions in terms of subsections (1), (7) and (10), enter into an agreement with any member of Cabinet.

70. Prohibition of incineration or dumping at sea

- (1) Subject to subsection (2), no person may:
 - (a) incinerate at sea any waste or other material:
 - (i) within the coastal waters or the exclusive economic zone; or
 - (ii) aboard a South African vessel;

- (b) import into the Republic any waste or other material to be dumped or incinerated at sea within the coastal waters or the exclusive economic zone;
- (c) export from the Republic any waste or other material to be dumped or incinerated:
 - (i) on the high seas; or
 - (ii) in an area of the sea under the jurisdiction of another state;
- (d) load any waste or other material to be dumped or incinerated at sea onto any vessel, aircraft, platform or other structure at any place in the Republic, including the exclusive economic zone, unless the master of the vessel, aircraft, platform or other structure produces written proof that the dumping at sea of that waste or other material has been authorised in terms of a dumping permit granted under section 71:
- (e) except on the authority of a dumping permit granted under section 71:
 - (i) dump at sea any waste or other material within the coastal waters or the exclusive economic zone; or
 - (ii) dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material on the high seas; or
- (f) dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material in any area of the sea under the jurisdiction of another State, except with the written permission of that state.
- (2) It is a defence to a charge in terms of subsection (1)(e)(i) or (ii) to show:
 - (a) that adverse weather conditions necessitated the dumping or incineration at sea in order to secure the safety of human life or of the vessel, aircraft, platform or structure in question; or
 - (b) that there was a danger to human life or a real threat to the vessel, aircraft, platform or structure in question, that there appeared to be no reasonable alternative to dumping or incineration at sea, and that it is probable that the adverse effects arising from the dumping or incineration at sea were less than would otherwise have occurred; and
 - (c) that in either case, the dumping or incineration at sea was conducted in a manner that minimised any actual or potential adverse effects and was reported to the Department without delay.

71. Dumping permits

- (1) A person who wishes to dump at sea any waste or other material must:
 - (a) apply in writing to the Minister in the form stipulated by the Minister for a dumping permit that authorises the waste or other material to be loaded aboard a vessel, aircraft, platform or other structure and to be dumped at sea; and
 - (b) pay the prescribed fee.
- (2) When deciding an application for a dumping permit contemplated in subsection (1), the Minister must have regard to:
 - (a) the Waste Assessment Guidelines set out in Schedule 2;
 - (b) any coastal management programme applicable in the area;
 - (c) the likely environmental impact of the proposed activity;
 - (d) national legislation dealing with waste;
 - (e) the interests of the whole community;
 - (f) transboundary impacts and international obligations and standards; and
 - (g) any other factors that may be prescribed.
- (3) The Minister may not grant a dumping permit that authorises the dumping of any waste or other material, other than:
 - (a) dredged material;
 - (b) sewage sludge;

- (c) fish waste, or material resulting from industrial fish processing operations;
- (d) vessels and platforms or other man-made structures at sea;
- (e) inert, inorganic geological material;
- (f) organic material of natural origin; or
- (g) bulky items primarily comprising iron, steel, concrete and similarly non-harmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping at sea.
- (4) The Minister may not issue a dumping permit if:
 - (a) the waste or other material proposed for dumping contains:
 - (i) levels of radioactivity greater than as defined by the International Atomic Energy Agency and adopted by the contracting parties to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter adopted on 7 November 1996; or
 - (ii) material which is capable of creating floating debris or otherwise contributing to the pollution of the marine environment and which could be removed from the material proposed for dumping;
 - (b) dumping the waste or other material in question:
 - (i) is likely to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
 - (ii) would cause a serious obstacle to fishing or navigation;
 - (iii) would prejudice the achievement of any coastal management objective contained in a coastal management programme;
 - (iv) would be contrary to the obligations of the Republic under international law; or
 - (v) would be contrary to the interests of the whole community.
- (5) A dumping permit must be issued for a specified period of not more than two years but may be renewed once for a period of not more than two years.

72. Emergency dumping at sea

- (1) The Minister may in relation to any application for a dumping permit referred to in section 71 dispense with any prescribed procedure, including any consultation and public participation processes, if:
 - (a) the dumping at sea of a quantity of any particular waste or other material is necessary to avert an emergency that poses an unacceptable risk to the environment or to human health or safety; and
 - (b) there is no other feasible solution.
- (2) Before issuing a permit in the circumstances contemplated in subsection (1), the Minister must consult with:
 - (a) any foreign State that is likely to be affected by the proposed dumping at sea; and
 - (b) the International Maritime Organisation.
- (3) The Minister must:
 - (a) as far as reasonably possible in the circumstances, follow any recommendations received from the International Maritime Organisation when imposing permit conditions regarding the procedures to be followed in conducting the loading or dumping at sea of the relevant quantity of waste or other material; and
 - (b) inform the International Maritime Organisation of any action taken under this section within a reasonable period thereafter.

73. National action list

- (1) The Minister must progressively and subject to available resources, develop a national action list to provide a mechanism for screening waste and

other material on the basis of their potential effect on human health and the marine environment.

(2) The national action list must:

- (a) be developed in accordance with the Waste Assessment Guidelines set out in Schedule 2; and
- (b) contain the prescribed information.

CHAPTER 9: Appeals

74. Appeals

(1) A person to whom a coastal protection notice or coastal access notice in terms of section 59 or a repair and removal notice in terms of section 60, has been issued, may lodge a written appeal against that notice with:

- (a) the Minister, if the notice was issued by an MEC or by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or
- (b) the MEC of the province concerned, if the notice was issued by a municipality in that province or by a person exercising powers delegated by the MEC in terms of this Act.

(2) A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel an authorisation, may lodge a written appeal against that decision with:

- (a) the Minister, if the decision was taken by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or
- (b) the MEC of the province concerned, if the decision was taken by:
 - (i) a person exercising powers granted or delegated to the MEC that have been delegated by the MEC;
 - (ii) a provincial organ of state; or
 - (iii) a municipality in that province.

(3) An appeal made under subsection (1) or (2) must:

- (a) be lodged within 30 days of the appellant being given the notice in terms of section 59 or 60, or being notified of the decision, or if the appellant is not given a notice or notified of the decision, within 60 days of the relevant decision being announced;
- (b) State clearly the grounds of the appeal;
- (c) state briefly the facts on which the appellant relies and include any relevant information that was not placed before the decision-maker and which the appellant believes should be considered on appeal; and
- (d) comply with any other requirements that may be prescribed.

(4) An appeal under this section does not suspend an authorisation or an exemption, or any provision or condition of an authorisation, or any notice issued under chapter 7, unless the Minister or MEC directs otherwise.

(5) The Minister or MEC may, on good cause shown, extend the period within which an appeal may be lodged in terms of this chapter.

(6) The Minister or MEC may dismiss an appeal that he or she considers to be trivial, frivolous or manifestly without merit.

(7) Appeals against a decision involving an environmental authorisation must be dealt with in terms of the National Environment Management Act.

75. Advisory Appeal panel

(1) The Minister or an MEC may appoint an advisory appeal panel to consider and advise the Minister or the MEC on an appeal.

(2) An advisory appeal panel must consist of an uneven number of members.

(3) The members appointed by the Minister or an MEC must:

- (a) have suitable qualifications and experience in relation to the matters that must be considered in the appeal; and
- (b) be committed to the objects of this Act.
- (4) A person may not be appointed as a member of the appeal panel if he or she:
 - (a) was involved in any way in the making of the decision appealed against;
 - (b) or any spouse, partner or close family member of that person has a personal or private interest in the appeal;
 - (c) is an unrehabilitated insolvent;
 - (d) has, as a result of improper conduct, been removed from an office of trust; or
 - (e) has been declared by a court to be mentally ill or disordered.
- (5) The Minister, with the consent of the Minister of Finance, or the MEC, with the consent of the member of the provincial executive council responsible for finance, must determine the rate of remuneration and the allowances payable to any member of an advisory appeal panel who is not an employee of an organ of State.

76. Interim orders by Minister or MEC

- (1) The Minister or an MEC may, at any time after an appeal has been lodged, make any interim order pending the determination of the appeal, that he or she considers equitable or appropriate to achieve the objects of this Act.
- (2) Without limiting the generality of subsection (1) an interim order may:
 - (a) preserve existing rights or an existing State of affairs between the parties to the proceedings;
 - (b) provide for interim protection of the coastal environment;
 - (c) suspend or temporarily stay a notice or any part, of it; or
 - (d) deal with procedural issues.
- (3) The Minister or an MEC may make an interim order at his or her own initiative, or in response to an application by the appeal panel or a party to the appeal proceedings.
- (4) If a party to the proceedings applies for an interim order, the Minister or an MEC must give the parties to the proceedings a reasonable opportunity to make oral or written submissions, but may make an interim order pending the making of submissions by the parties, if the Minister or an MEC has reason to believe that doing so would be just or desirable in order to protect the coastal environment.

77. Proceedings of advisory appeal panel

- (1) The chairperson of an advisory appeal panel decides when and where the panel meets.
- (2) An advisory appeal panel must give the appellant, the person who made the decision or gave the notice appealed against, and any other interested and affected parties, a reasonable opportunity of making written submissions, and may allow oral representations to be made.
- (3) An advisory appeal panel:
 - (a) must act fairly;
 - (b) may determine its own procedures;
 - (c) may convene hearings and make orders concerning preliminary and procedural matters;
 - (d) may summon and examine witnesses on oath;
 - (e) must in considering the merits of an appeal, have regard to:
 - (i) the objects of this Act; and
 - (ii) any relevant coastal management objectives or standards and relevant policies; and

- (iii) guidelines published or endorsed by the Department or the provincial lead agency concerned.
- (4) An advisory appeal panel must give a written report to the Minister or an MEC, setting out its findings and recommendations.
- (5) The decision of the majority of the members of an advisory appeal panel is the decision of the panel, but the chairperson must ensure that any dissenting opinions by members are recorded in the written report of the panel.

78. Determination of appeal by Minister or MEC

- (1) The Minister or an MEC must consider the appeal and may:
 - (a) dismiss the appeal and confirm the decision appealed against;
 - (b) uphold part or all of the appeal and either vary the decision appealed against or set aside the decision and make a new decision; or
 - (c) refer the appeal back to the appeal panel with directions to investigate and consider specific facts or issues and to report back to the Minister or MEC.
- (2) In determining an appeal the Minister or an MEC must have regard to:
 - (a) the objects of this Act;
 - (b) any relevant coastal management objectives; and
 - (c) the findings and recommendations of the appeal panel, but is not bound by them.

CHAPTER 10: Enforcement

79. Offences

- (1) A person is guilty of a category one offence if that person:
 - (a) discharges effluent originating from a source on land into coastal waters in contravention of section 69;
 - (b) incinerates at sea any waste or material in contravention of section 70;
 - (c) loads, imports or exports any waste or other material to be dumped or incinerated at sea in contravention of section 70;
 - (d) dumps any waste at sea in contravention of section 70;
 - (e) dumps any waste or other material at sea without a dumping permit in contravention of section 70;
 - (f) alters any authorisation;
 - (g) fabricates or forges any document for the purpose of passing it off as an authorisation;
 - (h) passes, uses, alters or has in possession any altered or false document purporting to be an authorisation; or
 - (i) makes any false statement or report, for the purpose of obtaining or objecting to an authorisation.
- (2) A person is guilty of a category two offence if that person:
 - (a) fails to comply with a repair and removal notice issued in terms of section 60;
 - (b) hinders or interferes with a duly authorised person exercising a power or performing a duty in terms of this Act; or
 - (c) knowingly falsely represents that he or she is a person authorised to exercise powers in terms of this Act;
- (3) A person who is the holder of an authorisation is guilty of a category three offence if that person:
 - (a) contravenes or fails to comply with a condition subject to which the authorisation has been issued;
 - (b) performs an activity for which the authorisation was issued otherwise than in accordance with any conditions subject to which the authorisation was issued; or

- (c) allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b).
- (4) A person is guilty of a category three offence if that person:
 - (a) fails to comply with a coastal protection notice or access notice issued in terms of section 59; or
 - (b) contravenes any other provision of this Act which is not referred to in subsection (1), (2) or (3).

80. Penalties

- (1) A person who is guilty of a category one offence referred to in section 79(1) may be sentenced to a fine of up to R5000 000 or to imprisonment for a period of up to ten years, or to both such fine and imprisonment.
- (2) A person who is guilty of a category two offence referred to in section 79(2) may be sentenced on a first conviction for that offence to a fine of up to R500 000 or to imprisonment or community service for a period of up to five years, or to both such fine, imprisonment or community service.
- (3) A person who is guilty of a category three offence referred to in section 79(3) may be sentenced on a first conviction for that offence to a fine of up to R50 000 or community service for a period of up to six months or to both such fine and community service.
- (4) A person who is guilty of a category two or three offence may be sentenced on a second conviction for that offence as if he or she has committed a category one or two offence.
- (5) A court that sentences any person:
 - (a) to community service for an offence in terms of this Act must impose a form of community service which benefits the coastal environment, unless it is not possible to impose such a sentence in the circumstances;
 - (b) for any offence in terms of this Act, may suspend, revoke or cancel an authorisation granted to the offender under this Act.

81. Jurisdiction of courts

If a person is charged with the commission of an offence in terms of this Act on, in or above coastal waters, a court whose area of jurisdiction abuts on the coastal waters has jurisdiction in the prosecution of the offence.

82. Actions in relation to coastal zone

The Minister, an MEC or a municipality concerned may:

- (a) institute legal proceedings or take other appropriate measures:
 - (i) to prevent damage, or recover damages for harm suffered to coastal public property or the coastal environment; or
 - (ii) to abate nuisances affecting the rights of the public in its use and enjoyment of coastal public property; and
- (b) accept service of legal processes and defend any legal proceedings instituted in connection with coastal public property.

CHAPTER 11: General Powers and Duties

Part 1: Regulations

83. Regulations by Minister

- (1) The Minister may make regulations relating to any matter which this Act requires to be dealt with in regulations or that may be necessary to facilitate the implementation of this Act, including, but not limited to, regulations relating to:

- (a) the implementation and enforcement of the national coastal management programme;
- (b) the sustainable use of coastal resources in order to address poverty in communities dependent on coastal resources for their livelihood;
- (c) the sustainable use of coastal resources; (d) coastal public property, including regulations concerning:
 - (i) public access to coastal public property;
 - (ii) the rehabilitation of coastal public property;
 - (iii) fees, costs and rents for the use of coastal public property; and
 - (iv) research conducted within, or in respect of, coastal public property;
- (e) the type and format of data to be submitted to the Department or other organs of state for the purposes of monitoring the coastal environment and the implementation of this Act or maintaining a coastal information system;
- (f) the establishment of national norms, standards and frameworks to implement this Act, including systems, guidelines, protocols, procedures, standards and methods, concerning:
 - (i) the content and regular revision of the coastal management programmes of provinces and municipalities;
 - (ii) the implementation and enforcement of coastal management programmes;
 - (iii) the monitoring of the implementation of coastal management programmes and the performance of any functions contemplated in this Act, including indicators to evaluate effectiveness and progress;
 - (iv) the amendment of coastal planning schemes;
 - (v) the quality of coastal public property and coastal ecosystems;
 - (vi) the factors that must be taken into account when deciding applications;
 - (vii) the circumstances in which exemption may be given from compliance with a coastal management programme;
 - (viii) the uses of the coastal zone that do not conform with the relevant coastal planning scheme;
 - (ix) the outcomes that must be achieved by managing and treating all or any category of effluent, discharges from storm-water drains, or waste or other material, before it is discharged or deposited on or in coastal public property or in a place within the coastal zone from where it is likely to enter coastal public property, including those relating to the kind, quantity and characteristics of effluent, waste or other material that may be discharged or deposited;
 - (x) who should monitor and analyse effluent, waste or other material referred to in subparagraph (ix) and the methods that should be used to do so;
 - (xi) the appointment, training, powers and supervision of voluntary coastal officers;
 - (xii) public safety and behaviour on coastal public property; or
 - (xiii) any activity which has an adverse effect on the coastal environment.
- (g) the procedures to be followed with the lodging and consideration of applications for authorisations, including:
 - (i) the conditions with which applicants must comply before or after the lodging of their applications;
 - (ii) the application fees to be paid;
 - (iii) the authorities that will be competent to issue the different categories of authorisation;
 - (iv) the consultation procedures to be followed with organs of State and other interested and affected parties;
 - (v) the authorities whose consent is required before permits may be issued;
 - (vi) the procedures for objecting to such applications;

- (vii) the powers of issuing authorities when considering and deciding such applications;
 - (viii) the factors that must be taken into account when deciding applications;
 - (ix) the circumstances in which applications must be refused or may be approved and guidelines as to the conditions on which permits may or must be issued;
 - (x) the bid process to be followed for the award of coastal leases and coastal concessions;
 - (h) the contents of authorisations;
 - (i) the giving of security in respect of any obligation that may arise from carrying out activities authorised by permits, coastal leases or coastal concessions, and the form of such security;
 - (j) the procedure to be followed in connection with the lodging and consideration of appeals in terms of chapter 9, including:
 - (i) the fees to be paid;
 - (ii) the conditions with which appellants must comply before or after the lodging of their appeals;
 - (iii) the powers of, and the procedure to be followed by, an MEC when considering and deciding such appeals;
 - (iv) the circumstances in which a temporary stay may be granted in the carrying out of notices in terms of section 59 or 60, or an amendment, revocation, suspension or cancellation of permits, leases or concessions in terms of section 68;
 - (k) methods, procedures and conditions of enforcing compliance with authorisations;
 - (l) the issuing and contents of notices to persons who have contravened or failed to comply with:
 - (i) a provision of this Act;
 - (ii) a coastal management programme; or
 - (iii) a condition of a permit, coastal lease or coastal concession;
 - (m) training, education and public awareness programmes on the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources;
 - (n) the presence and use of vehicles and aircraft within the coastal zone;
 - (o) the presence and recreational use of vessels on coastal waters;
 - (p) the seizing, removal and disposal of vehicles, vessels, aircraft or properly suspected of being used in the commission of an offence under this Act and of coastal resources suspected of having been illegally obtained;
 - (q) methods, procedures and conditions for obtaining access to relevant information, including entry to private property; and
 - (r) the issuing and contents of permits or licences.
- (2) The Minister must obtain the consent of the Minister of Finance before making any regulation that
- (a) will entail the expenditure of funds in future years; or
 - (b) prescribes application fees for, or other monies in relation to, dumping permits or coastal waters discharge permits.
- (3) The Minister must consult with:
- (a) the Minister of Finance before making any regulations imposing fees, costs or rents;
 - (b) the Minister responsible for water affairs before making any regulations concerning estuaries; or
 - (c) the MEC and municipalities before making any regulations concerning the coastal zone within that province.

84. Regulations by MECs

- (1) The MEC of a province may, after consultation with the Minister, make regulations that are consistent with any national norms or standards that may have been prescribed, relating to:
 - (a) the implementation and enforcement of the coastal management programme of the province;
 - (b) the management of the coastal protection zone within the province;
 - (c) the use of coastal public property for recreational purposes;
 - (d) the impounding, removal and disposal of vehicles, vessels, aircraft or property found abandoned on coastal public property;
 - (e) the granting of permission for the erection, placing, alteration or extension of a structure that is wholly or partially seaward of a coastal set-back line and the process to be followed for acquiring such permission, including the authority by whom, the circumstances in which and the conditions on which such permission may be given;
 - (f) the implementation within the province of any national norm, framework or standard referred to in section 83(1)(f);
 - (g) the management of special management areas; or
 - (h) any other matter referred to in section 83(1), other than in paragraph (f) of that section, that may be necessary to facilitate the implementation of this Act in the province.
- (2) Any regulation which will entail the expenditure of funds in future years may be made only with the concurrence of the MEC responsible for finance in the province.

85. General provisions applicable to regulations

- (1) The Minister or MEC must publish draft regulations for public comment and must take any submissions received into account before making any regulations in terms of sections 83 or 84.
- (2) Subsection (1) need not be applied in the case of a minor or a mere technical amendment to regulations.
- (3) Regulations made in terms of section 83 or 84 may:
 - (a) restrict, prohibit or control any act that may have an adverse effect on the coastal environment, either absolutely or conditionally;
 - (b) apply generally:
 - (i) throughout the Republic or province, as the case may be, or only in a specified area or category of areas;
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all prohibited activities or only to a specified activity or category of activities; or
 - (iv) to all types of waste or other materials or only to specified waste or other material or a category of waste or other material;
- (c) differentiate between different:
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons;
 - (iii) activities or categories of activities; or
 - (iv) types of wastes or other materials or categories of types of waste or other materials;
- (d) provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to:
 - (i) imprisonment for a period not exceeding two years;
 - (ii) an appropriate fine; or
 - (iii) both such fine and imprisonment.

86. Amendment of Schedule 2

The Minister may by notice in the *Gazette* amend Schedule 2 so as to ensure that it continues to give effect to the Republic's obligations under international law.

Part 2: Powers to be exercised by Minister and MEC**87. Powers to be exercised by Minister**

(1) The Minister must exercise the powers granted to the MEC in terms of section 22 to excise all or part of a protected area from the coastal protection zone, if all or any part of that area:

- (a) extends into the sea for more than 500 metres from the high water mark;
 - (b) is a national protected area as defined in the Protected Areas Act;
 - (c) straddles a coastal boundary between two provinces; or
 - (d) extends up to, or straddles, the borders of the Republic of South Africa.
- (2) If subsection (1) applies, the reference to the MEC in section 22 must be read as a reference to the Minister.

88. Directives by MEC to municipalities

(1) An MEC may in writing direct a municipality to take specified measures if the MEC is satisfied that the municipality is not taking adequate measures to:

- (a) prevent or remedy adverse effects on the coastal environment;
 - (b) adopt or implement a municipal coastal management programme; or
 - (c) give effect to the provincial coastal management programme.
- (2) The MEC may not issue a directive under subsection (1) without first consulting with the municipality and giving it a reasonable opportunity to make representations.

(3) If the municipality does not comply with a directive under subsection (1) the MEC may use any powers granted to the MEC under this Act to take measures to prevent or remedy adverse effects on the coastal environment, to implement or monitor compliance with provincial norms and standards, or to give effect to the provincial coastal management programme.

Part 3: Delegations and enforcement**89. Delegation by Minister**

(1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to:

- (a) the Director-General or to other officials in the Department;
- (b) an MEC, by agreement with that MEC; or
- (c) any other organ of state, statutory functionary, traditional council or management authority of a special management area, by agreement with that organ of state, statutory functionary, traditional council or management authority.

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

- (a) is subject to any limitations, conditions and directions the Minister may impose;
- (b) is subject to consultation with the relevant MEC if the organ of state to whom the power or duty is delegated is a municipality;
- (c) must be in writing;
- (d) may include the power to subdelegate; and
- (e) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, an organ of state, a statutory functionary, a traditional council or a management authority of a special management area.

(4) The Minister may confirm, vary or revoke any decision made taken in consequence of a delegation or subdelegation in terms of a provision of this Act or of a statute repealed by this Act.

(5) The Minister:

- (a) may not delegate a power or duty vested in the Minister:
 - (i) to make regulations;
 - (ii) to publish notices in the *Gazette*; or
 - (iii) to appoint the members of the National Coastal Committee; and
- (b) may withdraw by notice in writing any delegation made in terms of a provision of this Act or of a statute repealed by this Act.

90. Enforcement by Minister

(1) The Minister may in writing request an MEC to take specified measures if the Minister is satisfied that the MEC is not taking adequate measures to:

- (a) prevent or remedy adverse effects on coastal public property;
- (b) implement or monitor compliance with national norms and standards;
- (c) give effect to the national coastal management programme; or
- (d) establish set-back lines to implement or monitor compliance with provincial norms and standards.

(2) If the MEC does not comply with a request under subsection (1) the Minister may exercise any powers given to the MEC by this Act in order to take any measures referred to in the request, including the power:

- (a) to issue coastal protection or coastal access notices and repair and removal notices delegated to the MEC in terms of sections 59 and 60, respectively;
- (b) to take measures and to recover costs in terms of section 61; and
- (c) to allow temporary occupation of land within the coastal zone and to take other measures in terms of section 67.

(3) The Minister may not take any measures under subsection (2) without first consulting with the MEC and giving the MEC a reasonable opportunity to make representations.

91. Delegation by MECs

(1) An MEC may delegate any power or duty assigned or delegated to him or her in terms of this Act to:

- (a) the head of the provincial lead agency; or
- (b) any other organ of state, a statutory functionary, a traditional council or a management authority of a special management area, by agreement.

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

- (a) is subject to any limitations, conditions and directions that the MEC may impose;
- (b) must be in writing;
- (c) may include the power to subdelegate; and
- (d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The MEC may confirm, vary or revoke any decision taken as a consequence of a delegation or subdelegation in terms of this section.

(4) The MEC:

- (a) may not delegate a power or duty vested in the MEC:
 - (i) to make regulations; or
 - (ii) to publish notices in the *Gazette*; or

- (iii) to appoint the members of the Provincial Coastal Committee contemplated in section 39; and
- (b) may withdraw any delegation by notice in writing.

Part 4: General matters

92. Urgent action by Minister

- (1) The Minister may issue a verbal directive to any responsible person to stay an activity if such activity poses:
 - (a) an immediate risk of serious danger to the public or property; or
 - (b) an immediate risk of serious damage, or potentially significant detriment, to the environment.
- (2) Subject to subsection (3), a verbal directive contemplated in subsection (1) must be confirmed in writing at the earliest opportunity, which must be within seven days.
- (3) When issuing a verbal directive contemplated in subsection (1), the provisions of section 59(1), (3) and (4) or 60(1), (3) and (4) apply with the necessary changes.

93. Information and reporting on coastal matters

- (1) The Minister must progressively, and within the available resources of the Department, make sufficient information available and accessible to the public concerning the protection and management of the coastal zone to enable the public to make an informed decision of the extent to which the State is fulfilling its duty in terms of section 3.
- (2) The MEC must:
 - (a) prepare a report on the state of the coastal environment in the province every four years, which must contain any information prescribed by the Minister;
 - (b) update the report once applicable information pertaining to the coastal environment under the jurisdiction of the MEC becomes available; and
 - (c) submit the report and every update to the Minister.
- (3) The Minister must prepare and regularly update a national report on the state of the coastal environment based on provincial reports submitted to the Minister in terms of subsection (2).

94. Co-ordination of actions between provinces and municipalities

The MEC must:

- (a) liaise with coastal municipalities in the province to co-ordinate actions taken in terms of this Act by provincial organs of state in the province with actions taken by municipalities; and
- (b) monitor compliance by such municipalities with this Act.

CHAPTER 12: Miscellaneous Matters

Part 1: Transitional provisions

95. Existing leases on, or rights to, coastal public property

- (1) Subject to subsection (3), this Act does not affect the continuation of:
 - (a) a lawful lease on coastal public property, including a port or harbour, that existed when this Act took effect; or
 - (b) a vested right to use or exploit any specific coastal resource on or in coastal public property, including a right to prospect for or mine minerals, or to explore for or exploit petroleum resources that existed when this Act took effect.

- (2) The holder of a lease or right referred to in subsection (1) must within 24 months of the commencement of this Act:
 - (a) notify the Minister, in writing, of the existence of that lease or right; and
 - (b) provide the Minister with a copy of any documents evidencing that lease or right.
- (3) A person may undertake any activity authorised by a lease or right referred to in subsection (1) without obtaining a coastal lease or a coastal concession in terms of chapter 7 for a maximum period of:
 - (a) 48 months after the commencement of this Act, if the holder of that lease or right complies with subsection (2); or
 - (b) 24 months after the commencement of this Act, if the holder of that lease or right does not comply with subsection (2).
- (4) After the end of the period referred to in subsection (3), no person may continue with or carry out an activity that was permitted under that lease or right except in terms of a coastal lease or a coastal concession awarded to that person in terms of chapter 7.
- (5) An application by a person contemplated in subsection (4) for a coastal lease or coastal concession:
 - (a) must:
 - (i) be considered taking into account the existing lease or right and any losses or hardships the applicant and other persons may suffer; and
 - (ii) be decided within six months from the date the application was lodged;
 - (b) may be refused if:
 - (i) the activity applied for would have or is likely to have serious adverse effects on the coastal environment; or
 - (ii) the Minister has reason to believe that granting the application would be inconsistent with the objects of the Act or would prejudice the attainment of a coastal management objective.

96. Unlawful structures on coastal public property

- (1) Subject to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998), and subsection (4), a person who, before this Act took effect, had unlawfully constructed a building or other structure on coastal public property or who, when this Act took effect, occupied a building or other structure unlawfully built on coastal public property must, within 12 months of the commencement of this Act, either:
 - (a) apply for a coastal lease in terms of chapter 7; or
 - (b) demolish the building or structure and as far as reasonably possible, restore the site to its condition before the building or other structure was built.
- (2) If a person referred to in subsection (1) applies for a coastal lease in accordance with subsection (1) and the application is refused by the Minister, that person must demolish the building or structure and, within a reasonable period, as determined by the Minister when refusing the application, as far as reasonably possible restore the site to its condition before the building or other structure was built.
- (3) If a person who in terms of subsection (2) is obliged to demolish the building or structure and to restore the site to its original condition, fails to do so within the period specified by the Minister, the Minister or the MEC may, under section 60, issue a written repair or removal notice to that person.
- (4) This section does not affect:
 - (a) any legal proceedings that commenced prior to the commencement of this Act to enforce any prohibition or restriction on construction or other activities in terms of any other law;

- (b) any legal proceedings instituted after the commencement of this Act to enforce any notice served prior to the commencement of this section that required the addressee to vacate or demolish any building or structure that was constructed unlawfully; or
- (c) any rights a person may have in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998).

97. Existing lawful activities in coastal zone

- (1) For a period of 24 months after the commencement of this Act, any person who, when this Act commenced, was lawfully engaged in:
 - (a) carrying out in the coastal zone, an activity requiring an environmental authorisation;
 - (b) abstracting water from coastal waters, must be regarded to be the holder of an environmental authorisation that authorises that activity.
- (2) Any person referred to in subsection (1) who within 24 months of the commencement of this Act applies for an environmental authorisation that will authorise the continuation of the activity referred to in subsection (1), shall continue to be regarded as the holder of the authorisation until the competent authority decides whether to grant or refuse the application.
- (3) This section does not affect:
 - (a) the powers of an issuing authority under section 68 to amend, revoke, suspend or cancel an authorisation; or
 - (b) any obligation which a person referred to in subsection (1) may have under section 96(2).

98. Repeal of legislation

The laws referred to in Schedule 1 are hereby repealed to the extent indicated in the third column of that Schedule.

99. Savings

- (1) Subject to section 6 any regulation made in terms of a provision repealed under section 98 remains valid to the extent that it is consistent with this Act and shall be regarded as having been made in terms of this Act.
- (2) Anything else done in terms of legislation repealed in terms of section 98 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

Part 2: General

100. Limitation of liability

Neither the State nor any other person is liable for any damage or loss caused by:

- (a) the exercise of any power or the performance of any duty in terms of this Act; or
- (b) the failure to exercise any power or perform any duty in terms of this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the duty, was unlawful, negligent or in bad faith.

101. Short title

This Act is called the National Environmental Management: Integrated Coastal Management Act, 2007, and takes effect on a date or dates determined by the President by proclamation in the *Gazette*.

Schedule 1: Laws Repealed**(Section 98)**

No and year of the law	Short title	Extent of repeal or amendment
Act 21 of 1935	Sea-shore Act, 1935	Repeal of the whole, to the extent that it has not been assigned to provinces
Act 73 of 1980	Dumping at Sea Control Act, 1980	Repeal of the whole

Schedule 2**(Section 71)**

**GUIDELINES FOR THE ASSESSMENT OF WASTES OR OTHER
MATERIAL THAT MAY BE CONSIDERED FOR DUMPING AT SEA
(‘the Waste Assessment Guidelines’)**

General

1. This Schedule sets out guidelines for reducing the necessity for dumping at sea in accordance with Schedule II to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters adopted on 7 November 1996.

Waste prevention audit

2. The initial stages in assessing alternatives to dumping at sea should, as appropriate, include an evaluation of:

- (a) the types, amounts and relative hazard of wastes generated;
- (b) details of the production process and the sources of wastes within that process; and
- (c) the feasibility of the following waste reduction or prevention techniques;
 - (i) product reformulation;
 - (ii) clean production technologies;
 - (iii) process modification;
 - (iv) input substitution; and
 - (v) on-site, closed-loop recycling.

3. In general terms, if the required audit reveals that opportunities exist for waste prevention at its source, an applicant for a permit is expected to formulate and implement a waste prevention strategy, in collaboration with the relevant local, provincial and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions must assure compliance with any resulting waste reduction and prevention requirements.

4. For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local, provincial and national agencies involved with the control of point and non-point sources of pollution. Until

this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

Consideration of waste management options

5. Applications to dump wastes or other material must demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:

- (a) re-use;
- (b) off-site recycling;
- (c) destruction of hazardous constituents;
- (d) treatment to reduce or remove the hazardous constituents; and
- (e) disposal on land, into air and in water.

6. The Minister will refuse to grant a permit if it is established that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping at sea and the alternatives.

Chemical, physical and biological properties

7. A detailed description and characterisation of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterised that a proper assessment cannot be made of its potential impacts on health and the environment, that waste may not be dumped.

Characterisation of the wastes and (their constituents must take into account:

- (a) origin, total amount, form and average composition;
- (b) properties: physical, chemical, biochemical and biological;
- (c) toxicity;
- (d) persistence: physical, chemical and biological; and
- (e) accumulation and biotransformation in biological materials or sediments.

Action list

8. In selecting substances for consideration in the Action List referred to in section 78, the Minister will give priority to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g. cadmium, mercury, organohalogens, petroleum hydrocarbons and whenever relevant arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogens). An Action List can also be used as a trigger mechanism for further waste prevention considerations.

9. The Action List must specify an upper level and may also specify a lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:

- (a) wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping at sea through the use of management techniques or processes;
- (b) wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping at sea; and

- (c) wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping at sea can be determined.

Dump-site selection

10. The Minister will require at least the following information before deciding whether or not to approve a site for dumping at sea:

- (a) the physical, chemical and biological characteristics of the water-column and the seabed;
- (b) the location of amenities, values and other uses of the sea in the area under consideration;
- (c) the assessment of the constituent fluxes associated with dumping at sea in relation to existing fluxes of substances in the marine environment;
- (d) the economic and operational feasibility; and
- (e) any relevant coastal management objectives.

Assessment of potential effects

11. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the 'Impact Hypothesis'. It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

12. The assessment for dumping at sea must integrate information on waste characteristics, conditions at the proposed dump-site or dump-sites, fluxes, and proposed disposal techniques and specify the potential effects on the environment, human health, living resources, amenities and other legitimate uses of the sea. It must define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.

13. An analysis of each disposal option must be considered in the light of a comparative assessment of the following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option may not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping at sea option to be less preferable, a permit for dumping will not be given.

14. Each assessment must conclude with a statement supporting a decision to issue or refuse a permit for dumping at sea.

Monitoring

15. Monitoring is used to verify that permit conditions are met- compliance monitoring- and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health-field monitoring. It is essential that such monitoring programmes have clearly defined objectives.

Permit and permit conditions

16. A decision to issue a permit will only be made if all impact evaluations are completed and the monitoring requirements are determined. The conditions of the permit must ensure, as far as practicable, that adverse effects are minimised and the benefits maximised. A dumping permit issued must contain data and information specifying:

- (a) the types and sources of materials to be dumped;
- (b) the location of the dump-site(s);
- (c) the method of dumping at sea; and

(d) monitoring and reporting requirements.

17. The Minister will review permits for dumping at sea at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

2.2.1.7 Environment Conservation Act

Description: The Act provides for the effective protection and controlled utilisation of the environment. This Act has been largely repealed by NEMA, but certain provisions remain, in particular provisions relating to environmental impact assessments.

Excerpts from the Environmental Conservation Act 73 of 1989

As last amended by the National Environmental Management: Protected Areas Amendment Act 15 of 2009.

General note

In terms of section 4 of Proclamation No R.43 of 8 August, 1996, the expression 'Administrator' has been substituted wherever it occurs by the expression 'competent authority'.

1. Definitions

In this Act, unless the context indicates otherwise:

'*administrative body*' means a Minister, competent authority, local authority, government institution or a person who makes a decision in terms of the provisions of this Act;

'*Administrator*'

...

'*chief executive officer*' means the officer in charge of the relevant local authority or government institution;

'*committee*' means the Committee for Environmental Co-ordination established by section 12;

'*competent authority*' in so far as a provision of this Act is applied in or with reference to a particular province, means the competent authority to whom the administration of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) been assigned in that province;

'*council*' means the Council for the Environment established by section 4;

'*define*' includes a description by means of a map on which sufficient information is indicated to identify an area;

'*Department*' means the Department of Environmental Affairs and Tourism;

'*Director-General*' means the Director-General: Environmental Affairs and Tourism;

'disposal site'

...

'ecological process' means the process relating to the interaction between plants, animals and humans and the elements in their environment;

'ecosystem' means any self-sustaining and self-regulating community of organisms and the interaction between such organisms with one another and with their environment;

'environment' means the aggregate of surrounding objects, conditions and influences that influence the life and habits of man or any other organism or collection of organisms;

'environmental impact report' means a report referred to in section 22(2) or 23(3);

'government institution' means any institution, body, company or close corporation recognised by the Minister by notice in the *Gazette*;

'limited development area' means an area declared as a limited development area in terms of section 23(1);

'litter' means any object or matter discarded or left behind by the person in whose possession or control it was;

'local authority', in so far as a provision of this Act is applied in or with reference to a particular province, means a local government body or a transitional council, as the case may be, contemplated in section 1(1) of the Local Government Transition Act, 1993;

'management advisory committee' means a committee established under section 17(1);

'Minister' means the Minister of Environmental Affairs and Tourism;

'Minister of State Expenditure':

(a) in so far as the administration of a provision of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993, been assigned to a competent authority within the jurisdiction of the government of a province and the provision is applied in or with reference to the province concerned, means the member of the Executive Council of that province responsible for the budget in the province; or

(b) in so far as the administration of a provision of this Act has been so assigned, means the Minister of Finance;

'Official Gazette' means the Provincial *Gazette* of a province;

'prescribe' means prescribe by regulation or notice in the *Gazette*;

'protected natural environment' means an area declared as a protected natural environment under section 16(1);

'province' means a province established in terms of section 124 of the Constitution of the Republic of South Africa, 1993;

'provincial administration' means the provincial administration established for a province by the Public Service Act, 1994 (Proclamation No 103 of 1994);

'regulation' means a regulation made under this Act;

'special nature reserve' means an area declared as a special nature reserve under section 18;

'this Act' includes the regulations and any notice issued under the Act;

'waste'

...

Part 1: Policy for Environmental Conservation

...

Part 2: Council for the Environment, Committee for Environmental Co-ordination and Board of Investigation

...

Part 3: Protection of Natural Environment

...

Part 4: Control of Environmental Pollution

...

Part 5: Control of Activities which may have Detrimental Effect on the Environment

21. Identification of activities which will probably have detrimental effect on environment

(1) The Minister may by notice in the *Gazette* identify those activities which in his opinion may have a substantial detrimental effect on the environment, whether in general or in respect of certain areas.

(2) Activities which are identified in terms of subsection (1) may include any activity in any of the following categories, but are not limited thereto:

- (a) Land use and transformation;
- (b) water use and disposal;
- (c) resource removal, including natural living resources;
- (d) resource renewal;
- (e) agricultural processes;
- (f) industrial processes;
- (g) transportation;
- (h) energy generation and distribution;
- (i) waste and sewage disposal;
- (j) chemical treatment;
- (k) recreation.

(3) The Minister identifies an activity in terms of subsection (1) after consultation with:

- (a) the Minister of each department of State responsible for the execution, approval or control of such activity;
- (b) the Minister of State Expenditure; and
- (c) the competent authority of the province concerned.

22. Prohibition of undertaking of identified activities

(1) No person shall undertake an activity identified in terms of section 21(1) or cause such an activity to be undertaken except by virtue of a written authorisation issued by the Minister or by a competent authority or local authority or an officer, which competent authority, authority or officer shall be designated by the Minister by notice in the *Gazette*.

(2) The authorisation referred to in subsection (1) shall only be issued after consideration of reports concerning the impact of the proposed activity and of alternative proposed activities on the environment, which shall be compiled and submitted by such persons and in such manner as may be prescribed.

(3) The Minister or the competent authority, or a local authority or officer referred to in subsection (1), may at his or its discretion refuse or grant the authorisation for the proposed activity or an alternative proposed activity on such conditions, if any, as he or it may deem necessary.

(4) If a condition imposed in terms of subsection (3) is not being complied with, the Minister, any competent authority or any local authority or officer may withdraw the authorisation in respect of which such condition was imposed, after at least 30 days' written notice was given to the person concerned.

23. Limited development areas

(1) A competent authority may by notice in the *Official Gazette* declare any area defined by him or her, as a limited development area.

(2) No person shall undertake in a limited development area any development or activity prohibited by the competent authority by notice in the *Official Gazette* or cause such development or activity to be undertaken unless he or she has on application been authorised thereto by the competent authority, or by a local authority designated by the competent authority by notice in the *Official Gazette*, on the conditions contained in such authorisation.

(3) In considering an application for an authorisation referred to in subsection (2) the competent authority or the designated local authority may request the person to submit a report as prescribed, concerning the influence of the proposed activity on the environment in the limited development area.

(4) A limited development area shall not be declared unless the competent authority:

- (a) has given notice in the *Official Gazette* and in not fewer than one English and one Afrikaans newspaper circulating in the area in question of his or her intention to declare such area as a limited development area;
- (b) has permitted not fewer than 60 days for the submission to the Director-General of the provincial administration concerned, of comment on the proposed declaration;
- (c) has considered all representations received in terms of such notice; and
- (d) has consulted each Minister charged with the administration of any law which in the opinion of the competent authority relates to a matter affecting the environment in that area.

Part 6: Regulations

24. ...

24A. ...

24B. ...

24C. ...

25. Regulations regarding noise, vibration and shock

The Minister may make regulations with regard to the control of noise, vibration and shock, concerning:

- (a) the definition of noise, vibration and shock;
- (b) the prevention, reduction or elimination of noise, vibration and shock;
- (c) the levels of noise, vibration and shock which shall not be exceeded, either in general or by specified apparatus or machinery or in specified instances or places;
- (d) the type of measuring instrument which can be used for the determination of the levels of noise, vibration and shock, and the utilisation and calibration thereof;
- (e) the powers of provincial administrations and local authorities to control noise, vibration and shock; and
- (f) any other matter which he may deem necessary or expedient in connection with the effective control and combating of noise, vibration and shock.

26. Regulations regarding environmental impact reports

The Minister or a competent authority, as the case may be, may make regulations with regard to any activity identified in terms of section 21(1) or prohibited in terms of section 23(2), concerning:

- (a) the scope and content of environmental impact reports, which may include, but are not limited to:
 - (i) a description of the activity in question and of alternative activities;
 - (ii) the identification of the physical environment which may be affected by the activity in question and by the alternative activities;
 - (iii) an estimation of the nature and extent of the effect of the activity in question and of the alternative activities on the land, air, water, biota and other elements or features of the natural and man-made environments;
 - (iv) the identification of the economic and social interests which may be affected by the activity in question and by the alternative activities;
 - (v) an estimation of the nature and extent of the effect of the activity in question and the alternative activities on the social and economic interests;
 - (vi) a description of the design or management principles proposed for the reduction of adverse environmental effects; and
 - (vii) a concise summary of the finding of the environmental impact report;
- (b) the drafting and evaluation of environmental impact reports and of the effect of the activity in question and of the alternative activities on the environment; and
- (c) the procedure to be followed in the course of and after the performance of the activity in question or the alternative activities in order to substantiate the estimations of the environmental impact report and to provide for preventative or additional actions if deemed necessary or desirable.

27. Regulations regarding limited development areas

The competent authority may make regulations with regard to limited development areas, concerning:

- (a) the imposition of restrictions on the nature and extent of development or activities in connection with development in such area;
- (b) the procedure to be followed for obtaining permission for development in such area; and
- (c) the repair of damage to the environment in such area by unauthorised development or activities.

27A.

...

28. General regulatory powers

Any regulation made under this part:

- (a) may assign functions to any provincial administration or any local authority;
- (b) may relate to the qualifications, powers and duties of officers enforcing the provisions of this Act, including the power to seize any book, document, vehicle or other thing which such officer deems necessary in the execution of his functions;
- (c) ...
- (d) may provide that an officer, local authority or government institution may by notice call upon a person contravening a provision of this Act to take certain steps or to cease certain activities within a specified period;
- (e) may provide that any person who contravenes, or who fails to comply with, any provision thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial

value of any thing in respect of which the offence was committed, and, in the event of a continuing contravention, to a fine not exceeding R250 or to imprisonment for a period not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which such contravention continues;

- (f) may be made in respect of different regions or different matters which the Minister or a competent authority as the case may be may deem necessary or expedient;
- (g) may relate to any matter which in terms of this Act shall or may be prescribed by regulation;
- (h) may in general relate to any matter which aims at furthering the objects of this Act;
- (i)(i) which will entail the expenditure of State funds shall be made only with the concurrence of the Minister of State Expenditure.
- (ii) ...
- (iii) ...

28A. Exemption to persons, local authorities and government institutions from application of certain provisions

(1) Any person, local authority or government institution may in writing apply to the Minister or a competent authority, as the case may be, with the furnishing of reasons, for exemption from the application of any provision of any regulation, notice or direction which has been promulgated or issued in terms of this Act.

(2) In order to enable him to make a decision on an application in terms of subsection (1), the Minister or a competent authority, as the case may be, may call for further information from the applicant.

(3) The Minister or a competent authority, as the case may be, may after considering an application:

- (a) refuse to grant exemption;
- (b) in writing grant exemption from compliance with any of or all the provisions of any regulation, notice or direction, subject to such conditions as he may deem fit.

(4) If any condition referred to in subsection (3)(b) is not being complied with, the Minister may in writing withdraw the exemption concerned or at his discretion determine new conditions.

(5) The Minister or a competent authority, as the case may be, may from time to time review any exemption granted or condition determined, and if he deems it necessary, withdraw such exemption or delete or amend such condition.

Part 7: Offences, Penalties and Forfeiture

29. Offences and penalties

(1) Any person:

- (a) who, having been duly summoned to appear at proceedings under section 15, fails without lawful excuse so to appear; or
- (b) who, having appeared as a witness at proceedings under section 15, refuses without lawful excuse to be sworn or to make affirmation or to produce any book, document or thing or to answer any question which he may be lawfully required to produce or answer,

shall be guilty of an offence.

(2) Any person:

- (a) referred to in section 16(3) who contravenes any provision of a direction issued under section 16(2) or fails to comply therewith; or

(b) who contravenes a provision of section 18(6) or a condition of an exemption in terms of section 118(7), shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Any person who contravenes a provision of section 19 or 19A or fails to comply therewith, or fails to comply with a direction in terms of section 31A(1) or (2), or prevents any person authorised in terms of section 41A to enter upon such land or hinders him in the execution of his powers, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months.

(4) Any person who contravenes a provision of section 22(1) or 23(2) or fails to comply with an authorisation issued under the said provisions shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.

(5) Any person convicted of an offence in terms of this Act for which no penalty is expressly provided, shall be liable to a fine not exceeding R500 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) Any person convicted of an offence in terms of this Act, and who after such conviction persists in the act or omission which constituted such offence, shall be guilty of a continuing offence and liable on conviction to a fine not exceeding R1 000 per day or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in respect of every day on which he or she so persists with such act or omission.

(7) In the event of a conviction in terms of this Act the court may order that any damage to the environment resulting from the offence be repaired by the person so convicted, to the satisfaction of the Minister, the competent authority concerned or the local authority concerned.

(8) If within a period of 30 days after a conviction or such longer period as the court may determine at the time of the conviction, an order in terms of subsection (7) is not being complied with, the Minister, the competent authority concerned or local authority concerned may itself take the necessary steps to repair the damage and recover the cost thereof from the person so convicted.

(9) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.

30. Forfeiture

(1) Notwithstanding anything to the contrary in any law contained, a court convicting any person of an offence under this Act may declare any vehicle or other thing by means whereof the offence concerned was committed or which was used in the commission of such offence, or the rights of the convicted person to such vehicle or other thing, to be forfeited to the State.

(2) A declaration of forfeiture under subsection (1) shall not affect the rights which any person other than the convicted person may have to the vehicle or other thing concerned, if it is proved that he did not know that the vehicle or other thing was used or would be used for the purpose of or in connection with the commission of the offence concerned or that he could not prevent such use.

(3) The provisions of section 35(3) and (4) of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply to any declaration of forfeiture under this section.

Part 8: General Provisions

31. Powers of Minister and competent authority in case of default by local authority

(1) If in the opinion of the competent authority of the province in question, any local authority fails to perform any function assigned to it by or under this Act, that competent authority may, after affording that local authority an opportunity of making representations to him, in writing direct such local authority to perform such function within a period specified in the direction, and if that local authority fails to comply with such direction, the competent authority may perform such function as if he were that local authority and may authorise any person to take all steps required for that purpose.

(2) Any expenditure incurred by the competent authority in the performance of any function by virtue of the provisions of subsection (1), may be recovered from the local authority concerned.

(3) Whenever in the opinion of the Minister a local authority has failed to perform a function in terms of subsection (1), the Minister may request the competent authority in question to act in terms of subsection (1), and if the competent authority fails within 90 days after the date of such request to act accordingly, the Minister may do anything which the competent authority could have done, and the provisions of subsections (1) and (2) shall apply *mutatis mutandis* with reference to the Minister and anything done by him or under his authority.

31A. Powers of Minister, competent authority, local authority or government institution where environment is damaged, endangered or detrimentally affected

(1) If, in the opinion of the Minister or the competent authority, local authority or government institution concerned, any person performs any activity or fails to perform any activity as a result of which the environment is or may be seriously damaged, endangered or detrimentally affected, the Minister, competent authority, local authority or government institution, as the case may be, may in writing direct such person:

(a) to cease such activity; or

(b) to take such steps as the Minister, competent authority, local authority or government institution, as the case may be, may deem fit;

within a period specified in the direction, with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.

(2) The Minister or the competent authority, local authority or government institution concerned may direct the person referred to in subsection (1) to perform any activity or function at the expense of such person with a view to rehabilitating any damage caused to the environment as a result of the activity or failure referred to in subsection (1), to the satisfaction of the Minister, competent authority, local authority or government institution, as the case may be.

(3) If the person referred to in subsection (2) fails to perform the activity or function, the Minister, competent authority, local authority or government institution, depending on who or which issued the direction, may perform such activity or function as if he or it were that person and may authorise any person to take all steps required for that purpose.

(4) Any expenditure incurred by the Minister, a competent authority, a local authority or a government institution in the performance of any function by virtue of the provisions of subsection (3), may be recovered from the person concerned.

32. Publication for comment

- (1) If the Minister, the Minister of Water Affairs, a competent authority or any local authority, as the case may be, intends to:
 - (a) issue a regulation in terms of the provisions of this Act;
 - (b) make a declaration or identification in terms of section 16(1), 18(1), 21(1) or 23(1); or
 - (c) determine a policy in terms of section 2, a draft notice shall first be published in the *Gazette* or the *Official Gazette* in question, as the case may be.
- (2) The draft notice referred to in subsection (1) shall include:
 - (a) the text of the proposed regulation, direction, declaration, identification or determination of policy;
 - (b) a request that interested parties shall submit comments in connection with the proposed regulation, direction, declaration, identification or determination of policy within the period stated in the notice, which period shall not be fewer than 30 days after the date of publication of the notice;
 - (c) the address to which such comments shall be submitted.
- (3) If the Minister, competent authority or local authority concerned thereafter determines on any alteration of the draft notice published as aforesaid, it shall not be necessary to publish such alteration before finally issuing the notice.

33. Delegation

- (1) The Minister, the Minister of Water Affairs, a competent authority, a local authority or a government institution may on such conditions as he or it may deem fit delegate or assign any power or duty conferred upon or assigned to him or it by or under this Act, excluding any power referred to in sections 2, 16(2), 18(1), 18(4), 24, 25, 26, 27 and 28, to, respectively, any officer or employee of the Department, the Department of Water Affairs or the provincial administration or local authority or government institution concerned.
- (2) The Director-General may, on such conditions as he may deem fit, delegate or assign any power or duty conferred upon or assigned to him by or under this Act, to any officer or employee of the Department.

34. Compensation for loss

- (1) If in terms of the provisions of this Act limitations are placed on the purposes for which land may be used or on activities which may be undertaken on the land, the owner of, and the holder of a real right in, such land shall have a right to recover compensation from the Minister or competent authority concerned in respect of actual loss suffered by him consequent upon the application of such limitations.
- (2) The amount so recoverable shall be determined by agreement entered into between such owner or holder of the real right and the Minister or competent authority, as the case may be, with the concurrence of the Minister of State Expenditure.
- (3) In the absence of such agreement the amount so to be paid shall be determined by a court referred to in section 14 of the Expropriation Act, 1975 (Act 63 of 1975), and the provisions of that section and section 15 of that Act shall *mutatis mutandis* apply in determining such amount.

35. Appeal to Minister or competent authority

- (1) Any person who feels aggrieved at a decision referred to in section 20 in respect of which a power has been delegated to an officer or employee under section 33 may appeal against such decision to the Minister of Water

Affairs in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(2) Any person who feels aggrieved at a decision of an officer or employee enforcing a provision of this Act in respect of a protected natural environment may appeal against such decision to the competent authority concerned, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(3) Subject to the provisions of subsections (1) and (2) any person who feels aggrieved at a decision of an officer or employee exercising any power delegated to him in terms of this Act or conferred upon him by regulation, may appeal against such decision to the Minister or the competent authority concerned, as the case may be, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(4) The Minister, the Minister of Water Affairs or a competent authority, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision of the officer or employee or make such order as he may deem fit, including an order that the prescribed fee paid by the applicant or such part thereof as the Minister or competent authority concerned may determine be refunded to that person.

36. Review by court

(1) Notwithstanding the provisions of section 35, any person whose interests are affected by a decision of an administrative body under this Act, may within 30 days after having become aware of such decision, request such body in writing to furnish reasons for the decision within 30 days after receiving the request.

(2) Within 30 days after having been furnished with reasons in terms of subsection (1), or after the expiration of the period within which reasons had to be so furnished by the administrative body, the person in question may apply to a division of the Supreme Court having jurisdiction, to review the decision.

37. Restriction of liability

No person, including the State, shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this Act.

38. ...

39. ...

40. State bound

The provisions of this Act shall bind the State, including any provincial administration, except in so far as criminal liability is concerned.

41. Application of Act

(1) This Act shall also apply in respect of the Prince Edward Islands as defined in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948).

(2) ...

41A. Right to enter upon land

(1) Any person authorised thereto in writing by the Minister or a competent authority, as the case may be, may after reasonable notice to the owner or occupier of any land, at any reasonable time enter upon that land in order to investigate whether any action is necessary in order to give effect to the objects of this Act, or to determine whether the provisions of this Act or a regulation, notice, authorisation, instruction or any direction promulgated, issued, granted or made thereunder or any condition imposed thereunder or

contained in any authorisation, instruction or direction has been complied with.

(2) A person authorised under subsection (1) shall not exercise any power or perform any duty unless he is in possession of the authorisation concerned.

(3) An authorised person shall produce his authorisation at the request of any person having a material interest in the matter concerned.

42. Repeal of laws, and savings

(1) Subject to the provisions of subsection (2), the laws mentioned in the schedule are hereby repealed to the extent set out in the third column thereof.

(2) Anything done under any provision of a law repealed by subsection (1) and which could have been done under a provision of this Act shall be deemed to have been done under the latter provision.

43. Amendment of section 1 of Act 88 of 1967

Amends section 1 of the Physical Planning Act, 88 of 1967, by deleting the definition of '*nature area*'.

44. Amendment of section 4 of Act 88 of 1967

(1) Amends section 4(1) of the Physical Planning Act, 88 of 1967, by deleting paragraph (b).

(2) At the commencement of this Act, land reserved as a nature area in terms of section 4(1)(b) of the Physical Planning Act, 1967 (Act 88 of 1967), shall, notwithstanding the provisions of subsection (1), be deemed to be declared a protected natural environment in terms of section 16(1) of this Act.

45. Amendment of section 6 of Act 88 of 1967

Amends section 6(2)(e) of the Physical Planning Act, 88 of 1967, by substituting subparagraph (i).

46. Short title

This Act shall be called the Environment Conservation Act, 1989.

2.2.2 Conservation and natural resources

This section deals with legislation that impacts on various components of conservation. These components include the conservation of forests, water, agriculture, animals, fisheries and land resources. Conservation refers to the preservation and management of living species, natural resources, biological diversity and ecosystems through necessary policies and legislative measures in order to ensure environmental protection and/or sustainable use of such resources. Most components of conservation in South Africa are regulated through national legislation. Only selected legislation that impacts on conservation of the environment has been included in this *Compendium*.

South African conservation laws can be traced back to legislation promulgated by colonial authorities at the Cape during the seventeenth century. These *placaats* were promulgated to *inter alia* regulate the protection of gardens, lands and trees from destruction. After 1910, four provincial nature conservation ordinances regulated conservation at provincial level.

Currently, conservation is regulated mainly by national and provincial legislation. The legislation reprinted below impacts on all aspects of conservation. For reasons of clarity and convenience these are reprinted under the sub-categories of forests, water, agriculture, animals, fisheries and land.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.2.1 Biodiversity

The United Nations Convention on Biological Diversity defines 'biodiversity' as: '[T]he variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.'

South Africa is said to have the third highest biodiversity in the world. Whilst its land surface represents only 1% of the earth's total land surface, South Africa contains almost 10% of the world's total known bird, fish and plant

species, and over 6% of the world's mammal and reptile species. This biodiversity is important, not only from an environmental point of view, but also provides a basis for economic development and provides foundation for industries such as fishing, commercial and subsistence farming, horticulture, agriculture, tourism and cultural and medicinal applications of indigenous resources.

However there are major pressures on South Africa's biodiversity. The National Biodiversity Framework (2009) identifies these as loss and degradation of natural habitat, in terrestrial and aquatic ecosystems, invasive alien species, over-harvesting of species, over-abstraction of water and climate change. This creates the impetus for the law to regulate the management of biodiversity in South Africa. Several national acts have thus been enacted to address biodiversity with the overarching piece of legislation being the National Environmental Management: Biodiversity Act 10 of 2004. In addition legislation has been enacted to protect biodiversity in protected areas in the form of the National Environmental Management: Protected Areas Act 57 of 2003.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.2.1.1 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, co-operative governance, public participation and matters related to protected areas.

(Refer to page 87 for this Act)

2.2.2.1.2 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity - South African Biodiversity Institute.

(Refer to page 119 for this Act)

2.2.2.2 Forests

South Africa's climate can be described as semi desert with savanna areas. As such the country's natural resources have never been rich in natural forest areas. However, small and sporadic pockets of natural forest areas do occur and are mostly restricted to areas in the Eastern Cape, Kwa-Zulu Natal, Western Cape, Limpop and Mpumalanga Province.

On the commercial side, large plantation areas do exist and forestry is a key economic indicator in South Africa's national economy. Mayer *et al* indentified five major phases in the development of the South African forestry sector:

1. Initial state sponsored forestation (1876-1914);
2. Rapid afforestation led by the state (1914 -1939);
3. Continued rapid afforestation with increased private sector participation (1939-1972);
4. Rapid development of private sector forestry within the context of controlled afforestation (1972 -1994); and
5. A mature industry facing new policy and market pressures (1994-2004).

2004 - 2010 can be described as a continuation of the last phases with greater considerations being placed on socio-economic conditions prevalent in South Africa.

Ownership of our country's forestry resources includes state owned (approximately 30%); large companies (approximately 47%); medium-sized companies and private growers (22%); as well as micro-growers (1%). However, as a result of shifting policies contemporary development over the past decade in the forestry sector include a greater participation communities and previously disadvantage groups in both the management and ownership of the country's forest resources. Key role-players include: SAFCOL and the Department of Agriculture, Forestry and Fisheries; SAPPI and Mondi at the level of large enterprises; various medium sized private sector role-players; and approximately 19 000 small or micro growers.

Forest certification forms an integral part of forest management in South Africa and provides a mechanism to evaluate, monitor and provide the necessary assurances that forest resources are responsibly managed through its emphasis on legal, environmental, economic and social considerations during the evaluation process.

In addition to our National Forest Act, Act 84 of 1998 which is the primary law regulating forestry various policies, laws as well as norms and standards are in place at national level that provides a regulatory framework to manage our forest resources at national level. These include *inter alia*: Forestry Laws Amendment Act, Act 35 of 2005; National Forests Act Regulations of 29 April 2009; National Veld and Forest Fire Act, Act 101 of 1998; as well as the National Forest and Fire Laws Amendment Act, Act 12 of 2001. When considering legislative norms applying to the forestry context further consideration should be given to laws pertaining to the environment, land, labour and water resources.

Further reading:

1. Forestry South Africa *Environmental Guidelines* (2002) available from [www. forestry.co.za](http://www.forestry.co.za)
2. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9.
3. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

Also see:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*

2.2.2.2.1 National Forest Act

Description: The Act reforms the law on forests, and repeals previous laws relating to matters on forests and forestry.

National Forest Act 84 of 1998

As last amended by the Forestry Laws Amendment Act 35 of 2005.
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Preamble

Parliament recognises that:

everyone has the constitutional right to have the environment protected for the benefit of present and future generations;
 natural forests and woodlands form an important part of that environment and need to be conserved and developed according to the principles of sustainable management;
 plantation forests play an important role in the economy;

plantation forests have an impact on the environment and need to be managed appropriately;
 the State's role in forestry needs to change; and
 the economic, social and environmental benefits of forests have been distributed unfairly in the past.

CHAPTER 1: Introductory Provisions

1. Purposes

The purposes of this Act are to:

- (a) promote the sustainable management and development of forests for the benefit of all;
- (b) create the conditions necessary to restructure forestry in State forests;
- (c) provide special measures for the protection of certain forests and trees;
- (d) promote the sustainable use of forests for environmental, economic, educational, recreational, cultural, health and spiritual purposes;
- (e) promote community forestry;
- (f) promote greater participation in all aspects of forestry and the forest products industry by persons disadvantaged by unfair discrimination.

2. Interpretation

(1) In this Act, unless inconsistent with the context:

biological diversity: means genetic diversity, species diversity and ecosystem diversity;

Committee for Sustainable Forest Management means the committee established in terms of section 36(3)(a);

Committee on Forest Access means the committee established in terms of section 36(3)(b);

Community means a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;

Community forestry means forestry by a community in terms of an agreement referred to in sections 30 and 31;

Council means the National Forests Advisory Council, established by section 33;

Department means the national Department which has responsibility for forests;

Director-General means the Director-General of the Department;

Ecosystem means a system made up of a group of living organisms, the relationship between them and their physical environment;

Forest includes:

- (a) a natural forest, a woodland and a plantation;
- (b) the forest produce in it; and
- (c) the ecosystems which it makes up;

Forest management unit means an area of land on all or on part of which there is forest and which is managed as an integrated unit;

Forest officer means a person designated or appointed as a forest officer under section 65;

Forest produce means anything which appears or grows in a forest, including-

- (a) any living organism, and any product of it, in a forest; and
- (b) inanimate objects of mineral, historical, anthropological or cultural value;

Forest product means an object or substance made from forest produce by a mechanical or chemical process;

Forestry means the management of forests, including the management of land which is not treed but which forms part of a forest management unit;

Habitat means the place where a plant or animal naturally grows or lives;

Indigenous: means indigenous to South Africa;

Minister means the Minister to whom the President assigns responsibility for forests in terms of section 91(2) of the Constitution;

Municipality means a local council, a metropolitan council, a metropolitan local council, a representative council, a rural council or a district council as defined in section 10B of the Local Government Transition Act, 1993 (Act 209 of 1993), and any successor to such a council;

Natural forest means a group of indigenous trees:

- (a) whose crowns are largely contiguous; or
- (b) which have been declared by the Minister to be a natural forest under section 7(2);

Organ of State means:

- (a) any department of State or administration in the national, provincial or local sphere of government;
- (b) any other functionary or institution exercising a public power or performing a public function in terms of any legislation; and

but excluding a court or judicial officer;

Person includes a juristic person and a community;

Plantation means a group of trees cultivated for exploitation of the wood, bark, leaves or essential oils in the trees;

Prescribe means prescribe by regulation;

Previous forest legislation means:

- (a) the laws referred to in the Schedule to the Forest Act, 1913 (Act 16 of 1913);
- (b) the Forest Act, 1913 (Act 16 of 1913);
- (c) the Forest (Demarcation) Act, 1917 (Act 14 of 1917);
- (d) the regulations made in terms of the Development Trust and Land Act, 1936 (Act 18 of 1936), and published in Government Notice No 494 of 2 April 1937;
- (e) the Forest Act, 1941 (Act 13 of 1941);
- (f) the regulations made in terms of the Black Administration Act, 1927 (Act 38 of 1927), and the Development Trust and Land Act, 1936 (Act 18 of 1936), and published in Government Notice No R191 of 8 September 1967;
- (g) the Government Notices referred to in regulation 27 of the Government Notice referred to in paragraph (f);
- (h) the Forest Act, 1968 (Act 72 of 1968);
- (i) the laws referred to in column 1 of Schedule 1 to the Forestry Laws Rationalisation and Amendment Act, 1994 (Act 51 of 1994);
- (j) the laws referred to in Schedule 1 to this Act;
- (k) any other law which allowed for the demarcation of forests or the acquisition or reservation of land for forestry; and
- (l) any amendments to the laws referred to in paragraphs (a) to (k);

Protected area means an area set aside by the Minister as a protected area in one of the categories referred to in section 8(1);

Protected tree means a tree declared to be protected, or belonging to a group of trees, woodland or species declared to be protected, under section 12(1) or 14(2);

Province means the premier of the province exercising his or her executive authority together with the other members of the executive council referred to in section 132 of the Constitution;

registered owner: means an owner as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

State forest

- (a) means:

- (i) State land, other than trust forests, acquired or reserved for forestry in terms of this Act or any previous forest legislation, unless it has been released under section 50(3);
- (ii) State land, other than trust forests, designated as demarcated State forest or a similar designation in terms of any previous forest legislation, unless it was withdrawn from demarcation and is no longer used for forestry; and
- (iii) trust forests; and
- (b) includes:
 - (i) State plantations, State sawmills and State timber preservation plants;
 - (ii) land controlled and managed by the Department for research purposes or as a tree nursery;
 - (iii) areas protected in terms of sections 8(1)(a) and (b) and 9;
 - (iv) an area of State land which has been set aside in terms of previous forest legislation for the prevention of soil erosion or sand drift;
 - (v) an area referred to in paragraph (a) or paragraph (b)(i) to (iv), the ownership or control of which is transferred to a person or organ of State contemplated in section 53(1)(g)(i);

State land means land which vests in the national or a provincial government:

- (a) including:
 - (i) land held in trust by the Minister of Land Affairs or the Ingonyama referred to in the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu); and
 - (ii) land which is not owned by the State but is managed by the national or a provincial government exclusively or jointly with the owner in terms of an agreement; but
- (b) excluding land belonging to a municipality;

the Act or this Act means the National Forests Act, 1998, and includes the regulations made in terms of the Act;

the Trust means the National Forest Recreation and Access Trust, established by section 41;

the Trust funds means the funds referred to in section 41(5) together with any money subsequently received by the Trust;

timber means:

- (a) logs; or
 - (b) wood that has been sawn or otherwise mechanically processed;
- tree* includes any tree seedling, sapling, transplant or coppice shoot of any age and any root, branch or other part of it;

trust forest means State land which:

- (a) was reserved for forestry or declared as demarcated State forest or a similar status in terms of any previous forest legislation; and
- (b) has at any time vested in:
 - (i) the South African Development Trust established by the Development Trust and Land Act, 1936 ();
 - (ii) the government of any area for which a legislative assembly was established in terms of the Self-governing Territories Constitution Act, 1971 (); or
 - (iii) the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, despite any subsequent withdrawal, retraction or amendment of the status of the forest as reserved or demarcated, the boundaries being those which were most recently surveyed or otherwise accurately described in terms of any law;

vehicle includes any vessel or aircraft;

woodland means a group of indigenous trees which are not a natural forest, but whose crowns cover more than five per cent of the area bounded by the trees forming the perimeter of the group.

- (2) Words derived from the words defined have corresponding meanings, unless the context indicates otherwise.
- (3) A reasonable interpretation of a provision which is consistent with the purposes of this Act must be preferred over an alternative interpretation which is not.
- (4) Neither:
 - (a) a reference to a duty to consult specific persons or authorities; nor
 - (b) the absence of any reference to a duty to consult or give a hearing,
 in this Act exempts the official or authority exercising a power or performing a duty from the duty to proceed fairly in respect of all persons entitled to be heard.
- (5) Explanatory notes, printed in bold italics, at the beginning of chapters and Parts must not be used to interpret this Act.

CHAPTER 2: Sustainable Forest Management

Part 1: Management

3. Principles to guide decisions affecting forests

- (1) The principles set out in subsection (3) must be considered and applied in a balanced way:
 - (a) in the exercise of any power or the performance of any duty in terms of this Act;
 - (b) in the development and implementation of government policies affecting forests;
 - (c) in the exercise of any power or the performance of any duty in terms of any other legislation where the exercise of that power or the performance of that duty will impact on a natural forest or woodland;
 - (d) in the issuing of a license or other authorisation relating to the use of water for afforestation or forestry in terms of section 39(1) or 40(1) of the National Water Act, 1998; and
 - (e) by any person required in terms of any legislation to carry out an environmental impact assessment in respect of any activity which will or may have an effect on natural forests or woodlands.
- (2) An organ of State applying these principles must:
 - (a) take into account the differences between natural forests, woodlands and plantations;
 - (b) recognise that conservation of biological diversity within plantations should be promoted in a way which is consistent with the primary economic purpose for which the plantation was established;
 - (c) only apply those principles which it considers relevant to the decision or action which is contemplated; and
 - (d) give such weight to each principle as it considers appropriate.
- (3) The principles are that:
 - (a) natural forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits;
 - (b) a minimum area of each woodland type should be preserved; and
 - (c) forests must be developed and managed so as to:
 - (i) conserve biological diversity, ecosystems and habitats;
 - (ii) sustain the potential yield of their economic, social and environmental benefits;
 - (iii) promote the fair distribution of their economic, social and environmental benefits;
 - (iv) promote their health and vitality;
 - (v) conserve natural resources, especially soil and water;

- (vi) conserve heritage resources and promote aesthetic, cultural and spiritual values; and
- (vii) advance persons or categories of persons disadvantaged by unfair discrimination.
- (4) The Minister must determine the minimum area of each woodland type to be preserved in terms of subsection (3)(b) on the basis of scientific advice.

4. Promotion and enforcement of sustainable forest management

- (1) For the purposes of this section, 'owner' means:
 - (a) the registered owner; or
 - (b) where the registered owner has transferred control of the forest management unit in question to another person or organ of state, whether by way of assignment, delegation, contract or otherwise, that person or organ of State.
- (2) The Minister may:
 - (a) determine:
 - (i) criteria on the basis of which it can be determined whether or not forests are being managed sustainably;
 - (ii) indicators which may be used to measure the state of forest management; and
 - (iii) appropriate standards in relation to the indicators; and
 - (b) create or promote certification programmes and other incentives to encourage sustainable forest management; on the advice of the Committee for Sustainable Forest Management.
- (3) The Minister must:
 - (a) publish the criteria, indicators and standards in the form of regulations made under section 53(2)(b);
 - (b) identify clearly where the breach of a standard may be an offense.
- (4) The Minister may publish the criteria, indicators and standards in such other media as he or she considers appropriate.
- (5) Specific regional, economic, social and environmental conditions must be taken into account in determining criteria, indicators and standards.
- (6) Criteria and indicators may include, but are not limited to, those for determining:
 - (a) the level of maintenance and development of:
 - (i) forest resources;
 - (ii) biological diversity in forests;
 - (iii) the health and vitality of forests;
 - (iv) the productive functions of forests;
 - (v) the protective and environmental functions of forests; and
 - (vi) the social functions of forests;
 - (b) the level of provision of socio-economic benefits; and
 - (c) the status and appropriateness of the policy and the legislative and institutional framework for forest management.
- (7) The criteria, indicators and standards determined under subsection (2)(a):
 - (a) may apply nationally, regionally or to specific forest management units;
 - (b) may identify the boundaries of the forest management unit or units to which they apply;
 - (c) may apply to all or to specific forest types;
 - (d) bind all owners of land on which there are forests in the area and of the type to which the standards apply;
 - (e) bind any other persons to whom they are expressly made applicable.
- (8) Where the breach of a particular standard may be an offense, a forest officer may inform an owner who is in breach of that standard by written notice of:

- (a) the nature of the breach;
- (b) the steps which the owner must take to remedy the breach; and
- (c) the period within which he or she must do so.
- (9) The period laid down in the notice may be extended by the Minister for good reason.

Part 2: Research, monitoring and reporting

5. Promotion of research

- (1) The Minister must carry out or commission research.
- (2) The research must promote the objectives of forest policy and conform with national policies and programmes relating to science and technology.

6. Duty to monitor forests and disseminate information

- (1) The Minister must monitor forests with reference to the matters referred to in section 4(6).
- (2) The Minister must disseminate the information derived from monitoring to the public in a way which in his or her opinion will promote sustainable forest management.
- (3) The Minister must report to Parliament at least every three years on:
 - (a) the facts and trends which emerge from the monitoring;
 - (b) whether the facts and trends observed are in the national interest;
 - (c) the measures being implemented to address negative trends; and
 - (d) any other matter he or she considers appropriate.

CHAPTER 3: Special Measures to Protect Forests and Trees

Part 1: Prohibition of destruction of natural forests

7. Prohibition on destruction of trees in natural forests

- (1) No person may:
 - (a) cut, disturb, damage or destroy any indigenous tree in a natural forest; or
 - (b) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, or any forest product derived from a tree contemplated in paragraph (a), except in terms of:
 - (i) a license issued under subsection (4) or section 23; or
 - (ii) an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of the Council.
- (2) The Minister may declare to be a natural forest a group of indigenous trees:
 - (a) whose crowns are not largely contiguous; or
 - (b) where there is doubt as to whether or not their crowns are largely contiguous, if he or she is of the opinion, based on scientific advice, that the trees make up a forest which needs to be protected in terms of this Part.
- (3) The Minister declares a forest to be a natural forest by:
 - (a) publishing a notice in the *Gazette*;
 - (b) publishing a notice in two newspapers circulating in the area; and
 - (c) airing a notice on two radio stations broadcasting to the area.
- (4) The Minister may licence one or more of the activities referred to in paragraph (a) or (b) of subsection (1).

Part 2: Protected areas

8. Power to set aside protected areas

- (1) The Minister may:
 - (a) declare a State forest or a part of it;
 - (b) purchase or expropriate land under section 49 and declare it; or
 - (c) at the request or with the consent of the registered owner of land outside a State forest, declare it, as a protected area in one of the following categories:
 - (i) A forest nature reserve;
 - (ii) a forest wilderness area; or
 - (iii) any other type of protected area which is recognised in international law or practice.
- (2) The Minister may declare such an area only if he or she is of the opinion that it is not already adequately protected in terms of other legislation.

9. Procedure for declaring protected areas

- (1) Before declaring an area under section 8(1), the Minister must:
 - (a) give notice of the proposal to declare a protected area and invite comments and objections within a specified period;
 - (b) consider the comments and objections received in response to the notice; and
 - (c) in the case of a trust forest, consult with the communities residing on the land adjoining the proposed protected area.
- (2) The Minister must:
 - (a)(i) publish the notice referred to in subsection (1) in the *Gazette* and two newspapers circulating in the area; and
 - (ii) air such notice on two radio stations broadcasting to the area; and
 - (b) deliver it to:
 - (i) the Council;
 - (ii) the Committee for Environmental Co-ordination, established by section 12 of the Environment Conservation Act, 1989 (Act 73 of 1989);
 - (iii) the member of the executive council responsible for nature conservation in the province in which the area falls;
 - (iv) the chief executive officer of the local authority for the area; and
 - (v) any person or organ of State to whom control of the area in question has been transferred, whether by way of assignment, delegation, contract or otherwise.
- (3) The Minister declares a protected area by publishing a notice in the media referred to in subsection (2)(a):
 - (a) recording his or her decision;
 - (b) naming the protected area; and
 - (c) describing the area set aside.

10. Effect of setting aside protected areas

- (1) No person may cut, disturb, damage or destroy any forest produce in, or remove or receive any forest produce from, a protected area, except:
 - (a) in terms of the rules made for the proper management of the area in terms of section 11(2)(b);
 - (b) in the course of the management of the protected area by the responsible organ of State or person;
 - (c) in terms of a right of servitude;
 - (d) in terms of the authority of a license granted under section 7(4) or 23;
 - (e) in terms of an exemption under section 7(1)(b)(ii) or 24(6); or [Para (e) amended by s 3 of Act 12 of 2001.]

- (f) in the case of a protected area on land outside a State forest, with the consent of the registered owner or by reason of another right which allows the person concerned to do so, subject to the prohibition in section (1).
- (2) The decision to declare a protected area may not be revoked, nor may a protected area which is State forest be sold, nor may a servitude over a protected area be granted, without:
 - (a) the Minister following the same procedure as that required for declaring the protected area; and
 - (b) the approval by resolution of Parliament.
- (3) Changes to the boundaries of an existing protected area require compliance with subsection (2)(a) only.

11. Management of protected areas

- (1) The Minister is responsible for the management of the protected area.
- (2) The Minister must:
 - (a) manage the protected area in a manner which is consistent with the purpose for which it was established; and
 - (b) make rules for the management of the protected area so as to achieve the purpose for which the area has been protected, unless suitable rules already exist for the area.
- (3) The Minister may grant financial or other assistance to the registered owner of land referred to in section 8(1)(c) for the management of a protected area.

Part 3: Protection of trees

12. Declaration of trees as protected

- (1) The Minister may declare:
 - (a) a particular tree;
 - (b) a particular group of trees;
 - (c) a particular woodland; or
 - (d) trees belonging to a particular species, to be a protected tree, group of trees, woodland or species.
- (2) The Minister may make such a declaration only if he or she is of the opinion that the tree, group of trees, woodland or species is not already adequately protected in terms of other legislation.
- (3) In exercising a discretion in terms of this section, the Minister must consider the principles set out in section 3(3).

13. Normal procedure for declaring protected trees

- (1) Except in the circumstances referred to in section 14, the Minister must, before making a declaration under section 12:
 - (a) give notice of the proposal to protect a tree, group of trees, woodland or species and invite comments and objections within a specified period; and
 - (b) consider the comments and objections received in response to the notice.
- (2) The Minister must:
 - (a) publish the notice referred to in subsection (1) in the *Gazette* and in two newspapers circulating in, and air it on two radio stations broadcasting to:
 - (i) the vicinity, in the case of a particular tree or group of trees or woodland; or
 - (ii) the entire country, in the case of a species; and
 - (b) deliver the notice to:

- (i) the persons and bodies referred to in section 9(2)(b), in the case of a particular tree or group of trees or woodland;
- (ii) the bodies referred to in subparagraphs (i) and (ii) of section 9(2)(b), in the case of a species.
- (3) After deciding to make a declaration the Minister must publish a notice in the media referred to in subsection (2)(a):
 - (a) recording his or her decision; and
 - (b) identifying the particular tree or group of trees or woodland or species to be protected.

14. Emergency procedure for protecting trees

- (1) If the Minister is of the opinion that any tree sought to be protected in terms of this Part may be damaged or destroyed before a declaration under section 12 could come into effect, he or she may act under this section.
- (2) The Minister may declare any tree or group of trees to be temporarily protected by publishing a notice in two newspapers circulating in, and airing it on two radio stations broadcasting to:
 - (a) the vicinity, in the case of a particular tree or group of trees or woodland; or
 - (b) the entire country, in the case of a species.
- (3) The Minister may act under subsection (1) without consulting or hearing any person if the urgency of the situation justifies this.
- (4) The prohibition referred to in section 15(1) applies to a tree or group of trees temporarily protected in terms of this section.
- (5) The temporary protection lapses when:
 - (a) the Minister publishes a notice in terms of section 13(3);
 - (b) the Minister decides not to protect the trees under section 12, in which event he or she must publish a notice confirming this in the media referred to in subsection (2); or
 - (c) the Minister fails to act in terms of paragraph (a) or (b) within 12 months of the day the notice referred to in subsection (2) became effective.

15. Effect of declaration of protected trees

- (1) No person may:
 - (a) cut, disturb, damage or destroy any protected tree; or
 - (b) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, or any forest product derived from a protected tree, except:
 - (i) under a licence granted by the Minister; or
 - (ii) in terms of an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of the Council.
- (2) The decision to declare a tree, group of trees, woodland or species protected may not be revoked, nor may the notice referred to in section 13(3) be amended, without the Minister following the procedure set out in section 13.
- (3) The Minister must publish:
 - (a) a list of all species protected under section 12; and
 - (b) an appropriate warning of the prohibition referred to in subsection (1) and the consequences of its infringement, annually in the *Gazette* and in two newspapers circulating nationally.

16. Registration against title deeds

- (1) Where the Minister has declared:
 - (a) a forest to be a natural forest under section 7(2); or
 - (b) a particular tree or group of trees or woodland to be protected under section 12(1),

the Minister may request the registrar of deeds for the area to make an appropriate note.

(2) On receiving such a request, the registrar of deeds must make a note of the particulars of such declaration in his or her registers in terms of section 3(1)(w) of the Deeds Registries Act, 1937 (Act 47 of 1937).

(3) The State does not acquire any rights:

- (a) in the land on which any natural forest or any protected tree is situated; or
 - (b) to any tree or forest produce,
- as a result of the prohibition in section 7(1) or a declaration under section 7(2), 12(1), 14(1) or 17(2) or the making of a note in terms of this section.

Part 4: Measures to control and remedy deforestation

17. Power to declare controlled forest areas

(1) For the purposes of this section, 'owner' means:

- (a) the registered owner; and
- (b) where the registered owner has transferred control of the forest management unit in question to another person or organ of State, whether by way of assignment, delegation, contract or otherwise, that person or organ of State.

(2) If the Minister is of the opinion that urgent steps are required to:

- (a) prevent the deforestation or further deforestation of; or
- (b) rehabilitate,

a natural forest or a woodland which is threatened with deforestation, or is being or has been deforested, he or she may declare it a controlled forest area.

(3) The Minister declares a controlled forest area by publication of a notice in two newspapers circulating in, and by airing it on two radio stations broadcasting to, the vicinity:

- (a) recording his or her decision;
 - (b) stating a fixed time period for which the declaration is effective;
 - (c) describing the area;
 - (d) identifying the activities which are or become prohibited in the area in terms of subsection (4);
 - (e) identifying the steps to be taken in terms of subsection (4)(e) and, if applicable, subsection (4)(f) to prevent or remedy deforestation.
- (4) The Minister may, in the notice referred to in subsection (3):
- (a) stop any persons wishing to exercise the right of access referred to in section 19 from entering the area;
 - (b) prohibit any person from removing forest produce from the area;
 - (c) prohibit any other activity which may cause deforestation or prevent rehabilitation;
 - (d) suspend licenses issued under this Act in respect of the area;
 - (e) require the owner to take specified steps to prevent deforestation or rehabilitate the natural forest or woodland; and
 - (f) require the owner to submit and comply with a sustainable forest management plan for the area.
- (5) The notice is effective from the date of its publication in the newspapers and airing on the radio stations referred to in subsection (3).
- (6) The Minister may extend the period for which the notice is effective.
- (7) The Minister must cause copies of the notice to be:
- (a) delivered to the owner, the holders of any licenses granted under this Act in respect of the area and any other interested persons known to the Minister; and
 - (b) published in the *Gazette*.

(8) The Minister may conduct the hearings required by the duty to proceed fairly in declaring a controlled forest area, in a way which is commensurate with the urgency of the situation.

(9) The Minister may, instead of or in addition to declaring a controlled forest area, enter into an agreement with the owner and any other interested persons which:

- (a) describes the steps to be taken to prevent deforestation or to rehabilitate the natural forest or woodland;
- (b) allocates responsibility for the management of the area;
- (c) adopts a sustainable forest management plan for the area; and
- (d) records any assistance the Minister will give to enable the owner to comply with the agreement.

(10) In the absence of an agreement, the Minister may authorise officials of the Department or any other person to take the steps necessary to prevent deforestation or to rehabilitate the forest or woodland in a controlled forest area.

(11) Any official of the Department or other person authorised by the Minister has reasonable access to the area for purposes of giving effect to this section.

(12) The Minister may grant financial or other assistance to the owner to enable him or her to comply with any duty imposed in terms of this section.

18. Right to apply for protection

(1) Any person or organ of State may apply to the Minister to protect a forest, species of tree, tree or group of trees in terms of this chapter.

(2) The applicant must apply in the prescribed way.

CHAPTER 4: Use of Forests

Part 1: Access for recreation and related purposes

19. Access to State forests for recreation, education, culture or spiritual fulfilment

Everyone has reasonable access to State forests for purposes of recreation, education, culture or spiritual fulfilment, subject to:

- (a) this Act;
- (b) any conditions determined by the Minister; and
- (c) restrictions on entry into any area protected for environmental purposes in terms of this Act or any other law.

20. Regulation of access to State forests

(1) For the purposes of this section, 'owner' means any person or organ of State to whom control of the forest management unit in question has been transferred, whether by way of assignment, delegation, contract or otherwise.

(2) The owner of each State forest must designate areas in the forest for access under section 19.

(3) The owner must prepare a map showing the areas designated and a set of written rules which regulate access and which may provide for:

- (a) payment to the owner of a reasonable fee for the map, the use of facilities and the provision of any services; and
- (b) reasonable restrictions on access, including, but not limited to:
 - (i) limitations on the number of people allowed in the forest at any one time;
 - (ii) restrictions on the mode of transport in a forest;
 - (iii) restrictions to prevent fires;

- (iv) provision for closure of forests for specific periods;
 - (v) restrictions to prevent harm to any person or property;
 - (vi) restrictions in a plantation to ensure that its proper management for commercial purposes is not frustrated;
 - (vii) restrictions in a protected area to ensure that the purposes for which the area was declared as such, are not frustrated; and
 - (viii) different restrictions for different forest types.
- (4) In a protected area, the map and rules may be incorporated in the rules referred to in section 11(2)(b).
- (5)(a) The owner must submit the rules to the Director-General within six months of the promulgation of this Act.
- (b) Until the map and rules are made, access to any State forest for recreation, education, culture or spiritual fulfilment is regulated as if this Act has not come into force.
- (6) The Director-General:
- (a) may change the designated area and the rules;
 - (b) must, where the owner fails to designate an area or make rules within the six month period, designate such an area, prepare a map and make such rules; and
 - (c) must designate an area for public access and prepare a map and rules as set out in subsection (3), where control of a forest management unit has not been transferred as referred to in subsection (1).
- (7)(a) An owner who objects to:
- (i) a change by, or to rules made by the Director-General in terms of subsection (6); or
 - (ii) the way in which the public or members of the public exercise their right of access; and
- (b) a member of the public who objects to:
- (i) the designation or the rules;
 - (ii) the fee charged for the map, facilities or services; or
 - (iii) any conduct of the owner in relation to his or her right of access, may lodge a written objection with the Director-General.
- (8) The Director-General may convene a meeting of the interested parties to reach an agreement on the objection, or appoint a mediator acceptable to the interested parties from the panel referred to in section 45 to do so.
- (9) If the matter is not resolved in terms of subsection (8), the Director-General must refer the matter to the Minister who must:
- (a) rule on the objection; or
 - (b) appoint an arbitrator from the panel referred to in section 45 to do so.
- (10) The ruling of the Minister or the arbitrator:
- (a) may require the owner to change the designation or the rules; or
 - (b) may confirm the designation and rules as made by the owner; or
 - (c) may require the Director-General to change the designation or the rules made by him or her; and
 - (d) is final and binding on the interested parties, subject to the right to review of administrative action.
- (11) The owner must make the map and rules available to any person exercising the right of access to the forest.
- (12) If an owner wishes to amend the rules, he or she must lodge the amended rules with the Director-General, after which the procedure in subsections (6) to (10) applies again.
- (13) Everyone is entitled to information from the Department regarding the right of access, including maps and rules, on payment of a reasonable fee set by the Director-General.

21. Access to forests other than State forests

- (1) The Minister, in his or her capacity as trustee of the Trust, may take steps to promote the voluntary grant of access to forests other than State forests by the owners of such forests.
- (2) The registered owner may lodge with the Minister a map displaying clearly the areas designated for public access and a set of written rules recording the conditions on which he or she is prepared to allow access.
- (3) At the request of:
 - (a) a person seeking access to a forest other than a State forest; or
 - (b) a registered owner of such a forest, the Minister may negotiate, or appoint a facilitator from the panel referred to in section 45 to facilitate negotiations, with interested parties with a view to determining whether and on what terms an owner of such a forest is willing to grant access to the public.
- (4) Where the Minister is of the opinion that it is justified and affordable, he or she may:
 - (a) provide financial or other assistance from the Trust funds for the development of an area of public access in a forest other than a State forest;
 - (b) compensate an owner of such a forest from the Trust funds for losses caused by the grant of access to the public in such a forest.
- (5) No person who is granted access to a forest other than a State forest may interfere with the privacy or cause damage to the property of the registered owner.

Part 2: Vesting and granting of rights to use State forests**22. Vesting of rights**

- (1) The rights to:
 - (a) the use, management, control and operation of; and
 - (b) the forest produce in, State forests, vest in the national executive of the Republic, represented by the Minister, despite any other law but subject to:
 - (i) this Act;
 - (ii) an order of the Land Claims Court restoring or granting rights in a State forest to a claimant in terms of section 35(1) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994); and
 - (iii) rights protected in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996).
- (2) The Minister, the Director-General or an arbitrator, as the case may be, may not:
 - (a) make or change a designation or rules under section 11(2)(b) or 20(6);
 - (b) make a ruling in terms of section 20(10);
 - (c) grant a license under section 23;
 - (d) grant a servitude under section 26; or
 - (e) enter into an agreement under section 27, 28 or 30. if doing so conflicts with an existing right under a license, servitude or agreement referred to in this chapter or section 77(2) and the persons affected have not consented.

23. Activities which may be licensed in State forests

- (1) The Minister may in a State forest, license:
 - (a) the establishment and management of a plantation;
 - (b) the felling of trees and removal of timber;
 - (c) the cutting, disturbance, damage or destruction of any other forest produce;

- (d) the removal or receipt of any other forest produce;
 - (e) the use of land, structures or buildings for agricultural, commercial, communications, domestic, industrial, residential or transportation purposes;
 - (f) the use of roads;
 - (g) the moving of water, electricity, gas, fuel and any other thing across a State forest;
 - (h) the construction of any road, building or structure;
 - (i) the grazing or herding of animals;
 - (j) the cultivation of land;
 - (k) hunting and fishing;
 - (l) the use of a State forest for recreational, educational, cultural or spiritual purposes where there is no right to such use under section 19; and
 - (m) the use of a State forest for any other purpose, if it is consistent with the sustainable management of the forest.
- (2) No person may engage in any activity in a State forest for which a license is required without such a license, unless he or she:
- (a) is exempted under section 24(6);
 - (b) is acting in the scope of his or her employment or mandate as an officer, employee or agent of the Department;
 - (c) has a right to engage in the activity in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996);
 - (d) performs the activity in terms of a contract contemplated in paragraph (b) of section 24(4).
- (3) An organ of State must obtain a license to carry on an activity for which a license is required.

24. Requirements for licensing

- (1) A license must be issued for a period:
 - (a) equal to the period for which the activity is permitted in terms of a servitude, lease, agreement to sell forest produce or community forestry agreement referred to in this chapter; or
 - (b) not exceeding ten years in the case of any other activity.
- (2) The Minister may attach conditions to the granting of a license.
- (3) A licensee must pay the license fee, unless:
 - (a) he or she has entered into a lease agreement under section 27;
 - (b) he or she is a purchaser in terms of an agreement referred to in section 28(1);
 - (c) it is a community which has entered into an agreement under section 30;
 - (d) the licensee is unable to pay in terms of criteria set by the Minister; or
 - (e) the tariff referred to in section 55(a) does not prescribe a licence fee for the activity concerned.
- (4) A licensee may only:
 - (a) transfer a license; or
 - (b) contract with another party to carry out the activities authorised by the license,
 with the written consent of the Minister.
- (5) A license may only be granted in a protected area if the licensed activity does not frustrate the achievement of the objects for which the protected area was established.
- (6)(a) The Minister may exempt persons or classes of persons from the licensing provisions if the intended activity is for domestic, cultural, health or spiritual purposes only.
- (b) The exemption becomes effective when it is published in the *Gazette*.

(7) The Minister and any other organs of State or persons to whom the power to grant licenses is delegated must keep registers of all licenses granted in terms of this section which are issued for a year or longer.

(8) The holder of a license must produce it on demand of a forest officer or a police officer.

(9) Nothing in this Act prohibits the grant in terms of any law of a right to prospect for, mine or dispose of any mineral as defined in the Minerals Act, 1991 (Act 50 of 1991), or any source material as defined in the Nuclear Energy Act, 1993 (Act 131 of 1993), in a State forest but:

- (a) the holder of such a right may not do anything which requires a licence in terms of section 23 without such a licence; and
- (b) the grant of any such right after the commencement of the National Forest and Fire Laws Amendment Act, 2001, must be made subject to the principles set out in section 3(3) of this Act.

25. Amendments, suspensions and cancellations

(1) The licensee is responsible for any damage caused by not complying with the license.

(2) The Minister may amend, suspend or cancel a license or a category of licenses if:

- (a) there is, in his or her opinion, a material change in the circumstances which existed at the time of the grant of the license or licenses which requires such amendment, suspension or cancellation; or
 - (b) the licensee does not comply with the license.
- (3) Before acting under subsection (2)(b), the Minister must give a licensee a fair opportunity to remedy his or her non-compliance with the license, unless the Minister is of the opinion that granting such an opportunity will result in serious harm to person or property.

26. Servitudes in State forests

(1) The Minister may grant a servitude in a State forest if:

- (a) in the case of State forests other than trust forests, the Minister of Public Works agrees;
- (b) in the case of trust forests on land held in trust by the Ingonyama referred to in the Kwazulu Ingonyama Trust Act, 1994 (Kwazulu Act 3 of 1994), the authority with the necessary power in terms of that Act agrees; or
- (c) in the case of trust forests other than those referred to in paragraph (b), the Minister of Land Affairs; and
- (d) it does not conflict with an existing right;
- (e) it does not materially affect the ecology and the useful extent of the State forest; and
- (f) there is compliance with section 10(2) where it is a protected area.

(2) Any agreement entered into with the Minister creating the servitude may include such provisions as he or she considers appropriate, including payment for the rights granted under the servitude.

(3) A community or members of a community who are granted a servitude of right of way in order to walk to or from their homes are exempt from payment for such rights.

(4) The Minister must keep a register of all servitudes granted under subsection (1).

(5) The Minister must license any activity which is permitted under a servitude.

(6) No servitude or other right of any nature in a State forest may be acquired by prescription.

27. Leasing of State forests

- (1) The Minister may lease a State forest or part of it to any person if:
 - (a) in the case of State forests other than trust forests, the Minister of Public Works agrees;
 - (b) in the case of trust forests on land held in trust by the Ingonyama referred to in the Kwa-Zulu Ingonyama Trust Act, 1994 (Kwa-Zulu Act 3 of 1994), the authority with the necessary power in terms of that Act agrees; and
 - (c) in the case of trust forests other than those referred to in paragraph (b), the Minister of Land Affairs agrees.
- (2) The lease agreement may provide for:
 - (a) the carrying on by the lessee of any of the activities referred to in section 23(1);
 - (b) the management, control and operation of a State forest for commercial purposes;
 - (c) the management, control and operation of a protected area;
 - (d) the performance by the lessee of the State's obligations to supply forest produce from that State forest;
 - (e) the lodging by the lessee of and compliance with a sustainable forest management plan;
 - (f) the sustainable management of natural forests, woodlands and other habitats falling within the forest let;
 - (g) the establishment and operation of facilities for tourism and recreation;
 - (h) the resolution of disputes by members of the panel referred to in section 45; and
 - (i) such other matters as the parties consider appropriate.
- (3) The Minister must license the activities which the lessee may carry on in terms of the lease.

27A. Trusts

- (1) Notwithstanding the provisions of any other law, the Minister may, by notice in the *Gazette*, establish a trust in respect of a State forest or part of a State forest including a State forest or part of a State forest on land held in trust in terms of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act 3 KZ of 1994), where:
 - (a)(i) a claim for restitution has been published in terms of section 11(1) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994), in respect of a State forest or part of a State forest;
 - (ii) the owner of the land has been notified of the claim in terms of section 11(6)(a) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994);
 - (iii) the right to restitution has not been finally determined; and
 - (iv) that land is leased to a third party by the Minister;
 - (b)(i) a State forest or part of a State forest is occupied by a community claiming rights in that land;
 - (ii) the Minister is contemplating the granting of rights in that land to that community; and
 - (iii) that land is leased to a third party by the Minister; or
 - (c)(i) a State forest or part of a State forest is leased to a third party by the Minister; and
 - (ii) it is necessary for the Minister to receive money in terms of the lease on behalf of successful claimants of various rights in respect of the land or forest.
- (2) The Minister may direct that any money due in terms of a lease contemplated in subsection (1) be paid to the trust established in terms of that subsection.
- (3) The objects of the trust are:

- (a) to receive payment of the money contemplated in subsection (2);
 - (b) to invest such money on behalf of the beneficiaries as part of the trust property;
 - (c) to pay such money or part of that money together with any yield to the beneficiaries when they receive rights in the State forest or part of the State forest involved;
 - (d) to pay such money or part of that money together with any yield to the State, or the Ingonyama Trust where applicable, when it is clear that the beneficiaries will not acquire rights in the State forest or part of the State forest; and
 - (e) to pay such money or part of that money periodically to successful claimants contemplated in subsection (1)(c)(ii).
- (4) The beneficiaries of the trust are any claimants contemplated in subsection (1)(a) whose claims succeed, any community contemplated in subsection (1)(b) if it is granted rights by the Minister and any successful claimants contemplated in subsection (1)(c)(ii).
- (5) The Minister may:
- (a) effect or terminate the appointment of any or all of the trustees on just cause shown;
 - (b) create such powers, rights, obligations and exemptions for the trustees as may be necessary to achieve the objects of the trust;
 - (c) decide on the contents, variation and termination of the trust;
 - (d) temporarily perform any of the functions of the trustees where the appointment of all the trustees has been terminated; and
 - (e) prevent payment to the Ingonyama Trust contemplated in section 27A if he or she is not satisfied that the Ingonyama Trust maintains and implements effective, efficient and transparent financial management and internal control systems.

28. Agreements to sell forest produce in State forests

- (1)(a) The Minister;
- (b) a person who has entered into a lease agreement under section 27; or
 - (c) a party to a community forestry agreement entered into under section 30; or
 - (d) the South African Forestry Company Limited,
- may enter into an agreement to sell timber or any other forest produce in or derived from a State forest to any other person.
- (2) An agreement referred to in subsection (1) must:
- (a) allow for termination of the contract at any time after it comes into effect by either party on a period of notice which is not more than five years, unless:
 - (i) the Minister agrees to a longer period of notice;
 - (ii) the contract endures for a total period of five years or less including any periods for which the contract may be renewed;
 - (iii) the contract is for a once-off sale of timber or other forest produce which has been harvested at the time of the sale.
 - (b) not oblige the seller to provide a quantity of timber or other forest produce which is greater than that which the forest to which the agreement relates, yielded on a sustainable basis during the period of the contract, or a cycle within a contract, unless any shortfall was due to negligence by the seller;
 - (c) not confer rights in conflict with the terms of the lease or community forestry agreement referred to in subsection (1)(b) or (c) or an agreement referred to in section 77(2) with the South African Forestry Company Limited.

(3) A term of an agreement which is in conflict with subsection (2) is void and the agreement is deemed to have been entered into on the terms set out in subsection (2).

(4) The Minister must license the activities which the purchaser may carry on in terms of an agreement to sell timber or other forest produce, subject to subsection (5).

(5) An agreement to sell timber or other forest produce derived from any State forest which is already in force on the date this Act commences, is despite the terms of the agreement, subject to the following:

- (a) either party may elect to terminate the agreement on either of the following bases:
 - (i) five years written notice to the other; or
 - (ii) such greater or lesser period of notice as the agreement may provide;
- (b) notice in terms of subparagraph (i) of paragraph (a) may be given at any time after the commencement of this Act;
- (c) before the seller acts in terms of subparagraph (i) of paragraph (a), the Minister must be of the opinion that:
 - (i) it will serve one or more of the purposes referred to in section 1; and
 - (ii) the purchaser will, by the end of the notice period, have had an opportunity of realising a reasonable return on any investments which were made before the commencement of the Act primarily as a result of the agreement;
- (d) if either party elects to terminate the agreement in terms of subparagraph (i) of paragraph (a), neither it nor any person or organ of State has to pay any compensation to, or buy any assets of, any other party, except that the State must compensate the purchaser for any improvements which the purchaser has erected in a State forest in terms of or as a result of the agreement if:
 - (i) the seller terminated the agreement; and
 - (ii) the purchaser must vacate the improvements as a result of the termination;
- (e) the seller is not obliged to deliver to the purchaser a quantity of timber or other forest produce which is greater than that which the forest yielded on a sustainable basis during the period of the contract, or a cycle within a contract, unless any shortfall was due to negligence by the seller;
- (f) an act or omission by either party in terms of this subsection is not a breach of the agreement.
- (6) The compensation for improvements referred to in paragraph (d) of subsection (5) is not payable if the agreement:
 - (a) is terminated no earlier than a date on which the agreement could lawfully have been terminated had this Act not been promulgated; and
 - (b) does not provide for:
 - (i) compensation for improvements; or
 - (ii) the purchase by the seller of any assets of the purchaser.
- (7) A shortfall referred to in subsection (2)(b) or (5)(e) may not be made up from the forest to which the agreement relates.

Part 3: Community forestry

29. Offers to enter into community forestry agreements

- (1) Any community wishing:
 - (a) to do anything in a State forest for which a license is required;
 - (b) to manage a State forest or part of it, whether alone or jointly with an organ of State; or
 - (c) to do both,

may make an offer to the Minister to enter into a community forestry agreement with him or her and any other person or organ of State who must by law consent.

(2) The Minister may invite communities to submit offers to enter into community forestry agreements in respect of a particular State forest or forests.

(3) The offer must include:

- (a) details of the membership of the community;
- (b) a copy or details of the constitution, laws or customs which regulate the community;
- (c) the terms of its offer;
- (d) details of any rights held by the community or any of its members in the State forest concerned in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996); and
- (e) any other prescribed information.

(4) The Minister must investigate the offer and may in doing so:

- (a) establish whether or not there are any other communities who may wish to make offers to enter into a community forestry agreement in respect of the forest in question;
- (b) invite such communities to make offers;
- (c) consult with any other persons or organs of State having an interest in the matter;
- (d) evaluate the suitability of the forest for community forestry in comparison to its current or potential uses;
- (e) establish whether or not any offeror is willing to amend the terms of its offer to accommodate any concerns of the Minister and, if so, invite the offeror to amend it;
- (f) in the event of competing offers, evaluate which offers or offerors are the most suitable; and
- (g) appoint a facilitator from the panel referred to in section 45 to attempt to secure agreement between competing offerors.

30. Conclusion of community forestry agreements

(1) The Minister may:

- (a) reject any offer;
- (b) make a counter-offer to one or more offerors; or
- (c) decide to enter into a community forestry agreement with one or more offerors in respect of the State forest in question.

(2) If the forest is a trust forest, the Minister may only enter into such an agreement if:

- (a) in the case of land held in trust by the Ingonyama referred to in the Kwa-Zulu Ingonyama Trust Act, 1994 (Kwa-Zulu Act 3 of 1994), the authority with the necessary power in terms of that Act agrees; and
- (b) in the case of other land, the Minister of Land Affairs agrees.

(3) The Minister must license the activities which the community or communities may carry on under the community forestry agreement.

(4) The Minister need not implement a public tender process before entering into a community forestry agreement, despite any other law, unless he or she is of the opinion that such a process is needed in any particular case.

31. Content of community forestry agreements

(1) A community forestry agreement must:

- (a) not discriminate unfairly;
- (b) identify the management powers delegated to the community or communities and those retained by the Minister;
- (c) identify accurately the area of forest subject to the agreement;

- (d) identify the licensed activities which the community or communities intend carrying on;
- (e) regulate the use and the management of the forest in a way which is sustainable;
- (f) identify the duties of the various parties in terms of the agreement, including payments to be made by any party;
- (g) prohibit the parties to the agreement from transferring their rights under the agreement in any way without the consent of the Minister;
- (h) provide for dispute resolution through informal mediation or arbitration, whether by a member of the panel referred to in section 45 or otherwise; and
- (i) provide for remedial measures, including the suspension or cancellation of the community forestry agreement, in the event of a breach.
- (2) A community forestry agreement may:
 - (a) rename the forest;
 - (b) be indefinite or for a fixed period;
 - (c) oblige a community to reconstitute itself or make a lawful amendment to its constitution;
 - (d) require the community or communities to lodge and comply with a sustainable forest management plan which is acceptable to the Minister;
 - (e) include as a party a person who is not a community or a member of the community and who wishes to conduct forestry for commercial, environmental or other purposes;
 - (f) provide for the management of a protected area;
 - (g) oblige the community to perform the State's obligations to supply forest produce from that State forest;
 - (h) provide that a community need not pay rental or similar compensation for the rights granted to it, if this is fair having regard to:
 - (i) the community's historical association with the land on which the forest is situated; or
 - (ii) the economic circumstances of the community;
 - (i) exchange a right in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996), for a right in the agreement; and
 - (j) deal with such other matters as may be prescribed or as the parties consider appropriate.

32. Assistance for community forestry

- (1) In this section, community forestry includes, in addition to the definition of that term:
 - (a) small scale plantation forestry by persons disadvantaged by unfair discrimination;
 - (b) the planting of trees by any person or organ of State for aesthetic reasons or to improve the quality of life; and
 - (c) the sustainable use of a natural forest or woodland by a community other than in terms of an agreement referred to in section 30, in a rural or an urban area and whether in or outside of a State forest.
- (2) The Minister may:
 - (a) provide information, training, advice and management and extension services for community forestry;
 - (b) establish and maintain nurseries and other facilities to provide seed and plants for community forestry;
 - (c) provide material or financial assistance for community forestry, including recovery from disaster, if no such grants are available from any other source.
- (3) The Minister may enter into an agreement with a person or organ of State regulating the matters referred to in subsection (2).

CHAPTER 5: Institutions

Part 1: National Forests Advisory Council

33. Establishment and objects of National Forests Advisory Council

- (1) The National Forests Advisory Council is hereby established.
- (2) The object of the Council is to advise the Minister on any matter related to forestry in the Republic.
- (3) The Minister must consider and respond to the advice provided to him or her by the Council.
- (4)(a) The Forestry Council and the Forestry Industry Fund referred to in sections 47 to 56 of the Forest Act, 1984 (Act 122 of 1984), are hereby dissolved.
- (b) The assets, if any, of the Forestry Industry Fund vest in the State.
- (5) The National Forestry Advisory Council referred to in sections 46A to 46H of the Forest Act, 1984, is hereby dissolved.
- (6)(a) The Transkei Forestry Council referred to in section 3 of the Forestry Laws Rationalisation and Amendment Act, 1994 (Act 51 of 1994), is hereby dissolved.
- (b) The assets, if any, of the Transkei Forestry Council vest in the State.

34. Constitution of Council

- (1) The Council consists of a maximum of 20 members and a minimum of 14 members appointed by the Minister in terms of this section.
- (2) In making appointments to the Council the Minister must balance the interests of:
 - (a) categories of persons disadvantaged by unfair discrimination;
 - (b) communities involved in community forestry;
 - (c) environmental interest groups;
 - (d) persons who carry on small case plantation forestry;
 - (e) persons who carry on small scale timber processing;
 - (f) persons with expertise which can assist the Council in achieving its objects;
 - (g) the forest industry;
 - (h) the forest products industries; and
 - (i) trade unions representing employees in the forest and forest products industry.
- (3) Whenever it is necessary to appoint the Council the Minister must:
 - (a) invite nominations by means of a notice published in at least two nationally distributed newspapers, specifying a period within which nominations must be submitted;
 - (b) establish an advisory committee which includes the chairpersons of the portfolio committees dealing with forestry matters in the National Assembly and the National Council of Provinces, or their delegates, and appoint a chairperson for the committee; and
 - (c) submit all the nominations received to the advisory committee.
- (4) The advisory committee must compile a short list of suitable candidates from the nominations and submit it to the Minister within one month of receiving the nominations.
- (5) The Minister must appoint the members of the Council after considering the short list.
- (6) The Minister may appoint:
 - (a) an alternate member for any member of the Council; and
 - (b) a replacement for any member who vacates his or her office, on the basis of the criteria referred to in subsection (2).

- (7) The replacement serves for the balance of the term of the person he or she replaces.
- (8) The Minister must appoint one member of the Council as chairperson and one member as vice-chairperson.

35. Conditions of appointment to Council

- (1) A member of the Council holds office for a period of:
 - (a) four years in the case of the chairperson of the Council; and
 - (b) three years in the case of other members.
- (2) At the expiry of his or her term of office a member may be appointed again.
- (3) A member or alternate member of the Council must vacate his or her office if:
 - (a) the Minister at any time terminates his or her term of office for good reason after consulting the chairperson of the Council;
 - (b) he or she can no longer perform his or her duties on the Council;
 - (c) he or she is convicted of an offense and sentenced to imprisonment without the option of a fine;
 - (d) he or she is absent from more than two consecutive meetings of the Council without the leave of the chairperson; or
 - (e) he or she resigns by written notice to the Minister.
- (4) Members of the Council and members of a committee of the Council who are not in the full-time employment of the State may be paid for their services, except for attending Council meetings.
- (5) The Minister must determine the remuneration and allowances payable to members of the Council and members of a committee of the Council with the consent of the Minister of Finance.

36. Committees of Council

- (1) The Council may elect an executive committee.
- (2) The chairperson of the Council must be the chairperson of the executive committee.
- (3) The Council must establish:
 - (a) the Committee for Sustainable Forest Management; and
 - (b) the Committee on Forest Access,
 as permanent committees of the Council.
- (4) The permanent committees must include persons representing the interest groups referred to in section 34(2) and-
 - (a) in the case of the Committee for Sustainable Forest Management, a representative of the Department of Environmental Affairs and Tourism appointed by its Director-General;
 - (b) in the case of the Committee on Forest Access, one or more representatives of voluntary associations interested in recreational activities in forests appointed in terms of subsection (9).
- (5) The functions of the Committee for Sustainable Forest Management are to advise:
 - (a) the Council, the Department and the Minister on all aspects of sustainable forest management in the Republic;
 - (b) the Department and the Minister on the determination of criteria, indicators and standards for sustainable forest management;
 - (c) the Department on convening forums for interested persons to participate in the formulation of criteria, indicators and standards.
- (6) The functions of the Committee on Forest Access are to advise the Minister on:
 - (a) a ruling referred to in section 20(10);
 - (b) promoting the grant and exercise of access to forests;

- (c) promoting education on the sustainable management and use of forests;
- (d) the use of the Trust funds.
- (7)(a) A decision on advice to be provided to the Minister by a permanent committee must be reached on the basis of unanimity.
- (b) If unanimity is not reached, the Minister must consider all the views expressed in the committee as conveyed by the chairperson of the committee.
- (8) The Council may establish other committees.
- (9) The Council may, with the approval of the Minister, appoint to one of the permanent committees or to a committee contemplated in subsection (8), persons who are not members of the Council but who may assist the committee in the performance of its functions.
- (10) The Council must designate one member of each committee as the chairperson and one member as the vice-chairperson.

37. Meetings of Council

- (1) The Minister must determine:
 - (a) the manner of the calling of, the quorum for, and the procedure at, meetings of the Council;
 - (b) what records the Council must keep;
 - (c) the way in which the Council must submit advice to him or her; and
 - (d) a code of conduct for Council members.
- (2) The Council or a committee may admit as an observer any person including any representative of national, provincial or local government.
- (3) The chairperson of the Council must provide the Minister with advice or information emanating from any meeting within two weeks.

38. Funding of Council

- (1) The Council is funded by money appropriated by Parliament.
- (2) Before 31 October of every year the Council must submit a budget of its expenditure for the next financial year to the Minister for his or her approval.
- (3) The Council may during the course of a financial year submit to the Minister for his or her approval additional or revised budgets for that year.
- (4) The Minister must include the budget of the Council in his or her annual budget for the Department submitted for approval to Parliament.
- (5) The Council must as soon as possible after the end of each financial year present a report on its expenditure for that year to the Minister.
- (6) The financial year ends on 31 March.

39. Staff of Council

The Director-General must designate as many officers and employees of the Department as may be necessary to assist the Council and any committee of the Council to perform the administrative and professional work of the Council or of a particular committee.

40. Report by Council

- (1) The Council must present an annual report on its activities to the Minister within three months of the end of the financial year.
- (2) The report by the Council must include its expenditure report compiled in terms of section 38(5).

Part 2: National Forest Recreation and Access Trust

41. Establishment and objects of National Forest Recreation and Access Trust

- (1) The National Forest Recreation and Access Trust is established.

- (2) The Minister is the sole trustee of the Trust.
- (3)(a) The National Hiking Way Board referred to in section 29;
- (b) the committees referred to in sections 40 and 41; and
- (c) the National Hiking Way System referred to in section 28, of the Forest Act, 1984 (Act 122 of 1984), are dissolved.
- (4) Administrative action in terms of part VII of the Forest Act, 1984, is no longer of any effect, except in relation to the National Hiking Way Fund.
- (5) The moneys standing to the credit of the National Hiking Way Fund referred to in section 36 of the Forest Act, 1984, vest in the Minister in his or her capacity as trustee.
- (6) The object of the Trust is to promote access to and the use of forests for recreation, education, culture or spiritual fulfilment.
- (7) The Trust is for the benefit of the general public of the Republic.

42. Powers and duties of Minister as trustee

- (1) The Minister must do whatever is necessary to achieve the object of the Trust.
- (2) The Minister may, as trustee:
 - (a) act on the advice of the Committee on Forest Access;
 - (b) solicit and receive donations and sponsorships;
 - (c) receive funds appropriated by Parliament;
 - (d) contract;
 - (e) use money in the Fund;
 - (f) cooperate with any organ of State or person;
 - (g) commission research;
 - (h) provide environmental education;
 - (i) provide information and other public services;
 - (j) charge fees for goods the Trust supplies and services it renders; and
 - (k) delegate any of his or her powers and duties as trustee to a named official in the Department.

43. Administration of Trust funds

- (1) The Minister must appoint:
 - (a) an official of the Department; or
 - (b) any other person, if the Minister of Finance agrees, as the accounting officer for the Trust.
- (2) The accounting officer must account for money received by and paid from the Trust and generally perform the work of the Trust connected with its records, accounts and balance sheets.
- (3) The accounting officer must before 31 October of every year submit a budget of the Trust's income and expenditure for the next financial year to the Minister for his or her approval.
- (4) The accounting officer may revise the budget during the course of a financial year.
- (5) The accounting officer may, with the consent of the Minister, invest Trust funds which are not needed for immediate use.
- (6) Any credit balance in the Trust funds at the end of a financial year must be carried forward to the next financial year in the budget of the Trust.
- (7) The financial year ends on 31 March.
- (8) The accounting officer must keep a record of:
 - (a) the assets and liabilities of the Trust; and
 - (b) the financial transactions of the Trust.
- (9) The accounting officer must, as soon as possible after the end of each financial year, draw up financial statements which must reflect the Trust's assets and liabilities at the beginning and end of the year and its income and expenditure for the year.

(10) The records, accounts and balance sheets of the Trust must be audited every year by the Auditor-General at an agreed fee, or, in the absence of an agreement, at a fee determined by the Minister of Finance.

44. Reports by Minister as trustee

The Minister must, within three months of the end of each financial year, submit to Parliament:

- (a) a report on the Trust's activities; and
- (b) audited financial statements of the Trust.

Part 3: Panel of facilitators, mediators and arbitrators

45. Establishment of panel

(1) The Minister must establish a panel of persons from whom appointments of facilitators, mediators and arbitrators may be made for the purposes referred to in sections 20(8), 20(9), 21(3), 27(2)(h), 29(4)(g) and 31(1)(h).

(2) The Minister may, instead of establishing a panel in terms of subsection (1), adopt:

- (a) the panel of arbitrators established in terms of section 31(1) of the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996), as the panel from which such appointments must be made;
- (b) the remuneration and allowances determined in terms of section 31(3) of that Act as those which will be payable for services rendered by panel members in terms of this Act.

(3) If the Minister establishes a panel in terms of subsection (1), he or she must determine the remuneration and allowances to be paid to panel members in consultation with the Minister of Finance.

(4) Facilitators, mediators and arbitrators are only remunerated when they are appointed or selected from the panel to act in a particular matter.

(5) A facilitator, mediator or arbitrator appointed in terms of this Act must, where appropriate, have regard to the following factors along with all other issues he or she must consider in any matter:

- (a) Where one or more communities is or are party to the dispute, the historical and cultural association of the community or communities with the forest;
- (b) the need to find equitable solutions to problems in the forests sector; and
- (c) the principles of sustainable forest management set out in section 3(3).

CHAPTER 6: Administration Of Act

Part 1: General powers and duties of Minister

46. Development and implementation of policy

The Minister must develop and implement policy for forests and their management.

47. Assignment of powers and duties

(1) The Minister may:

- (a) assign any power or duty in this Act to:
 - (i) a province or other organ of State; or
 - (ii) a person who or which is not an organ of State, indefinitely or for a fixed period;

- (b) withdraw an assignment, including any assignment of powers and duties in the Forest Act, 1984 (Act 22 of 1984), whether that assignment was effected in terms of that Act or any other legislation;
- (c) make an assignment subject to conditions, by notice in the *Gazette*.
- (2) The Minister must:
 - (a) consult with the province, organ or State or person concerned; and
 - (b) consider the administrative capacity of the province, organ of State or person concerned to assume, or continue to provide, effective responsibility,
 before making or withdrawing an assignment.
- (3) A province may implement those provisions of the Act relating to the powers and duties assigned to it:
 - (a) from the date of the assignment;
 - (b) in the area to which the assignment relates;
 - (c) until the assignment ends.

48. Delegation of powers and duties

- (1) The Minister may delegate the exercise of any of his or her powers, other than a power referred to in subsection (4), and the performance of any of his or her duties, to:
 - (a) a named official in the Department;
 - (b) the holder of an office in the Department;
 - (c) an organ of State;
 - (d) a person who or which is not an organ of State.
- (2) The Minister may permit a person or organ of State to whom a power or duty has been assigned or delegated to delegate that power or duty further.
- (3) A delegation referred to in subsection (1) and the permission referred to in subsection (2):
 - (a) must be in writing;
 - (b) may be subject to conditions;
 - (c) must specify the period for which it lasts;
 - (d) do not prevent the exercise of the power or the performance of the duty by the Minister himself or herself.
- (4) The Minister may not delegate the power or duty:
 - (a) to assign;
 - (b) to make regulations;
 - (c) to develop policy; or
 - (d) to appoint a member of the Council.
- (5) The Minister may withdraw any delegation.

49. Expropriation of property

- (1) The Minister may purchase or expropriate any property and reserve it for forestry or any other purpose in terms of this Act, if:
 - (a) that purpose is a public purpose or is in the public interest; and
 - (b) the Minister of Public Works agrees.
- (2) Land purchased or expropriated for forestry under subsection (1) may include land which is not treed or which will not be afforested if that land will be managed as part of the forest management unit or units in question.
- (3) The Expropriation Act, 1975 (Act 63 of 1975), applies to all expropriations under terms of this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriations.

50. Reservation of State land for forestry

- (1) The Minister may reserve State land for forestry if:

- (a) in the case of State land held in trust by the Ingonyama referred to in the Kwazulu Ingonyama Trust Act, 1994 (Kwazulu Act 3 of 1994) the authority with the necessary power in terms of that Act agrees;
 - (b) in the case of State land, other than land referred to in paragraph (a), which has at any time vested in:
 - (i) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act 18 of 1936); or
 - (ii) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act 21 of 1971); or
 - (iii) the governments of the former republics of Transkei, Bophuthatswana, Venda and Ciskei;
 the Minister of Land Affairs agrees;
 - (c) in the case of State land which is not owned by the State but is managed by the national or a provincial government exclusively or jointly with the owner in terms of an agreement, the owner agrees;
 - (d) in the case of State land, other than land referred to in paragraphs (a), (b) and (c) the Minister of Public Works agrees.
- (2) State land reserved for forestry under subsection (1) may include land which is not treed or which will not be afforested if that land will be managed as part of the forest management unit or units in question.
- (3) The Minister may release a State forest or part of a State forest which is no longer required for forestry.
- (4) The Minister reserves State land for forestry or releases it by notice in the *Gazette*.

51. Performance of functions on other land

The Minister may authorise officials in the Department to perform services in connection with trees on land which is not a State forest:

- (a) at the request, or with the consent, of the registered owner;
- (b) on appropriate conditions.

52. Extensions

The Minister may extend, or condone a failure by a person to comply with, a time period in terms of this Act, except a time period which binds the Minister.

53. Content of regulations

- (1) For the purposes of this section, 'owner' means:
 - (a) the registered owner; and
 - (b) where the registered owner has transferred control of the forest management unit in question to another person or organ of State, whether by way of assignment, delegation, contract or otherwise, that person or organ of State.
- (2) The Minister may make regulations to deal with:
 - (a) any matter which must be dealt with by regulation in terms of this Act;
 - (b) the criteria, indicators and standards referred to in section 4(2)(a), including:
 - (i) their determination and enforcement;
 - (ii) the creation and promotion of the incentives referred to in section 4(2)(b);
 - (c) research;
 - (d) monitoring of the forest resource, including regulations relating to:
 - (i) the registration of, and collection of data from, owners of forests;
 - (ii) the registration of, and collection of data from, persons who harvest, saw, process or sell forest produce;

- (iii) collection of data from institutions which certify sustainable forest management;
- (e) protected trees, including:
 - (i) the cultivation and grazing of land around any protected tree;
 - (ii) financial assistance for erecting stock-proof fences;
 - (iii) the preparing and maintenance of firebreaks for the protection of such a tree;
- (iv) the control of the collection, removal, transport, export, purchase, sale or donation of parts or produce of protected trees;
- (v) management plans for protected trees;
- (f) the management of State forests in general or a particular State forest or part of it, including:
 - (i) mensuration of forest produce or forest products for the purpose of sale or otherwise; and
 - (ii) access to State forests for recreation;
- (g) licences under section 23, leases under section 27, agreements under section 28 and community forestry agreements under section 30, including:
 - (i) the appointment and functioning of a person or organ of State outside of the Department to exercise powers and perform duties of the Minister and the Director-General in terms of chapter 4 and such other sections as relate to that task; and
 - (ii) procedures for the selection of suitable licensees, lessees, purchasers or offerors;
- (h) facilitation, mediation and arbitration before a panel member referred to in section 45;
- (i) forest hygiene, including:
 - (i) the combating of any harmful organism which affects any kind of forest, tree or timber on any land or in any vehicle, building or other place where timber is stored, stacked, seasoned or processed;
 - (ii) the prevention of the introduction into or the spreading within the Republic of any such harmful organism; and
- (j) generally, any other ancillary or incidental administrative or procedural matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (3) The Minister may make different regulations under subsection (2) for different regions of the Republic, different forests or parts or classes of forests and different owners or classes of owners of forests.
- (4) The Minister may make regulations:
 - (a) for the inspection of any forest, trees, timber, vehicle, pack-animal or premises by any person or the incumbent of a post designated by the Minister for purposes of enforcing regulations made under this section;
 - (b) prescribing how samples of any timber for examination or testing must be taken and how and where such timber may or must be graded or marked.
- (5) The generality of the powers conferred by subsection (2)(j) is not limited by the provisions of the preceding paragraphs.
- (6)(a) The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe maximum penalties for such offences.
- (b) The penalties may not exceed those for a second category offence in terms of section 58(2).

54. Procedure for making regulations

- (1) Before making or amending any regulations in terms of this Act, the Minister must:

- (a) publish a notice in the *Gazette*:
 - (i) setting out the draft regulations; and
 - (ii) inviting written comments to be submitted on the proposed regulations within a specified period;
 - (b) consider all comments received; and
 - (c) take advice from the Council.
- (2)(a) After complying with subsection (1) the Minister may:
- (i) amend the draft regulations; and
 - (ii) subject to subsections (3) to (8) publish the regulations in final form in the *Gazette*.
- (b) The regulations are effective from the date the Minister published them in the *Gazette* in terms of paragraph (a).
- (3) The Minister must table the regulations in Parliament, together with any written comments and advice received on them pursuant to subsection (1):
- (a) within 30 days after publishing them in terms of subsection (2); or
 - (b) if Parliament is not then in session, within 30 days after the next session starts.
- (4) Parliament may reject the regulations within 60 days after they have been tabled.
- (5) If Parliament rejects any regulations, the Minister must:
- (a) repeal them; or
 - (b) table amended regulations in draft form in Parliament within 60 days of the rejection, or if Parliament is not in session, within 60 days after the next session starts, failing which the regulations become invalid.
- (6) If the Minister elects to table amended regulations in terms of subsection (5)(b), he or she:
- (a) must consult the chairperson of the Council;
 - (b) need not follow the procedure in subsection (1), before the amended regulations are tabled.
- (7) If Parliament:
- (a) accepts the amended regulations, the Minister must publish them within 30 days of Parliament's acceptance;
 - (b) rejects the amended regulations, subsections (5) and (6) and this subsection apply.
- (8) If the Minister complies with subsection (5)(b), the regulations as originally published continue to apply until amended regulations are accepted by Parliament and published by the Minister in terms of subsection (2).

55. Tariffs and charges

The Minister may, with the consent of the Minister of Finance:

- (a) in respect of State forests, issue tariffs of fees for licences issued in terms of this Act
- (b) issue tariffs of charges for:
 - (i) forest produce or forest products derived from State forests and sold by an organ of State; or
 - (ii) services rendered by officers or employees of the Department or by members of the panel referred to in section 45.

Part 2: General powers and duties of Director-General

56. Powers and duties

- (1) The Director-General has those powers and duties:
 - (a) referred to in this Act; or
 - (b) delegated to him or her.
- (2) The Director-General may delegate the exercise of any of his or her powers and the performance of any of his or her duties to:

- (a) a named official of the Department;
- (b) the holder of an office in the Department;
- (c) an organ of State;
- (d) a person who or which is not an organ of State.
- (3) The Director-General may permit a person or organ of State to whom a power or duty has been delegated to delegate that power or duty further.
- (4) A delegation referred to in subsection (1) and the permission referred to in subsection (2):
 - (a) must be in writing;
 - (b) may be subject to conditions;
 - (c) must specify the period for which it lasts;
 - (d) do not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself.
- (5) The Director-General may withdraw any delegation.

57. Transfer of officers and employees

- (1) The Director-General may enter into an agreement with an officer or employee of the Department to transfer his or her employment to:
 - (a) a person who leases or carries on a licensed activity in a State forest;
 - (b) a community which has entered into a community forestry agreement; or
 - (c) a party to a community forestry agreement referred to in section 31(2)(e).
- (2) The Minister of Finance and the Minister for the Public Service and Administration must approve the terms of such an agreement before it is concluded.
- (3) The agreement may provide for the terms on which the employee will terminate membership of the State pension fund or become a member of a new pension fund.

CHAPTER 7: Offenses And Penalties

Part 1: Sentencing

58. Penalties

- (1) A person who is guilty of a first category offense referred to in sections 62 and 63 may be sentenced to a fine or imprisonment for a period of up to three years, or to both a fine and such imprisonment.
- (2) A person who is guilty of a second category offense referred to in sections 62, 63 and 64 may be sentenced on a first conviction for that offense to a fine or imprisonment for a period of up to two years, or to both a fine and such imprisonment.
- (3) A person who is guilty of a third category offense referred to in sections 62 and 63 may be sentenced on a first conviction for that offense to a fine or imprisonment for a period of up to one year, or to both a fine and such imprisonment.
- (4) A person who is guilty of a fourth category offense referred to in sections 63 and 64 may be sentenced on a first conviction for that offense to a fine or community service for a period of up to six months or to both a fine and such service.
- (5) A person who is guilty of a second, third or fourth category offense may be sentenced on a second conviction for that offense as if he or she has committed a first, second or third category offense, respectively.
- (6) A person who is guilty of a fifth category offense referred to in section 61 may not be sentenced to imprisonment, but may be sentenced to a fine up to R50 000.

(7) The maximum amount of the fine referred to in subsection (6) may be amended by the Minister by a notice in the *Gazette* in order to counteract inflation.

(8) A court which sentences any person:

- (a) to community service for an offense in terms of this Act must impose a form of community service which benefits the environment if it is possible for the offender to serve such a sentence in the circumstances;
- (b) for any offense in terms of this Act, may suspend or revoke a license granted to the offender under section 7 or 23.

59. Compensatory orders in criminal proceedings

(1) A court which convicts a person of an offense in terms of this Act, may order:

- (a) the return of any forest produce or protected tree which has unlawfully been removed, cut or damaged, to the person entitled to it if it is feasible to do so; and, in addition to or instead of such return;
- (b) the person convicted to pay damages to any person who suffered a loss as a result of the offense.

(2) The power in subsection (1) is in addition to any other powers the court has in the proceedings in question.

(3) An order under subsection (1) is executed in the same manner as a judgment of that court in a civil case.

60. Award of part of fine recovered to informant

(1) A court which imposes a fine for an offense in terms of this Act, may order that a sum of not more than one-fourth of the fine, be paid to any person whose evidence led to the conviction or who helped bring the offender to justice.

(2) An officer in the service of the State may not receive such an award.

Part 2: Offenses

61. Offences relating to sustainable forest management

Any person who fails to take the steps which he or she has been instructed to take in terms of section 4(8) within the period or the extended period laid down, is guilty of a fifth category offense.

62. Offences relating to protection of forests and trees

(1) Any person who contravenes the prohibition of certain acts in relation to trees in natural forests referred to in section 7(1) is guilty of a second category offence.

(2) Any person who contravenes:

- (a) the prohibition on the cutting, disturbance, damage or destruction of forest produce in or the removal or receipt of forest produce from a protected area referred to in section 10(1) is guilty of a second category offence;
- (b) the rules referred to in section 11(2)(b), is guilty of a third category offence;
- (c) the prohibition on:
 - (i) the cutting, disturbance, damage or destruction of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(a); or
 - (ii) the possession, collection, removal, transport, export, purchase or sale of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(b), or any forest

product derived from a temporarily protected tree, group of trees or protected tree,
is guilty of a first category offence.

(3) Any person who contravenes a prohibition or any other provision in a notice declaring a controlled forest area under section 17(3) and (4) is guilty of a second category offence.

63. Offences relating to use of forests

(1) Any person who:

- (a) without authority, enters or is in an area of a forest which is not designated for access for recreation, education, culture or spiritual fulfilment, is guilty of a fourth category offence;
- (b) contravenes a rule made by an owner in terms of section 20(3) or a registered owner in terms of section 21(2), is guilty of a fourth category offence;
- (c) invades the privacy of, or causes damage to the property of, a registered owner in contravention of the prohibition referred to in section 21(5), is guilty of a third category offence;
- (d) damages, removes or interferes with any beacon, boundary, fence, notice board or other structure in a forest without authority, is guilty of a fourth category offence;
- (e) without authority makes a mark or sign on a rock, building, tree or other vegetation in a forest, is guilty of a third category offence;
- (f) dumps or scatters litter in a forest, is guilty of a fourth category offence.

(2) Any person who, without a licence or other authority:

- (a) cuts, disturbs, damages, destroys, removes or receives seven-week ferns (*Rumohra adiantiforme*) from any forest, is guilty of a first category offence;
 - (aA) cuts, disturbs, damages, destroys, removes or receives forest produce other than seven-week ferns (*Rumohra adiantiforme*) from any forest is guilty of a third category offence;
 - (b) kills any animal, bird, insect or fish, is guilty of a second category offence if it is in a protected area and a third category offence if it is in any other area.
- (3) Any person who, without the permission of the registered owner, removes any forest produce other than trees referred to in section 62(1), from a forest other than a State forest, is guilty of a third category offence.
- (4) Any person who carries on an activity in a State forest for which a licence is required without such a licence is guilty of:
- (a) a third category offence, if the State forest is a protected area;
 - (b) a fourth category offence, if the State forest is not a protected area.
- (5) Any person who contravenes a condition in a licence, exemption or other authorisation in terms of this Act:
- (a) in any protected area is guilty of a second category offence;
 - (b) in any other forest is guilty of a third category offence.

64. Offences in relation to enforcement

(1) Any person who:

- (a) refuses or fails to produce a license in terms of section 24(8) to a forest officer or a police officer; or
 - (b) prevents a forest officer or police officer from, or hinders a forest officer or police officer, acting under section 67, 68 or 69,
- is guilty of a fourth category offence.

(2) A forest officer or employee of the Department who:

- (a) solicits or receives, or agrees to receive, any payment, advantage or reward for doing anything in conflict with his or her duty;
 - (b) solicits or receives, or agrees to receive, any payment, advantage or reward, other than his or her normal remuneration, for performing his or her duty; or
 - (c) trades in forest produce, other than forest produce grown or produced on his or her own land, or acts as an agent for any person trading in forest produce,
- is guilty of a second category offense.

CHAPTER 8: Enforcement

65. Appointment of forest officers

The Director-General may:

- (a) designate posts in the Department or in any provincial administration or local authority, whose incumbents are forest officers; and
- (b) appoint any other suitably qualified persons as forest officers.

66. General powers of forest officers

- (1) A reference to an offense in this chapter is a reference to an offense in terms of this Act.
- (2) A forest officer has in respect of any offense all the powers vested by law in a police official.
- (3) A forest officer exercising powers under this Act-
 - (a) is deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
 - (b) must carry with him or her, and produce on request, the prescribed proof of his or her identity and appointment as a forest officer.

67. Power to enter and search

- (1) A forest officer may enter and search any land or premises without a warrant if he or she has reason to believe that an offense has been or is being committed there if:
 - (a) the person in control of the land or premises consents; or
 - (b) the forest officer has reason to believe that a warrant would be issued if he or she were to apply for such warrant, but the delay caused by applying would defeat the object of the entry or search.
- (2) A forest officer may, without a warrant, stop, enter and search any vehicle or search any pack-animal which he or she reasonably suspects is being or has been used in the commission of an offense.

68. Power to seize

- (1) A forest officer may seize without a warrant:
 - (a) any forest produce in respect of which he or she has reason to suspect an offense has been or is being committed;
 - (b) any vehicle, tool, weapon, animal or other thing which he or she has reason to believe has been or is being used in the commission of an offense;
 - (c) any thing which he or she has reason to believe might be used as evidence in the prosecution of any person for an offense.
- (2) Where any vehicle or animal is seized under subsection (1)(b), the person in control of the vehicle or animal must take it to the place pointed out by the forest officer.
- (3) The place pointed out must be that which in the opinion of the forest officer is the nearest or most convenient for keeping the vehicle or animal.

- (4) The vehicle may be kept there pending the outcome of any proceedings in terms of this Act.
- (5) If the person in control of the vehicle or animal refuses to take it to the place, the forest officer may do so.
- (6) In order to safeguard a vehicle which has been seized, the forest officer may immobilise it by removing a part.
- (7) The part must be kept safely and returned to the vehicle when it is released.
- (8) An item seized under this section must be kept securely and in good order.

69. Power to arrest

- (1) A forest officer may arrest any person whom he or she reasonably suspects to have committed:
 - (a) a first, second or third category offense; or
 - (b) a fourth category offense and who in his or her opinion will fail to appear in answer to a summons.
- (2) In making an arrest, a forest officer must:
 - (a) not use more force than is reasonably necessary if the arrest is resisted;
 - (b) respect the constitutional rights of the person arrested.

CHAPTER 9: General And Transitional Provisions

Part 1: Miscellaneous

70. Documents and steps valid under certain circumstances

- (1) A regulation, exemption, license or notice purportedly made, issued or given in terms of this Act:
 - (a) which does not comply with this Act, is valid if the non-compliance is not material and does not prejudice any person;
 - (b) may be amended or replaced without following the procedure set out in this Act if:
 - (i) the purpose is to correct a mistake in the regulation, exemption, license or notice; and
 - (ii) the correction does not change the rights and duties of any person materially.
- (2) The failure to take any steps required in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure:
 - (a) is not material;
 - (b) has subsequently been corrected;
 - (c) does not prejudice any person; and
 - (d) is not procedurally unfair.

71. Delivery of documents

- (1) If any notice or other document referred to in this Act must be delivered to any person, it may:
 - (a) be delivered by hand;
 - (b) be sent by registered mail:
 - (i) to that person's business or residential address; or
 - (ii) in the case of a juristic person, to its registered address or principal place of business; or
 - (c) where an address is unknown, despite reasonable enquiry, be published once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.

(2) Any document delivered in terms of subsection (1)(b) or (c) is presumed to have come to the notice of the person, unless the contrary is proved.

72. Publication of notices in media

- (1) Where a notice must be published or aired in terms of this Act and:
 - (a) the required number of television channels or radio stations are not broadcasting to an area; or
 - (b) the required number of newspapers are not circulated in an area, the organ of State responsible for publication may do so in such lesser number of media as to reach the area concerned.
- (2) If an employee of a television channel or radio station signs an affidavit confirming:
 - (a) publication of a notice, it is presumed that the notice has been published; or
 - (b) that a television channel or radio station is broadcasting to a particular area, it is presumed that it is so broadcasting,
 until the contrary is proved.
- (3) If an employee of a newspaper signs an affidavit confirming that a newspaper circulates in a particular area, it is presumed that it does, until the contrary is proved.

Part 2: Repeal and amendment of laws, savings, short title and commencement

73. Repeal of laws

- (1) The laws referred to in Schedule 1 are hereby repealed to the extent indicated in the third column of that Schedule.
 - (2)(a) The definitions of 'chief executive officer', 'fund' in Part I, 'institute' and 'national botanic garden' in section 1, and sections 57 to 72, 73(1)(g) and 89(3) of, and Schedule 1 to, the Forest Act, 1984 (Act 122 of 1984);
 - (b) sections 1, 4 to 10 and 12 of the Forest Amendment Act, 1991 (Act 53 of 1991); and
 - (c) sections 46 and 47 of the Transfer of Powers and Duties of the State President Act, 1986 (Act 97 of 1986), in so far as they amend the Forest Act, 1984,
- are repealed with effect from a date to be published by the Minister in the *Gazette*, which may not be earlier than the date on which a law or an amendment to a law is promulgated providing for the matters dealt with in those sections and that Schedule.

74. Savings

- (1) Anything done in terms of a law repealed by this Act:
 - (a) remains valid if it is consistent with this Act, until repealed or overridden; and
 - (b) becomes administrative action in terms of the corresponding provision of this Act.
- (2) Any regulation made in terms of the Forest Act, 1984 (Act 122 of 1984):
 - (a) remains valid if it is consistent with this Act, until it is repealed by the Minister; and
 - (b) becomes a regulation made in terms of sections 53 and 54 of this Act.
- (3) Assignments and delegations of powers or duties under the Forest Act, 1984, become assignments or delegations under this Act if they are consistent with this Act.

(4) The Tweefontein Timber Company Limited continues to exist with the same assets, liabilities, rights and obligations despite the repeal by section 73(1).

(5) Section 17 of the Forest Act, 1984, remains in force for purposes only of determining prices in contracts:

- (a) entered into before this Act comes into force; and
- (b) which would, in the absence of section 17, be incomplete.

75. Amendment of section 1 of 128 of 1992

Section 1 of the Management of State Forests Act, 1992, is hereby amended by the substitution for the definition of 'Forest Act' of the following definition:

'Forest Act' means the [Forest Act, 1984 (Act 122 of 1984)] National Forests Act.

76. Substitution of section 3 of Act 128 of 1992

The following section is hereby substituted for section 3 of the Management of State Forests Act, 1992:

'Objects of Company'

3. The objects of the Company are the development in the long term of the forestry industry according to accepted commercial [management] and environmental practice.

77. Repeal of section 4 of Act 128 of 1992

(1) Section 4 of the Management of State Forests Act, 1992, is repealed.

(2) Agreements entered into in terms of section 4 which are valid at the commencement of this Act continue on the same terms subject to the following:

- (a) The right of access referred to in sections 19 and 20 of this Act applies to State forests to which such agreements relate.
- (b) The South African Forestry Company Limited does not own or have a right to acquire ownership or ninety-nine year leasehold of any State forest.
- (c) The parties may amend the existing agreements or enter into a new agreement or agreements replacing the existing agreements, save that any right to use a State forest in terms of a new agreement must be granted in terms of chapter 4.
- (d) The South African Forestry Company Limited is deemed to be licensed under section 23 to carry on the activities allowed by the existing agreements for as long as the agreements remain in force.
- (e) No license fee is payable by the South African Forestry Company Limited as a result of paragraph (d) if it pays rent in terms of the existing agreements.
- (f) Powers and duties of the Director-General in terms of the Forest Act, 1984, (Act 122 of 1984), and the regulations made in terms of that Act, which have been delegated or assigned to the South African Forestry Company Limited in terms of the existing agreements and which:
 - (i) exist under a corresponding provision in this Act, are deemed to have been delegated to the South African Forestry Company Limited under section 47 or 48;
 - (ii) do not exist under a corresponding provision in this Act, no longer vest in the South African Forestry Company Limited.

78. Amendment of Act 51 of 1994

The Forestry Laws Rationalisation and Amendment Act, 1994, is amended on the basis set out in Schedule 2.

79. Short title

This Act is the National Forests Act, 1998.

80. Commencement

This Act takes effect on a date fixed by the President in the *Gazette*.

SCHEDULE 1

...

SCHEDULE 2

...

2.2.2.2.2 National Veld and Forest Fire Act

The Act provides for the prevention and combat of veld, forest and mountain fires throughout the Republic and provides for a variety of institutions, methods and practices for the achievement thereof.

2.2.2.2.3 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, cooperative governance, public participation and matters related to protected areas.

(Refer to page 87 for this Act.)

2.2.2.2.4 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity - South African Biodiversity Institute.

(Refer to page 119 for this Act)

2.2.2.3 Water

South African law relating to water has its roots in four different legal systems. These are Roman law, Roman Dutch Law, English and American Law. The cornerstone of South African water law is the Roman law classification of water in a flowing stream (*aqua profluens*) as either public or private. Public streams were *res omnium communes*, meaning they were owned by the state and could not be subject to private ownership. A stream was public, if the stream was a *flumen* that was perennial. A stream therefore had to flow throughout the year and had to be of a sizeable nature. Private streams, including underground water, were regarded as private property. The foundation for the South African water law was laid in the case *Retief v Louw*⁴, where the court had to decide the position regarding the riparian owners. The court decided that riparian owners had a prior right (not ownership) to use water in a river, whether a *flumen* or not. Furthermore, the court distinguished between the primary, secondary and tertiary uses of water. Primarily, water may be used for human domestic needs and the watering of stock. Secondary uses include agricultural irrigation. Tertiary use of water relates to mechanical use and industrial needs. This classification method formed the basis of South African water law.

The White Paper on a National Water Policy for South Africa was released by the Minister of Water Affairs and Forestry in April, 1997 and ushered in a whole new regime relating to ownership of water and the management of water resources with the aim, amongst others to provide for equitable access by all South Africans to water. The government thus promulgated the Water Services Act 108 of 1997 and the National Water Act 36 of 1998. Although the Water Services Act was enacted to deal with matters such as providing for the rights of access to basic water supply, basic sanitation, and the setting of national standards and norms for tariffs, the National Water Act (NWA) is the primary legislation pertaining to the regulation of water in South Africa. It fundamentally changes the notion of private ownership of water and provides that the national government is the public trustee of the nation's water resources and as such it must ensure that the nation's water resources are protected and managed in ways that take into account, *inter alia*, meeting the basic human needs of present and future generations.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment* (Chapter 50) in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.2.3.1 National Water Act

Description: This Act was promulgated to provide for the fundamental reform of the law relating to water resources. The Act regulates the relationship between these new laws and reforms and repeals certain laws.

National Water Act 36 of 1998

As last amended by the National Water Amendment Act 45 of 1999.

Preamble

Recognising that water is a scarce and unevenly distributed national resource which occurs in many different forms which are all part of a unitary, inter-dependent cycle;

Recognising that while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water, and use of water resources;

Acknowledging the National Government's overall responsibility for and authority over the nation's water resources and their use, including the equitable allocation of water for beneficial use, the redistribution of water, and international water matters;

Recognising that the ultimate aim of water resource management is to achieve the sustainable use of water for the benefit of all users;

Recognising that the protection of the quality of water resources is necessary to ensure sustainability of the nation's water resources in the interests of all water users; and

Recognising the need for the integrated management of all aspects of water resources and, where appropriate, the delegation of management functions to a regional or catchment level so as to enable everyone to participate.

CHAPTER 1: Interpretation and Fundamental Principles

This chapter sets out the fundamental principles of the Act. Sustainability and equity are identified as central guiding principles in the protection, use, development, conservation, management and control of water resources. These guiding principles recognise the basic human needs of present and future generations, the need to protect water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water and the need to establish suitable institutions in order to achieve the purpose of the Act. National Government, acting through the Minister, is responsible for the achievement of these fundamental principles in accordance with the Constitutional mandate for water reform. Being empowered to act on behalf of the nation, the Minister has the ultimate responsibility to fulfil certain obligations relating to the use, allocation and protection of and access to water resources.

This chapter also contains definitions explaining the meaning of certain words used in the Act as well as provisions regarding the interpretation of the Act.

1. Definitions and interpretation

(1) In this Act, unless the context shows that another meaning is intended: *'aquifer'* means a geological formation which has structures or textures that hold water or permit appreciable water movement through them;

'borehole' includes a well, excavation or any artificially constructed or improved underground cavity which can be used for the purpose of:

- (a) intercepting, collecting or storing water in or removing water from an aquifer;
- (b) observing and collecting data and information on water in an aquifer; or
- (c) recharging an aquifer;

'catchment', in relation to a watercourse or watercourses or part of a watercourse, means the area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, through surface flow to a common point or common points;

'charge' includes a fee, price or tariff imposed under this Act;

'conservation' in relation to a water resource means the efficient use and saving of water, achieved through measures such as water saving devices, water-efficient processes, water demand management and water rationing;

'Department' means the Department of Water Affairs and Forestry;

'Director-General' means the Director-General of the Department;

'entitlement' means a right to use water in terms of any provision of this Act or in terms of an instrument issued under this Act;

'estuary' means a partially or fully enclosed body of water:

- (a) which is open to the sea permanently or periodically;
- (b) within which the sea water can be diluted, to an extent that is measurable, with fresh water drained from land;

'government waterwork' means a waterwork owned or controlled by the Minister and includes the land on which it is situated;

'instream habitat' includes the physical structure of a watercourse and the associated vegetation in relation to the bed of the watercourse;

'Minister' means the Minister of Water Affairs and Forestry;

'organ of state' has the meaning set out in section 239 of the Constitution;

'person' includes a natural person, a juristic person, an unincorporated body, an association, an organ of state and the Minister;

'pollution' means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it:

- (a) less fit for any beneficial purpose for which it may reasonably be expected to be used;
- (b) harmful or potentially harmful:
 - (aa) to the welfare, health or safety of human beings;
 - (bb) to any aquatic or non-aquatic organisms;
 - (cc) to the resource quality; or
 - (dd) to property;

'prescribe' means prescribe by regulation;

'protection', in relation to a water resource, means:

- (a) maintenance of the quality of the water resource to the extent that the water resource may be used in an ecologically sustainable way;
- (b) prevention of the degradation of the water resource; and
- (c) the rehabilitation of the water resource;

'Reserve' means the quantity and quality of water required:

- (a) to satisfy basic human needs by securing a basic water supply, as prescribed under the Water Services Act, 1997 (Act 108 of 1997), for people who are now or who will, in the reasonably near future, be:
 - (i) relying upon;
 - (ii) taking water from; or
 - (iii) being supplied from the relevant water resource; and

(b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource;
 'resource quality' means the quality of all the aspects of a water resource including:

- (a) the quantity, pattern, timing, water level and assurance of instream flow;
- (b) the water quality, including the physical, chemical and biological characteristics of the water;
- (c) the character and condition of the instream and riparian habitat; and
- (d) the characteristics, condition and distribution of the aquatic biota;

'responsible authority', in relation to a specific power or duty in respect of water uses, means:

- (a) if that power or duty has been assigned by the Minister to a catchment management agency, that catchment management agency; or
- (b) if that power or duty has not been so assigned, the Minister;

'riparian habitat' includes the physical structure and associated vegetation of the areas associated with a watercourse which are commonly characterised by alluvial soils, and which are inundated or flooded to an extent and with a frequency sufficient to support vegetation of species with a composition and physical structure distinct from those of adjacent land areas;

'this Act' includes any regulations made under this Act;

'waste' includes any solid material or material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into a water resource in such volume, composition or manner as to cause, or to be reasonably likely to cause, the water resource to be polluted;

'watercourse' means:

- (a) a river or spring;
- (b) a natural channel in which water flows regularly or intermittently;
- (c) a wetland, lake or dam into which, or from which, water flows; and
- (d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks;

'water management area' is an area established as a management unit in the national water resource strategy within which a catchment management agency will conduct the protection, use, development, conservation, management and control of water resources;

'water management institution' means a catchment management agency, a water user association, a body responsible for international water management or any person who fulfils the functions of a water management institution in terms of this Act;

'water resource' includes a watercourse, surface water, estuary, or aquifer;

'waterwork' includes any borehole, structure, earthwork or equipment installed or used for or in connection with water use;

'wetland' means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

(2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, corresponding meanings.

(3) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the purpose of this Act as stated in section 2, must be preferred over any alternative interpretation which is inconsistent with that purpose.

- (4) Explanatory notes, printed in bold italics, at the commencement of chapters and Parts must not be used in the interpretation of any provision of this Act.
- (5) Any directive or notice given in terms of this Act must be in writing, unless otherwise specified in this Act.

2. Purpose of Act

The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors:

- (a) meeting the basic human needs of present and future generations;
- (b) promoting equitable access to water;
- (c) redressing the results of past racial and gender discrimination;
- (d) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (e) facilitating social and economic development;
- (f) providing for growing demand for water use;
- (g) protecting aquatic and associated ecosystems and their biological diversity;
- (h) reducing and preventing pollution and degradation of water resources;
- (i) meeting international obligations;
- (j) promoting dam safety;
- (k) managing floods and droughts, and for achieving this purpose, to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation.

3. Public trusteeship of nation's water resources

- (1) As the public trustee of the nation's water resources the National Government, acting through the Minister, must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.
- (2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values.
- (3) The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

4. Entitlement to water use

- (1) A person may use water in or from a water resource for purposes such as reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use, as set out in Schedule 1.
- (2) A person may continue with an existing lawful water use in accordance with section 34.
- (3) A person may use water in terms of a general authorisation or licence under this Act.
- (4) Any entitlement granted to a person by or under this Act replaces any right to use water which that person might otherwise have been able to enjoy or enforce under any other law:
- (a) to take or use water;
 - (b) to obstruct or divert a flow of water;
 - (c) to affect the quality of any water;
 - (d) to receive any particular flow of water;
 - (e) to receive a flow of water of any particular quality; or
 - (f) to construct, operate or maintain any waterwork.

CHAPTER 2: Water Management Strategies

This chapter deals with the development of strategies to facilitate the proper management of water resources.

Part 1: National Water Resource Strategy

Part 1 requires the progressive development, by the Minister, after consultation with society at large, of a national water resource strategy. The national water resource strategy provides the framework for the protection, use, development, conservation, management and control of water resources for the country as a whole. It also provides the framework within which water will be managed at regional or catchment level, in defined water management areas. The national water resource strategy, which must be formally reviewed from time to time, is binding on all authorities and institutions exercising powers or performing duties under this Act.

5. Establishment of national water resource strategy

- (1) Subject to subsection (4), the Minister must, as soon as reasonably practicable, by notice in the *Gazette*, establish a national water resource strategy.
- (2) The notice must state the address where the strategy may be inspected.
- (3) The water resources of the Republic must be protected, used, developed, conserved, managed and controlled in accordance with the national water resource strategy.
- (4) A national water resource strategy:
 - (a) may be established in a phased and progressive manner and in separate components over time; and
 - (b) must be reviewed at intervals of not more than five years.
- (5) Before establishing a national water resource strategy or any component of that strategy in terms of subsection (1), the Minister must:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out a summary of the proposed strategy or the component in question;
 - (ii) stating the address where the proposed strategy or the component in question is available for inspection; and
 - (iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a)(iii).

6. Contents of national water resource strategy

- (1) The national water resource strategy must, subject to section 5(4)(a):
 - (a) set out the strategies, objectives, plans, guidelines and procedures of the Minister and institutional arrangements relating to the protection, use, development, conservation, management and control of water resources within the framework of existing relevant government policy in order to achieve:
 - (i) the purpose of this Act; and
 - (ii) any compulsory national standards prescribed under section 9(1) of the Water Services Act, 1997 (Act 108 of 1997);

- (b) provide for at least:
 - (i) the requirements of the Reserve and identify, where appropriate, water resources from which particular requirements must be met;
 - (ii) international rights and obligations;
 - (iii) actions to be taken to meet projected future water needs; and
 - (iv) water use of strategic importance;
 - (c) establish water management areas and determine their boundaries;
 - (d) contain estimates of present and future water requirements;
 - (e) state the total quantity of water available within each water management area;
 - (f) state water management area surpluses or deficits;
 - (g) provide for inter-catchment water transfers between surplus water management areas and deficit water management areas;
 - (h) set out principles relating to water conservation and water demand management;
 - (i) state the objectives in respect of water quality to be achieved through the classification system for water resources provided for in this Act;
 - (j) contain objectives for the establishment of institutions to undertake water resource management;
 - (k) determine the inter-relationship between institutions involved in water resource management; and
 - (l) promote the management of catchments within a water management area in a holistic and integrated manner.
- (2) In determining a water management area in terms of subsection (1)(c), the Minister must take into account:
- (a) watercourse catchment boundaries;
 - (b) social and economic development patterns;
 - (c) efficiency considerations; and
 - (d) communal interests within the area in question.

7. Giving effect to national water resource strategy

The Minister, the Director-General, an organ of state and a water management institution must give effect to the national water resource strategy when exercising any power or performing any duty in terms of this Act.

Part 2: Catchment Management Strategies

Part 2 requires every catchment management agency to progressively develop a catchment management strategy for the water resources within its water management area. Catchment management strategies must be in harmony with the national water resource strategy. In the process of developing this strategy, a catchment management agency must seek co-operation and agreement on water-related matters from the various stakeholders and interested persons. The catchment management strategy, which must be reviewed from time to time, will include a water allocation plan. A catchment management strategy must set principles for allocating water to existing and prospective users, taking into account all matters relevant to the protection, use, development, conservation, management and control of water resources.

8. Establishment of catchment management strategies

(1) A catchment management agency contemplated in chapter 7 must, by notice in the *Gazette*, establish a catchment management strategy for the protection, use, development, conservation, management and control of water resources within its water management area.

- (2) The notice must state the address where the strategy may be inspected.
- (3) A catchment management strategy:
 - (a) may be established in a phased and progressive manner and in separate components over time; and
 - (b) must be reviewed at intervals of not more than five years.
- (4) A catchment management strategy or any component of that strategy may only be established with the written consent of the Minister.
- (5) Before establishing a catchment management strategy or any component of that strategy in terms of subsection (1), a catchment management agency must:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out a summary of the proposed catchment management strategy or the component in question;
 - (ii) stating the address where the proposed strategy or the component in question is available for inspection; and
 - (iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a)(iii).

9. Contents of catchment management strategy

A catchment management strategy must:

- (a) take into account the class of water resources and resource quality objectives contemplated in chapter 3, the requirements of the Reserve and, where applicable, international obligations;
- (b) not be in conflict with the national water resource strategy;
- (c) set out the strategies, objectives, plans, guidelines and procedures of the catchment management agency for the protection, use, development, conservation, management and control of water resources within its water management area;
- (d) take into account the geology, demography, land use, climate, vegetation and waterworks within its water management area;
- (e) contain water allocation plans which are subject to section 23, and which must set out principles for allocating water, taking into account the factors mentioned in section 27(1);
- (f) take account of any relevant national or regional plans prepared in terms of any other law, including any development plan adopted in terms of the Water Services Act, 1997 (Act 108 of 1997);
- (g) enable the public to participate in managing the water resources within its water management area;
- (h) take into account the needs and expectations of existing and potential water users; and
- (i) set out the institutions to be established.

10. Guidelines for and consultation on catchment management strategies

- (1) The Minister may establish guidelines for the preparation of catchment management strategies.
- (2) In developing a catchment management strategy, a catchment management agency must consult with:

- (a) the Minister;
- (b) any organ of state which has an interest in the content, effect or implementation of the catchment management strategy; and
- (c) any persons, or their representative organisations:
 - (i) whose activities affect or might affect water resources within its water management area; and
 - (ii) who have an interest in the content, effect or implementation of the catchment management strategy.
- (3) A catchment management agency must, before the publication of a notice in terms of section 8(5)(a), refer to the Minister for consideration and determination, any proposed component of a catchment management strategy which in the opinion of the catchment management agency:
 - (a) raises a material question of policy; or
 - (b) raises a question concerning:
 - (i) the relationship between the Department and other organs of state; or
 - (ii) the relationship between organs of state and their respective roles in developing or implementing a catchment management strategy.

11. Giving effect to catchment management strategies

The Minister and the catchment management agency concerned must give effect to any catchment management strategy established under this part when exercising any power or performing any duty in terms of this Act.

CHAPTER 3: Protection of Water Resources

The protection of water resources is fundamentally related to their use, development, conservation, management and control. Parts 1, 2 and 3 of this chapter lay down a series of measures which are together intended to ensure the comprehensive protection of all water resources. These measures are to be developed progressively within the contexts of the national water resource strategy and the catchment management strategies provided for in chapter 2. Parts 4 and 5 deal with measures to prevent the pollution of water resources and measures to remedy the effects of pollution of water resources.

Part 1: Classification System for Water Resources

Part 1 provides for the first stage in the protection process, which is the development by the Minister of a system to classify the nation's water resources. The system provides guidelines and procedures for determining different classes of water resources.

12. Prescription of classification system

- (1) As soon as is reasonably practicable, the Minister must prescribe a system for classifying water resources.
- (2) The system for classifying water resources may:
 - (a) establish guidelines and procedures for determining different classes of water resources;
 - (b) in respect of each class of water resource:
 - (i) establish procedures for determining the Reserve;
 - (ii) establish procedures which are designed to satisfy the water quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the resource;
 - (iii) set out water uses for instream or land-based activities which activities must be regulated or prohibited in order to protect the water resource; and

- (c) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources, as the Minister considers necessary.

Part 2: Classification of Water Resources and Resource Quality Objectives

Under part 2 the Minister is required to use the classification system established in part 1 to determine the class and resource quality objectives of all or part of water resources considered to be significant. The purpose of the resource quality objectives is to establish clear goals relating to the quality of the relevant water resources. In determining resource quality objectives a balance must be sought between the need to protect and sustain water resources on the one hand, and the need to develop and use them on the other. Provision is made for preliminary determinations of the class and resource quality objectives of water resources before the formal classification system is established. Once the class of a water resource and the resource quality objectives have been determined they are binding on all authorities and institutions when exercising any power or performing any duty under this Act.

13. Determination of class of water resources and resource quality objectives

- (1) As soon as reasonably practicable after the Minister has prescribed a system for classifying water resources the Minister must, subject to subsection (4), by notice in the *Gazette*, determine for all or part of every significant water resource:
 - (a) a class in accordance with the prescribed classification system; and
 - (b) resource quality objectives based on the class determined in terms of paragraph (a).
- (2) A notice in terms of subsection (1) must state the geographical area in respect of which the resource quality objectives will apply, the requirements for achieving the objectives, and the dates from which the objectives will apply.
- (3) The objectives determined in terms of subsection (1) may relate to:
 - (a) the Reserve;
 - (b) the instream flow;
 - (c) the water level;
 - (d) the presence and concentration of particular substances in the water;
 - (e) the characteristics and quality of the water resource and the instream and riparian habitat;
 - (f) the characteristics and distribution of aquatic biota;
 - (g) the regulation or prohibition of instream or land-based activities which may affect the quantity of water in or quality of the water resource; and
 - (h) any other characteristic, of the water resource in question.
- (4) Before determining a class or the resource quality objectives in terms of subsection (1), the Minister must in respect of each water resource:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out:
 - (aa) the proposed class;
 - (bb) the proposed resource quality objectives;
 - (cc) the geographical area in respect of which the objectives will apply;
 - (dd) the dates from which specific objectives will apply; and
 - (ee) the requirements for complying with the objectives; and

- (ii) inviting written comments to be submitted on the proposed class or proposed resource quality objectives (as the case may be), specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

14. Preliminary determination of class or resource quality objectives

- (1) Until:
 - (a) a system for classifying water resources has been prescribed; or
 - (b) a class of a water resource or resource quality objectives has been determined,

the Minister may, for all or part of a water resource make a preliminary determination of the class or resource quality objectives.

- (2) A determination in terms of section 13 supersedes a preliminary determination.

15. Giving effect to determination of class of water resource and resource quality objectives

The Minister, the Director-General, an organ of state and a water management institution, when exercising any power or performing any duty in terms of this Act, must give effect to any determination of a class of a water resource and the resource quality objectives as determined in terms of this part and any requirements for complying with the resource quality objectives.

Part 3: The Reserve

Part 3 deals with the Reserve, which consists of two parts – the basic human needs reserve and the ecological reserve. The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource. The Reserve refers to both the quantity and quality of the water in the resource, and will vary depending on the class of the resource. The Minister is required to determine the Reserve for all or part of any significant water resource. If a resource has not yet been classified, a preliminary determination of the Reserve may be made and later superseded by a new one. Once the Reserve is determined for a water resource it is binding in the same way as the class and the resource quality objectives.

16. Determination of Reserve

- (1) As soon as reasonably practicable after the class of all or part of a water resource has been determined, the Minister must, by notice in the *Gazette*, determine the Reserve for all or part of that water resource.
- (2) A determination of the Reserve must:
 - (a) be in accordance with the class of the water resource as determined in terms of section 13; and
 - (b) ensure that adequate allowance is made for each component of the Reserve.

(3) Before determining the Reserve in terms of subsection (1), the Minister must:

- (a) publish a notice in the *Gazette*:
 - (i) setting out the proposed Reserve; and
 - (ii) inviting written comments to be submitted on the proposed Reserve, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

17. Preliminary determinations of Reserve

(1) Until a system for classifying water resources has been prescribed or a class of a water resource has been determined, the Minister:

- (a) may, for all or part of a water resource; and
- (b) must, before authorising the use of water under section 22(5), make a preliminary determination of the Reserve.

(2) A determination in terms of section 16(1) supersedes a preliminary determination.

18. Giving effect to Reserve

The Minister, the Director-General, an organ of state and a water management institution, must give effect to the Reserve as determined in terms of this part when exercising any power or performing any duty in terms of this Act.

Part 4: Pollution Prevention

Part 4 deals with pollution prevention, and in particular, the situation where pollution of a water resource occurs or might occur as a result of activities on land. The person who owns, controls, occupies or uses the land in question is responsible for taking measures to prevent pollution of water resources. If these measures are not taken, the catchment management agency concerned may itself do whatever is necessary to prevent the pollution or to remedy its effects, and to recover all reasonable costs from the persons responsible for the pollution.

19. Prevention and remedying effects of pollution

(1) An owner of land, a person in control of land or a person who occupies or uses the land on which:

- (a) any activity or process is or was performed or undertaken; or
 - (b) any other situation exists,
- which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

(2) The measures referred to in subsection (1) may include measures to:

- (a) cease, modify or control any act or process causing the pollution;
- (b) comply with any prescribed waste standard or management practice;
- (c) contain or prevent the movement of pollutants;
- (d) eliminate any source of the pollution;
- (e) remedy the effects of the pollution; and
- (f) remedy the effects of any disturbance to the bed and banks of a watercourse.

- (3) A catchment management agency may direct any person who fails to take the measures required under subsection (1) to:
- (a) commence taking specific measures before a given date;
 - (b) diligently continue with those measures; and
 - (c) complete them before a given date.
- (4) Should a person fail to comply, or comply inadequately with a directive given under subsection (3), the catchment management agency may take the measures it considers necessary to remedy the situation.
- (5) Subject to subsection (6), a catchment management agency may recover all costs incurred as a result of it acting under subsection (4) jointly and severally from the following persons:
- (a) Any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution;
 - (b) the owner of the land at the time when the pollution or the potential for pollution occurred, or that owner's successor-in-title;
 - (c) the person in control of the land or any person who has a right to use the land at the time when:
 - (i) the activity or the process is or was performed or undertaken; or
 - (ii) the situation came about; or
 - (d) any person who negligently failed to prevent:
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about.
- (6) The catchment management agency may in respect of the recovery of costs under subsection (5), claim from any other person who, in the opinion of the catchment management agency, benefited from the measures undertaken under subsection (4), to the extent of such benefit.
- (7) The costs claimed under subsection (5) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.
- (8) If more than one person is liable in terms of subsection (5), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

Part 5: Emergency Incidents

Part 5 deals with pollution of water resources following an emergency incident, such as an accident involving the spilling of a harmful substance that finds or may find its way into a water resource. The responsibility for remedying the situation rests with the person responsible for the incident or the substance involved. If there is a failure to act, the relevant catchment management agency may take the necessary steps and recover the costs from every responsible person.

20. Control of emergency incidents

- (1) In this section 'incident' includes any incident or accident in which a substance:
- (a) pollutes or has the potential to pollute a water resource; or
 - (b) has, or is likely to have, a detrimental effect on a water resource.
- (2) In this section, 'responsible person' includes any person who:
- (a) is responsible for the incident;
 - (b) owns the substance involved in the incident; or
 - (c) was in control of the substance involved in the incident at the time of the incident.

(3) The responsible person, any other person involved in the incident or any other person with knowledge of the incident must, as soon as reasonably practicable after obtaining knowledge of the incident, report to:

- (a) the Department;
 - (b) the South African Police Service or the relevant fire department; or
 - (c) the relevant catchment management agency.
- (4) A responsible person must:
- (a) take all reasonable measures to contain and minimise the effects of the incident;
 - (b) undertake clean-up procedures;
 - (c) remedy the effects of the incident; and
 - (d) take such measures as the catchment management agency may either verbally or in writing direct within the time specified by such institution.
- (5) A verbal directive must be confirmed in writing within 14 days, failing which it will be deemed to have been withdrawn.
- (6) Should:
- (a) the responsible person fail to comply, or inadequately comply with a directive; or
 - (b) it not be possible to give the directive to the responsible person timeously,

the catchment management agency may take the measures it considers necessary to:

- (i) contain and minimise the effects of the incident;
- (ii) undertake clean-up procedures; and
- (iii) remedy the effects of the incident.

(7) The catchment management agency may recover all reasonable costs incurred by it from every responsible person jointly and severally.

(8) The costs claimed under subsection (7) may include, without being limited to, labour, administration and overhead costs.

(9) If more than one person is liable in terms of subsection (7), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

CHAPTER 4: Use of Water

As this Act is founded on the principle that National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest, a person can only be entitled to use water if the use is permissible under the Act. This chapter is therefore of central significance to the Act, as it lays the basis for regulating water use. The various types of licensed and unlicensed entitlements to use water are dealt with in detail.

Part 1: General Principles

This part sets out general principles for regulating water use. Water use is defined broadly, and includes taking and storing water, activities which reduce stream flow, waste discharges and disposals, controlled activities (activities which impact detrimentally on a water resource), altering a watercourse, removing water found underground for certain purposes, and recreation. In general a water use must be licensed unless it is listed in schedule I, is an existing lawful use, is permissible under a general authorisation, or if a responsible authority waives the need for a licence. The

Minister may limit the amount of water which a responsible authority may allocate. In making regulations the Minister may differentiate between different water resources, classes of water resources and geographical areas.

21. Water use

For the purposes of this Act, water use includes:

- (a) taking water from a water resource;
- (b) storing water;
- (c) impeding or diverting the flow of water in a watercourse;
- (d) engaging in a stream flow reduction activity contemplated in section 36;
- (e) engaging in a controlled activity identified as such in section 37(1) or declared under section 38(1);
- (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) disposing of waste in a manner which may detrimentally impact on a water resource;
- (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- (i) altering the bed, banks, course or characteristics of a watercourse;
- (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- (k) using water for recreational purposes.

22. Permissible water use

- (1) A person may only use water:
 - (a) without a licence:
 - (i) if that water use is permissible under schedule 1;
 - (ii) if that water use is permissible as a continuation of an existing lawful use; or
 - (iii) if that water use is permissible in terms of a general authorisation issued under section 39;
 - (b) if the water use is authorised by a licence under this Act; or
 - (c) if the responsible authority has dispensed with a licence requirement under subsection (3).
- (2) A person who uses water as contemplated in subsection (1):
 - (a) must use the water subject to any condition of the relevant authorisation for that use;
 - (b) is subject to any limitation, restriction or prohibition in terms of this Act or any other applicable law;
 - (c) in the case of the discharge or disposal of waste or water containing waste contemplated in section 21(f), (g), (h) or (j), must comply with any applicable waste standards or management practices prescribed under section 26(1)(h) and (i), unless the conditions of the relevant authorisation provide otherwise;
 - (d) may not waste that water; and
 - (e) must return any seepage, run-off or water containing waste which emanates from that use, to the water resource from which the water was taken, unless the responsible authority directs otherwise or the relevant authorisation provides otherwise.
- (3) A responsible authority may dispense with the requirement for a licence for water use if it is satisfied that the purpose of this Act will be met by the grant of a licence, permit or other authorisation under any other law.
- (4) In the interests of co-operative governance, a responsible authority may promote arrangements with other organs of state to combine their respective licence requirements into a single licence requirement.

(5) A responsible authority may, subject to section 17, authorise the use of water before:

- (a) a national water resource strategy has been established;
- (b) a catchment management strategy in respect of the water resource in question has been established;
- (c) a classification system for water resources has been established;
- (d) the class and resource quality objectives for the water resource in question have been determined; or
- (e) the Reserve for the water resource in question has been finally determined.

(6) Any person who has applied for a licence in terms of section 43 in respect of an existing lawful water use as contemplated in section 32, and whose application has been refused or who has been granted a licence for a lesser use than the existing lawful water use, resulting in severe prejudice to the economic viability of an undertaking in respect of which the water was beneficially used, may, subject to subsections (7) and (8), claim compensation for any financial loss suffered in consequence.

(7) The amount of any compensation payable must be determined:

- (a) in accordance with section 25(3) of the Constitution; and
- (b) by disregarding any reduction in the existing lawful water use made in order to:
 - (i) provide for the Reserve;
 - (ii) rectify an over-allocation of water use from the resource in question; or
 - (iii) rectify an unfair or disproportionate water use.

(8) A claim for compensation must be lodged with the Water Tribunal within six months of the relevant decision of the responsible authority.

(9) The Water Tribunal has jurisdiction to determine liability for compensation and the amount of compensation payable in terms of this section.

(10) After the Water Tribunal has decided that compensation is payable and determined the amount of compensation, the responsible authority may enter into negotiations with the claimant and, within 30 days after the decision of the Water Tribunal, offer an allocation of water instead of compensation.

23. Determination of quantity of water which may be allocated by responsible authority

(1) Subject to the national water resource strategy the Minister may determine the quantity of water in respect of which a responsible authority may issue a general authorisation and a licence from water resources in its water management area.

(2) Until a national water resource strategy has been established, the Minister may make a preliminary determination of the quantity of water in respect of which a responsible authority may issue a general authorisation and licence.

(3) A preliminary determination must be replaced by a determination under subsection (1) once the national water resource strategy has been established.

(4) A responsible authority must comply with any determination made under subsection (1) or (2).

(5) In making a determination under subsections (1) and (2) the Minister must take account of the water available in the resource.

24. Licences for use of water found underground on property of another person

A licence may be granted to use water found underground on land not owned by the applicant if the owner of the land consents or if there is good reason to do so.

25. Transfer of water use authorisations

(1) A water management institution may, at the request of a person authorised to use water for irrigation under this Act, allow that person on a temporary basis and on such conditions as the water management institution may determine, to use some or all of that water for a different purpose, or to allow the use of some or all of that water on another property in the same vicinity for the same or a similar purpose.

(2) A person holding an entitlement to use water from a water resource in respect of any land may surrender that entitlement or part of that entitlement:

- (a) in order to facilitate a particular licence application under section 41 for the use of water from the same resource in respect of other land; and
 - (b) on condition that the surrender only becomes effective if and when such application is granted.
- (3) The annual report of a water management institution or a responsible authority, as the case may be, must, in addition to any other information required under this Act, contain details in respect of every permission granted under subsection (1) or every application granted under subsection (2).

26. Regulations on use of water

(1) Subject to subsection (4), the Minister may make regulations:

- (a) limiting or restricting the purpose, manner or extent of water use;
- (b) requiring that the use of water from a water resource be monitored, measured and recorded;
- (c) requiring that any water use be registered with the responsible authority;
- (d) prescribing the outcome or effect which must be achieved by the installation and operation of any waterwork;
- (e) regulating the design, construction, installation, operation and maintenance of any waterwork, where it is necessary or desirable to monitor any water use or to protect a water resource;
- (f) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any waterwork, in order to protect the public and to safeguard human life and property;
- (g) regulating or prohibiting any activity in order to protect a water resource or instream or riparian habitat;
- (h) prescribing waste standards which specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource;
- (i) prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource;
- (j) requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis;
- (k) prescribing procedural requirements for licence applications;
- (l) relating to transactions in respect of authorisations to use water, including but not limited to:

- (i) the circumstances under which a transaction may be permitted;
- (ii) the conditions subject to which a transaction may take place; and
- (iii) the procedure to deal with a transaction;
- (m) prescribing methods for making a volumetric determination of water to be ascribed to a stream flow reduction activity for purposes of water use allocation and the imposition of charges;
- (n) prescribing procedures for the allocation of water by means of public tender or auction; and
- (o) prescribing:
 - (i) procedures for obtaining; and
 - (ii) the required contents of, assessments of the likely effect which any proposed licence may have on the quality of the water resource in question.
- (2) Regulations made under subsection (1) may:
 - (a) differentiate between different water resources and different classes of water resources;
 - (b) differentiate between different geographical areas; and
 - (c) create offences and prescribe penalties.
- (3) Regulations made under subsection (1)(h), (i) and (j) may contain:
 - (a) general provisions applicable to all waste; and
 - (b) specific provisions applicable to waste with specific characteristics.
- (4) When making regulations, the Minister must take into account all relevant considerations, including the need to:
 - (a) promote the economic and sustainable use of water;
 - (b) conserve and protect water resources or, instream and riparian habitat;
 - (c) prevent wasteful water use;
 - (d) facilitate the management of water use and waterworks;
 - (e) facilitate the monitoring of water use and water resources; and
 - (f) facilitate the imposition and recovery of charges.

Part 2: Considerations, Conditions and Essential Requirements of General Authorisations and Licences

This part deals with matters relevant to all general authorisations and licences issued under the Act. It guides responsible authorities in the exercise of their discretion to issue and to attach conditions to general authorisations and licences. It also sets out the essential features of licences, such as effective periods, purposes and places for which they may be issued, and the nature of conditions that may be attached to them. The granting of a licence does not imply any guarantee regarding the availability or quality of water which it covers.

27. Considerations for issue of general authorisations and licences

- (1) In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including:
 - (a) existing lawful water uses;
 - (b) the need to redress the results of past racial and gender discrimination;
 - (c) efficient and beneficial use of water in the public interest;
 - (d) the socio-economic impact:
 - (i) of the water use or uses if authorised; or
 - (ii) of the failure to authorise the water use or uses;
 - (e) any catchment management strategy applicable to the relevant water resource;
 - (f) the likely effect of the water use to be authorised on the water resource and on other water users;
 - (g) the class and the resource quality objectives of the water resource;

- (h) investments already made and to be made by the water user in respect of the water use in question;
 - (i) the strategic importance of the water use to be authorised;
 - (j) the quality of water in the water resource which may be required for the Reserve and for meeting international obligations; and
 - (k) the probable duration of any undertaking for which a water use is to be authorised.
- (2) A responsible authority may not issue a licence to itself without the written approval of the Minister.

28. Essential requirements of licences

- (1) A licence contemplated in this chapter must specify:
 - (a) the water use or uses for which it is issued;
 - (b) the property or area in respect of which it is issued;
 - (c) the person to whom it is issued;
 - (d) the conditions subject to which it is issued;
 - (e) the licence period, which may not exceed forty years; and
 - (f) the review periods during which the licence may be reviewed under section 49, which must be at intervals of not more than five years.
- (2) Subject to subsection (3), restriction, suspension or termination in terms of this Act and review under section 49, a licence remains in force until the end of the licence period, when it expires.
- (3) Subject to subsection (4) and notwithstanding section 49(2), a responsible authority may extend the licence period of a licence if this is done as part of a general review of licences carried out in terms of section 49.
- (4) An extension of a licence period contemplated in subsection (3) may only be made after the responsible authority has considered the factors specified in section 49(2) and all other relevant factors, including new applications for water use and has concluded that there are no substantial grounds not to grant an extension.
- (5) An extension of a licence period in terms of subsection (3) may only be given for a single review period at a time as stipulated in subsection (1)(f).
- (6) If the licence period of a licence is extended in terms of subsection (3), the licence may, in respect of the period for which it is extended, be issued subject to different conditions which may include a lesser permitted water use.

29. Conditions for issue of general authorisations and licences

- (1) A responsible authority may attach conditions to every general authorisation or licence:
 - (a) relating to the protection of:
 - (i) the water resource in question;
 - (ii) the stream flow regime; and
 - (iii) other existing and potential water users;
 - (b) relating to water management by:
 - (i) specifying management practices and general requirements for any water use, including water conservation measures;
 - (ii) requiring the monitoring and analysis of and reporting on every water use and imposing a duty to measure and record aspects of water use, specifying measuring and recording devices to be used;
 - (iii) requiring the preparation and approval of and adherence to, a water management plan;
 - (iv) requiring the payment of charges for water use as provided for in chapter 5;
 - (v) requiring the licensee to provide or make water available to a person specified in the licence; and

- (vi) in the case of a general authorisation, requiring the registration of the water use with the responsible authority and the payment of a registration fee as a pre-condition of that use;
 - (c) relating to return flow and discharge or disposal of waste, by:
 - (i) specifying a water resource to which it must be returned or other manner in which it must be disposed of;
 - (ii) specifying permissible levels for some or all of its chemical and physical components;
 - (iii) specifying treatment to which it must be subjected, before it is discharged; and
 - (iv) specifying the volume which may be returned;
 - (d) in the case of a controlled activity:
 - (i) specifying the waste treatment, pollution control and monitoring equipment to be installed, maintained and operated; and
 - (ii) specifying the management practices to be followed to prevent the pollution of any water resource;
 - (e) in the case of taking or storage of water:
 - (i) setting out the specific quantity of water or percentage of flow which may be taken;
 - (ii) setting out the rate of abstraction;
 - (iii) specifying the method of construction of a borehole and the method of abstraction from the borehole;
 - (iv) specifying the place from where water may be taken;
 - (v) specifying the times when water may be taken;
 - (vi) identifying or limiting the area of land on which any water taken from a resource may be used;
 - (vii) limiting the quantity of water which may be stored;
 - (viii) specifying locations where water may be stored; and
 - (ix) requiring the licensee to become a member of a water user association before water may be taken;
 - (f) in the case of a stream flow reduction activity:
 - (i) specifying practices to be followed to limit stream flow reduction and other detrimental impacts on the water resource; and
 - (ii) setting or prescribing a method for determining the extent of the stream flow reduction caused by the authorised activity;
 - (g) which are necessary or desirable to achieve the purpose for which the licence was issued;
 - (h) which are necessary or desirable to ensure compliance with the provisions of this Act; and
 - (i) in the case of a licence:
 - (i) specifying times when water may or may not be used;
 - (ii) containing provisions for its termination if an authorised use of water is not implemented or not fully implemented;
 - (iii) designating water for future or contingent use; or
 - (iv) which have been agreed to by the licensee.
- (2) If a licensee has agreed to pay compensation to another person in terms of any arrangement to use water, the responsible authority may make the obligation to pay compensation a condition of the licence.

30. Security by applicant

- (1) A responsible authority may, if it is necessary for the protection of the water resource or property, require the applicant to give security in respect of any obligation or potential obligation arising from a licence to be issued under this Act.
- (2) The security referred to in subsection (1) may include any of the following:

- (i) A letter of credit from a bank;
- (ii) a surety or a bank guarantee;
- (iii) a bond;
- (iv) an insurance policy; or
- (v) any other appropriate form of security.
- (3) The responsible authority must determine the type, extent and duration of any security required.
- (4) The duration of the security may extend beyond the time period specified in the licence in question.
- (5) If the responsible authority requires security in the form of an insurance policy, it may require that it be jointly insured under or be a beneficiary of the insurance policy and where appropriate, the responsible authority must be regarded as having an insurable interest in the subject matter of the insurance policy.
- (6) A person may apply in writing to the responsible authority to have any security given by that person in terms of this section amended or discharged at any time, which application may not be unreasonably refused.

31. Issue of licence no guarantee of supply

The issue of a licence to use water does not imply a guarantee relating to:

- (a) the statistical probability of supply;
- (b) the availability of water; or
- (c) the quality of water.

Part 3: Existing Lawful Water Uses

This part permits the continuation, under certain conditions of an existing water use derived from a law repealed by this Act. An existing lawful water use, with any conditions attached, is recognised but may continue only to the extent that it is not limited, prohibited or terminated by this Act. No licence is required to continue with an existing lawful water use until a responsible authority requires a person claiming such an entitlement to apply for a licence. If a licence is issued it becomes the source of authority for the water use. If a licence is not granted the use is no longer permissible.

32. Definition of existing lawful water use

- (1) An existing lawful water use means a water use:
 - (a) which has taken place at any time during a period of two years immediately before the date of commencement of this Act and which:
 - (i) was authorised by or under any law which was in force immediately before the date of commencement of this Act;
 - (ii) is a stream flow reduction activity contemplated in section 36(1); or
 - (iii) is a controlled activity contemplated in section 37(1); or
 - (b) which has been declared an existing lawful water use under section 33.
 - (2) In the case of:
 - (a) a stream flow reduction activity declared under section 36(1); or
 - (b) a controlled activity declared under section 38,
- existing lawful water use means a water use which has taken place at any time during a period of two years immediately before the date of the declaration.

33. Declaration of water use as existing lawful water use

- (1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32(1)(a), declared to be an existing lawful water use.

(2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32(1)(a), to be an existing lawful water use.

(3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use:

- (a) took place lawfully more than two years before the date of commencement of this Act and was discontinued for good reason; or
- (b) had not yet taken place at any time before the date of commencement of this Act but:
 - (i) would have been lawful had it so taken place; and
 - (ii) steps towards effecting the use had been taken in good faith before the date of commencement of this Act.

(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

34. Authority to continue with existing lawful water use

(1) A person, or that person's successor-in-title, may continue with an existing lawful water use, subject to:

- (a) any existing conditions or obligations attaching to that use;
- (b) its replacement by a licence in terms of this Act; or
- (c) any other limitation or prohibition by or under this Act.

(2) A responsible authority may, subject to any regulation made under section 26(1)(c), require the registration of an existing lawful water use.

35. Verification of existing water uses

(1) The responsible authority may, in order to verify the lawfulness or extent of an existing water use, by written notice require any person claiming an entitlement to that water use to apply for a verification of that use.

(2) A notice under subsection (1) must:

- (a) have a suitable application form annexed to it;
- (b) specify a date before which the application must be submitted;
- (c) inform the person concerned that any entitlement to continue with the water use may lapse if an application is not made on or before the specified date; and
- (d) be delivered personally or sent by registered mail to the person concerned.

(3) A responsible authority:

- (a) may require the applicant, at the applicant's expense, to obtain and provide it with other information, in addition to the information contained in the application;
- (b) may conduct its own investigation into the veracity and the lawfulness of the water use in question;
- (c) may invite written comments from any person who has an interest in the matter; and
- (d) must afford the applicant an opportunity to make representations on any aspect of the application.

(4) A responsible authority may determine the extent and lawfulness of a water use pursuant to an application under this section, and such determination limits the extent of any existing lawful water use contemplated in section 32(1).

(5) No person who has been required to apply for verification under subsection (1) in respect of an existing lawful water use may exercise that water use:

- (a) after the closing date specified in the notice, if that person has not applied for verification; or

- (b) after the verification application has been refused, if that person applied for verification.
- (6) A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

Part 4: Stream Flow Reduction Activities

This part allows the Minister, after public consultation, to regulate land-based activities which reduce stream flow, by declaring such activities to be stream flow reduction activities. Whether or not an activity is declared to be a stream flow reduction activity depends on various factors, such as the extent of stream flow reduction, its duration, and its impact on any relevant water resource and on other water users. The control of forestry for its impact on water resources, currently exercised in terms of the Forest Act, is now exercised under this part.

36. Declaration of stream flow reduction activities

- (1) The following are stream flow reduction activities:
 - (a) the use of land for afforestation which has been or is being established for commercial purposes; and
 - (b) an activity which has been declared as such under subsection (2).
- (2) The Minister may, by notice in the *Gazette*, in relation to a particular area specified in that notice, declare any activity (including the cultivation of any particular crop or other vegetation) to be a stream flow reduction activity if that activity is likely to reduce the availability of water in a watercourse to the Reserve, to meet international obligations, or to other water users significantly.
- (3) In making a declaration under subsection (2), the Minister must consider:
 - (a) the extent to which the activity significantly reduces the water availability in the watercourse;
 - (b) the effect of the stream flow reduction on the water resource in terms of its class and the Reserve;
 - (c) the probable duration of the activity;
 - (d) any national water resource strategy established under section 5; and
 - (e) any catchment management strategy established under section 8.
- (4) Before making a declaration under subsection (2), the Minister must:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out the activity proposed to be declared a stream flow reduction activity; and
 - (ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a)(ii).
- (5) Every notice published in terms of subsection (4)(a) must contain a schedule in which must be listed all stream flow reduction activities set out in subsection (1) and those which have, up to the date of the notice, been declared to be stream flow reduction activities under subsection (2).

Part 5: Controlled Activities

This part allows the Minister to regulate activities having a detrimental impact on water resources by declaring them to be controlled activities. Four such activities - irrigation using waste or water containing waste from certain sources, modification of atmospheric precipitation, altering the flow regime of a water resource as a result of power generation, and aquifer recharge using waste or water containing waste - are identified in the Act as controlled activities. Provision is made for the Minister to declare other controlled activities as the need arises, but in these cases public consultation is required. Following the identification or declaration of a controlled activity an authorisation for that particular category of activity is required under this Act.

37. Controlled activity

- (1) The following are controlled activities:
 - (a) irrigation of any land with waste or water containing waste generated through any industrial activity or by a waterwork;
 - (b) an activity aimed at the modification of atmospheric precipitation;
 - (c) a power generation activity which alters the flow regime of a water resource;
 - (d) intentional recharging of an aquifer with any waste or water containing waste; and
 - (e) an activity which has been declared as such under section 38.
- (2) No person may undertake a controlled activity unless such person is authorised to do so by or under this Act.

38. Declaration of certain activities as controlled activities

- (1) The Minister may, by notice in the *Gazette*, in general or specifically, declare an activity to be a controlled activity.
- (2) Before declaring an activity to be a controlled activity the Minister must be satisfied that the activity in question is likely to impact detrimentally on a water resource.
- (3) Before making a declaration under subsection (1) the Minister:
 - (a) must publish a notice in the *Gazette*:
 - (i) setting out the activity or category of activities proposed to be declared; and
 - (ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice; and
 - (b) may, in the case of a specific activity on a specific site, make the notice known by delivering or sending a copy to the owner or the person in control of the site in question, and to every organ of state which, and every person who, has an interest in the matter;
 - (c) must consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (d) must consider all comments received on or before the date specified in paragraph (a)(ii).
- (4) Every notice published in terms of subsection (1) must contain a schedule on which must be listed all controlled activities set out in section 37(1)(a) to (d) and those which have, up to the date of the notice, been declared to be controlled activities under subsection (1).

Part 6: General Authorisations

This part establishes a procedure to enable a responsible authority, after public consultation, to permit the use of water by publishing general authorisations in the *Gazette*. A general authorisation may be restricted to a particular water resource, a particular category of persons, a defined geographical area or a period of time, and requires conformity with other relevant laws. The use of water under a general authorisation does not require a licence until the general authorisation is revoked, in which case licensing will be necessary. A general authorisation does not replace or limit an entitlement to use water, such as an existing lawful water use or a licence, which a person may otherwise have under this Act.

39. General authorisations to use water

(1) A responsible authority may, subject to schedule 1, by notice in the *Gazette*:

- (a) generally;
- (b) in relation to a specific water resource; or
- (c) within an area specified in the notice,

authorise all or any category of persons to use water, subject to any regulation made under section 26 and any conditions imposed under section 29.

(2) The notice must state the geographical area in respect of which the general authorisation will apply, and the date upon which the general authorisation will come into force, and may state the date on which the general authorisation will lapse.

(3) A water use may be authorised under subsection (1) on condition that the user obtains any permission or authority required by any other specified law.

(4) Before issuing a general authorisation, the responsible authority must:

- (a) publish a notice in the *Gazette*:
 - (i) setting out the proposed general authorisation; and
 - (ii) inviting written comments to be submitted on the proposed general authorisation, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the responsible authority considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

(5) An authorisation to use water under this section does not replace or limit any entitlement to use water which a person may otherwise have under this Act.

Part 7: Individual Applications for Licences

This part sets out the procedures which apply in all cases where a licence is required to use water, but where no general invitation to apply for licences has been issued under part 8. Water users who are not required to license their use, but who wish to convert the use to licensed use, may also use the procedure set out in this part, but the responsible authority may decline to grant a licence when the applicant is entitled to the use of water under an existing lawful use or by a general authorisation. In considering an application a responsible authority may require additional information from the

applicant, and may also require the applicant to undertake an environmental or other assessment, which assessments may be subject to independent review.

40. Application for licence

- (1) A person who is required or wishes to obtain a licence to use water must apply to the relevant responsible authority for a licence.
- (2) Where a person has made an application for an authorisation to use water under another Act, and that application has not been finalised when this Act takes effect, the application must be regarded as being an application for a water use under this Act.
- (3) A responsible authority may charge a reasonable fee for processing a licence application, which may be waived in deserving cases.
- (4) A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.

41. Procedure for licence applications

- (1) An application for a licence for water use must:
 - (a) be made in the form;
 - (b) contain the information; and
 - (c) be accompanied by the processing fee, determined by the responsible authority.
- (2) A responsible authority:
 - (a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant's expense, to obtain and provide it by a given date with:
 - (i) other information, in addition to the information contained in the application;
 - (ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quality; and
 - (iii) an independent review of the assessment furnished in terms of subparagraph (ii), by a person acceptable to the responsible authority;
 - (b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water resource;
 - (c) may invite written comments from any organ of state which or person who has an interest in the matter; and
 - (d) must afford the applicant an opportunity to make representations on any aspect of the licence application.
- (3) A responsible authority may direct that any assessment under subsection (2)(a)(ii) must comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act 73 of 1989).
- (4) A responsible authority may, at any stage of the application process, require the applicant:
 - (a) to give suitable notice in newspapers and other media:
 - (i) describing the licence applied for;
 - (ii) stating that written objections may be lodged against the application before a specified date, which must be not less than 60 days after the last publication of the notice;
 - (iii) giving an address where written objections must be lodged; and
 - (iv) containing such other particulars as the responsible authority may require;
 - (b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and

- (c) to satisfy the responsible authority that the interests of any other person having an interest in the land will not be adversely affected.

42. Reasons for decisions

After a responsible authority has reached a decision on a licence application, it must promptly:

- (a) notify the applicant and any person who has objected to the application; and
- (b) at the request of any person contemplated in paragraph (a), give written reasons for its decision.

Part 8: Compulsory Licences for Water Use in Respect of Specific Resource

This part establishes a procedure for a responsible authority to undertake compulsory licensing of any aspect of water use in respect of one or more water resources within a specific geographic area. It includes requirements for a responsible authority to prepare schedules for allocating quantities of water to existing and new users. The procedure is intended to be used in areas which are, or are soon likely to be, under 'water stress' (for example, where the demands for water are approaching or exceed the available supply, where water quality problems are imminent or already exist, or where the water resource quality is under threat), or where it is necessary to review prevailing water use to achieve equity of access to water.

In such cases the responsible authority must publish a notice in the *Gazette* and other appropriate media, requiring people to apply for licences in the designated area. Applicants may be required to submit additional information, and may also be required to undertake an environmental or other assessment, which assessment may be subject to independent review.

In determining the quantities of water to be allocated to users, the responsible authority must consider all applications received, and draw up a schedule detailing how the available water will be allocated among the applicants. In drawing up an allocation schedule the responsible authority must comply with the plans, strategies and criteria set out elsewhere in the Act and must give special consideration to certain categories of applicants. A responsible authority need not allocate all the available water in a water resource, and may reserve some of the water for future needs. Provision is also made for any water still available after the requirements of the Reserve, international obligations and corrective action have been met to be allocated on the basis of public auction or tender. A system of objections and appeals in relation to proposed and preliminary allocation schedules ensures that licences may be issued only after the allocation schedule has been finalised. Licences issued under this part replace previous entitlements to any existing lawful water use by the applicant.

43. Compulsory licence applications

- (1) If it is desirable that water use in respect of one or more water resources within a specific geographic area be licensed:
 - (a) to achieve a fair allocation of water from a water resource in accordance with section 45:
 - (i) which is under water stress; or
 - (ii) when it is necessary to review prevailing water use to achieve equity in allocations;
 - (b) to promote beneficial use of water in the public interest;

(c) to facilitate efficient management of the water resource; or
 (d) to protect water resource quality,
 the responsible authority may issue a notice requiring persons to apply for licences for one or more types of water use contemplated in section 21.

(2) A notice in terms of subsection (1) must:

- (a) identify the water resource and the water use in question;
- (b) state where licence application forms may be obtained;
- (c) state the address to which licence applications must be submitted;
- (d) state the closing date for licence applications;
- (e) state the application fee; and
- (f) contain such other information as the responsible authority considers appropriate.

(3) A notice in terms of subsection (1) must be made known by publishing the notice in the *Gazette* at least 60 days before the closing date, giving suitable notice in newspapers and other media and taking other steps to bring the notice to the attention of interested persons.

(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

44. Late applications

A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

45. Proposed allocation schedules

(1) A responsible authority must, after considering:

- (a) all applications received in response to the publication of a notice in terms of section 43(1);
 - (b) any further information or assessment obtained; and
 - (c) the factors contemplated in section 27,
- prepare a proposed allocation schedule specifying how water from the water resource in question will be allocated.

(2) A proposed allocation schedule must, subject to subsection (3), reflect the quantity of water to be:

- (a) assigned to the Reserve and any relevant international obligations;
- (b) assigned to meet the requirements of existing licences;
- (c) allocated to each of the applicants to whom licences ought to be issued in order to redress the results of past racial and gender discrimination in accordance with the constitutional mandate for water reform;
- (d) allocated to each of the applicants exercising existing lawful water uses to whom the licensing authority determines that licences should be issued;
- (e) allocated to each of the applicants, taking into account the factors set out in section 27; and
- (f) allocated to every other applicant by public tender or auction, subject to any regulation made under section 26(1)(n).

(3) A responsible authority is under no obligation to allocate all available water.

(4) After completing a proposed allocation schedule the responsible authority must publish a notice in the *Gazette*:

- (a) containing a copy of the proposed schedule, or stating the address where it may be inspected;
- (b) inviting written objections to be submitted on the proposed schedule, specifying an address to which the objections are to be submitted and specifying a date before which the objections are to be submitted, which date must be not less than 60 days after the date of publication of the notice; and

- (c) must consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the responsible authority considers to be appropriate.

46. Preliminary allocation schedules

- (1) After considering all objections received on the proposed allocation schedule on or before the date specified in the notice contemplated in section 45(4), the responsible authority must prepare a preliminary allocation schedule and publish a notice in the *Gazette*:
 - (a) containing a copy of the preliminary allocation schedule, or stating the address where it may be inspected; and
 - (b) stating that an appeal in respect of any unsuccessful objection to the preliminary allocation schedule may be made in accordance with chapter 15.
- (2) If an appeal under subsection (1)(b) succeeds, the responsible authority must amend the preliminary allocation schedule as directed by the Water Tribunal.

47. Final allocation schedule

- (1) A preliminary allocation schedule becomes a final allocation schedule:
 - (a)(i) if no appeal is lodged within the time limit;
 - (ii) if it has been amended following every successful appeal; or
 - (iii) if every appeal lodged is dismissed; and
 - (b) on publication by the responsible authority of a notice in the *Gazette*:
 - (i) stating that a preliminary allocation schedule has become final; and
 - (ii) containing a copy of the final allocation schedule, or stating the address where it may be inspected.
- (2) A responsible authority must, as soon as reasonably practicable after a preliminary allocation schedule becomes final, issue licences according to the allocations provided for in it.

48. Licences replace previous entitlements

- (1) Any licence issued pursuant to an application contemplated in section 43(1) replaces any existing lawful water use entitlement of that person in respect of the water use in question.
- (2) Notwithstanding the provisions of section 4, no person to whom a general notice to apply for a licence has been directed in terms of section 43 in respect of an existing lawful water use may exercise that water use:
 - (a) after the closing date stated in the notice if that person did not apply for a licence; or
 - (b) after the licence application has been finally disposed of, if that person did apply for a licence.

Part 9: Review and Renewal of Licences, and Amendment and Substitution of Conditions of Licences

This part deals with the review and renewal of licences, and the amendment and substitution of their conditions. Review of a licence is by the relevant responsible authority, at periods stipulated in the licence as part of a general review process.

A review of a licence may lead to the amendment or substitution of its conditions, but only if certain requirements are satisfied. If the amendment or substitution of conditions severely prejudices the economic viability of any undertaking in respect of which the licence was issued there is a claim for compensation. Minor amendments to licences (for instance, to correct

clerical mistakes, or changes in format), and those agreed to by the licensee may be made outside of the review process. In addition, a licensee may apply to the responsible authority for the renewal or amendment of a licence before it expires. In considering such applications the responsible authority must again consider the matters dealt with in the initial application, and there are limitations to the new conditions to which the licence may be subjected.

49. Review and amendment of licences

- (1) A responsible authority may review a licence only at the time periods stipulated for that purpose in the licence.
- (2) On reviewing a licence, a responsible authority may amend any condition of the licence, other than the period thereof, if:
 - (a) it is necessary or desirable to prevent deterioration or further deterioration of the quality of the water resource;
 - (b) there is insufficient water in the water resource to accommodate all authorised water uses after allowing for the Reserve and international obligations; or
 - (c) it is necessary or desirable to accommodate demands brought about by changes in socio-economic circumstances, and it is in the public interest to meet those demands.
- (3) An amendment contemplated in subsection (2) may only be made if the conditions of other licences for similar water use from the same water resource in the same vicinity, all as determined by the responsible authority, have also been amended in an equitable manner through a general review process.
- (4) If an amendment of a licence condition on review severely prejudices the economic viability of any undertaking in respect of which the licence was issued, the provisions of section 22(6) to (10) apply.
- (5) A responsible authority must afford the licensee an opportunity to be heard before amending any licence condition on review.

50. Formal amendment of licences

- (1) A responsible authority may amend or substitute a licence condition:
 - (a) if the licensee or successor-in-title has consented to or requested the amendment or substitution;
 - (b) to reflect one or more successors-in-title as new licensees; and
 - (c) to change the description of the property to which the licence applies, if the property described in the licence has been subdivided or consolidated with other property.
- (2) The responsible authority may require the licensee:
 - (a) to obtain the written consent of any affected person before amending or substituting the licence; or
 - (b) to make a formal application for the amendment or substitution in terms of section 52;
- (3) A responsible authority may only amend or substitute a licence condition under this section if it is satisfied that:
 - (a) the amendment or substitution will not have a significant detrimental impact on the water resource; and
 - (b) the interests of any other person are not adversely affected, unless that person has consented thereto.

51. Successors-in-title

- (1) A responsible authority may, after giving all parties an opportunity to be heard, adjudicate upon conflicting claims between a licensee and a successor-in-title, or between different successors-in-title, in respect of claims for the amendment or substitution of licence conditions.

- (2) A successor-in-title of any person to whom a licence to use water has been issued:
 - (a) may, subject to the conditions of the relevant licence and paragraph (b), continue with the water use; and
 - (b) must promptly inform the responsible authority of the succession, for the substitution of the name of the licensee, for the remainder of the term.

52. Procedure for earlier renewal or amendment of licences

- (1) A licensee may, before the expiry date of a licence, apply to the responsible authority for the renewal or amendment of the licence.
- (2) Unless an application for the renewal or amendment of a licence is made in terms of section 50, it must:
 - (a) be made in such form, contain such information and be accompanied by such processing fee as may be determined by the responsible authority; and
 - (b) be dealt with according to the procedure as set out in section 41.
- (3) In considering an application to amend or renew a licence, the responsible authority must have regard to the same matters which it was required to consider when deciding the initial application for that licence.
- (4) A responsible authority may amend any condition of a licence by agreement with the licensee.

Part 10: Contravention of or Failure to Comply with Authorisations

This part deals with the consequences of contraventions of licence conditions. These range from the responsible authority requiring the licensee to take remedial action, failing which it may take the necessary action and recover reasonable costs from that person, to the suspension or withdrawal of a licence. Where a licensee offers to surrender a licence the responsible authority is obliged to accept the surrender and cancel the licence unless there is good reason for refusal.

53. Rectification of contraventions

- (1) A responsible authority may, by notice in writing to a person who contravenes:
 - (a) any provision of this chapter;
 - (b) a requirement set or directive given by the responsible authority under this chapter; or
 - (c) a condition which applies to any authority to use water,
 direct that person, or the owner of the property in relation to which the contravention occurs, to take any action specified in the notice to rectify the contravention, within the time (being not less than two working days) specified in the notice or any other longer time allowed by the responsible authority.
- (2) If the action is not taken within the time specified in the notice, or any longer time allowed, the responsible authority may:
 - (a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person on whom the notice was served; or
 - (b) apply to a competent court for appropriate relief.

54. Suspension or withdrawal of entitlements to use water

- (1) Subject to subsections (3) and (4), a responsible authority may by notice to any person entitled to use water under this Act suspend or withdraw the entitlement if the person fails:

- (a) to comply with any condition of the entitlement;
- (b) to comply with this Act; or
- (c) to pay a charge which is payable in terms of chapter 5.
- (2) An entitlement may be suspended under subsection (1):
 - (a) for the period specified in the notice of suspension; or
 - (b) until the responsible authority is satisfied that the person concerned has rectified the failure which led to the suspension.
- (3) A responsible authority may only suspend or withdraw an entitlement under subsection (1) if the responsible authority has directed the person concerned to take specified steps to rectify the failure within a specified period, and the person concerned has failed to do so to the satisfaction of the responsible authority.
- (4) The person concerned must be given an opportunity to make representations, within a reasonable period, on any proposed suspension or withdrawal of an entitlement to use water.
- (5) A responsible authority may, for good reason, reinstate an entitlement withdrawn under subsection (1).

55. Surrender of licence

- (1) A licensee may offer to surrender any licence issued to that licensee under this chapter, whereupon, unless there is good reason not to do so, the responsible authority must accept the surrender and cancel the licence.
- (2) A responsible authority may refund to a licensee any charge or part of any charge paid in respect of a licence surrendered under subsection (1).

CHAPTER 5: Financial Provisions

This chapter deals with the measures to finance the provision of water resource management services as well as financial and economic measures to support the implementation of strategies aimed at water resource protection, conservation of water and the beneficial use of water.

Part 1: Water Use Charges

In terms of part 1 the Minister may from time to time, after public consultation, establish a pricing strategy which may differentiate among geographical areas, categories of water users or individual water users. The achievement of social equity is one of the considerations in setting differentiated charges. Water use charges are to be used to fund the direct and related costs of water resource management, development and use, and may also be used to achieve an equitable and efficient allocation of water. In addition, they may also be used to ensure compliance with prescribed standards and water management practices according to the user pays and polluter pays principles. Water use charges will be used as a means of encouraging reduction in waste, and provision is made for incentives for effective and efficient water use. Non-payment of water use charges will attract penalties, including the possible restriction or suspension of water supply from a waterwork or of an authorisation to use water.

56. Pricing strategy for water use charges

- (1) The Minister may, with the concurrence of the Ministry of Finance, from time to time by notice in the *Gazette*, establish a pricing strategy for charges for any water use within the framework of existing relevant government policy.
- (2) The pricing strategy may contain a strategy for setting water use charges:

- (a) for funding water resource management, including the related costs of:
 - (i) gathering information;
 - (ii) monitoring water resources and their use;
 - (iii) controlling water resources;
 - (iv) water resource protection, including the discharge of waste and the protection of the Reserve; and
 - (v) water conservation;
- (b) for funding water resource development and use of waterworks, including:
 - (i) the costs of investigation and planning;
 - (ii) the costs of design and construction;
 - (iii) pre-financing of development;
 - (iv) the costs of operation and maintenance of waterworks;
 - (v) a return on assets; and
 - (vi) the costs of water distribution; and
- (c) for achieving the equitable and efficient allocation of water.
- (3) The pricing strategy may:
 - (a) differentiate on an equitable basis between:
 - (i) different types of geographic areas;
 - (ii) different categories of water use; and
 - (iii) different water users;
 - (b) provide for charges to be paid by either:
 - (i) an appropriate water management institution; or
 - (ii) consumers directly;
 - (c) provide for the basis of establishing charges;
 - (d) provide for a rebate for water returned to a water resource; and
 - (e) provide on an equitable basis for some elements of the charges to be waived in respect of specific users for a specified period of time.
- (4) The pricing strategy may differentiate under subsection (3)(a):
 - (a) in respect of different geographic areas, on the basis of:
 - (i) socio-economic aspects within the area in question;
 - (ii) the physical attributes of each area; and
 - (iii) the demographic attributes of each area;
 - (b) in respect of different types of water uses, on the basis of:
 - (i) the manner in which the water is taken, supplied, discharged or disposed of;
 - (ii) whether the use is consumptive or non-consumptive;
 - (iii) the assurance and reliability of supply and water quality;
 - (iv) the effect of return flows on a water resource;
 - (v) the extent of the benefit to be derived from the development of a new water resource;
 - (vi) the class and resource quality objectives of the water resource in question; and
 - (vii) the required quality of the water to be used; and
- (c) in respect of different water users, on the basis of:
 - (i) the extent of their water use;
 - (ii) the quantity of water returned by them to a water resource;
 - (iii) their economic circumstances; and
 - (iv) the statistical probability of the supply of water to them.
- (5) The pricing strategy may provide for a differential rate for waste discharges, taking into account:
 - (a) the characteristics of the waste discharged;
 - (b) the amount and quality of the waste discharged;
 - (c) the nature and extent of the impact on a water resource caused by the waste discharged;

- (d) the extent of permitted deviation from prescribed waste standards or management practices; and
- (e) the required extent and nature of monitoring the water use.
- (6) In setting a pricing strategy for water use charges, the Minister:
 - (a) must consider the class and resource quality objectives for different water resources;
 - (b) may consider incentives and disincentives:
 - (i) to promote the efficient use and beneficial use of water;
 - (ii) to reduce detrimental impacts on water resources; and
 - (iii) to prevent the waste of water; and
 - (c) must consider measures necessary to support the establishment of tariffs by water services authorities in terms of section 10 of the Water Services Act, 1997 (Act 108 of 1997), and the use of lifeline tariffs and progressive block tariffs.
- (7) Before setting a pricing strategy for water use charges under subsection (1), the Minister must:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out the proposed pricing strategy; and
 - (ii) inviting written comments to be submitted on the proposed strategy, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 90 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in the notice.

57. Application of pricing strategy

- (1) Water use charges:
 - (a) may be made:
 - (i) within a specific water management area; or
 - (ii) on a national or regional basis; and
 - (b) must be made in accordance with the pricing strategy for water use charges set by the Minister.
- (2) Charges made within a specific water management area may be made by and are payable to the relevant water management institution.
- (3) Charges made on a national or regional basis:
 - (a) may be made by the Minister and are payable to the state; and
 - (b) may be apportioned between different water management areas according to the extent of the specific benefits which each water management area derives or will derive from the water uses for which the charges are made.
- (4) Any person liable to pay water charges to a water services institution as defined in the Water Services Act, 1997 (Act 108 of 1997), for water supply services or sanitation services may not be charged for those services in terms of this Act.
- (5) No charge made under this Act may be of such a nature as to constitute the imposition of a tax, levy or duty.

58. Recovery of water use charges

- (1) The Minister may direct any water management institution to recover any charges for water use made by the Minister under section 57(1)(a) from water users within its water management area or area of operation, as the case may be.

- (2) A water management institution which has been directed to recover any such charges may retain such portion of all charges recovered in order to recompense it for expenses and losses, as the Minister may allow.
- (3) A water management institution which has been directed to recover any such charges:
 - (a) is jointly and severally liable to the state with the water users concerned; and
 - (b) may recover any amounts paid by it in terms of paragraph (a) from the water users concerned.

59. Liability for water use charges

- (1) Water use charges contemplated in this chapter:
 - (a) may only be made in respect of a water use to which a person is voluntarily committed; and
 - (b) must bear a direct relationship to the water use in question.
- (2) Any person registered in terms of a regulation under section 26 or holding a licence to use water must pay all charges imposed under section 57 in respect of that water use.
- (3) If a water use charge is not paid:
 - (a) interest is payable during the period of default at a rate determined from time to time by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*; and
 - (b) the supply of water to the water user from a waterwork or the authorisation to use water may be restricted or suspended until the charges, together with interest, have been paid.
- (4) A person must be given an opportunity to make representations within a reasonable period on any proposed restriction or suspension before the restriction or suspension is imposed.
- (5) Where there is a fixed charge, a restriction or suspension does not relieve a person of the obligation to pay the charges due for the period of the restriction or suspension.
- (6) A person whose water use is restricted or suspended for any lawful reason may not later claim the water to which that person would otherwise have been entitled during the period of restriction or suspension.

60. Water use charges are charges on land

- (1) A charge made in terms of section 57(1), including any interest, is a charge on the land to which the water use relates and is recoverable from the current owner of the land without releasing any other person who may be liable for the charge.
- (2) The Minister or relevant water management institution must:
 - (a) on written application by any person; and
 - (b) within 30 days of the application, issue a certificate stating the amount of any unpaid water charges and any interest due in respect of any land.
- (3) If a certificate is not issued within the period of 30 days, the provisions of subsection (1) cease to apply to that property, notwithstanding section 66.

Part 2: Financial Assistance

Part 2 deals with financial assistance, which may be granted once certain considerations are taken into account.

61. Financial assistance by Minister

- (1) The Minister may, subject to a regulation made under section 62, give financial assistance to any person for the purposes of this Act, including assistance for making licence applications, in the form of grants, loans or

subsidies, which may be made subject to such conditions as the Minister may determine.

- (2) The financial assistance must be from funds:
 - (a) appropriated by Parliament; or
 - (b) which may under this Act or otherwise lawfully be used for the purposes in question.
- (3) Before giving any financial assistance, the Minister must take into account all relevant considerations, including:
 - (a) the need for equity;
 - (b) the need for transparency;
 - (c) the need for redressing the results of past racial and gender discrimination;
 - (d) the purpose of the financial assistance;
 - (e) the financial position of the recipient; and
 - (f) the need for water resource protection.
- (4) A person who wilfully fails to comply with any obligations imposed by this Act is not eligible for financial assistance under this Act.

62. Regulations on financial assistance

The Minister may make regulations concerning:

- (a) the eligibility for financial assistance;
- (b) the manner in which financial assistance must be applied for; and
- (c) terms and conditions applicable to any financial assistance granted.

CHAPTER 6: General Powers and Duties of Minister and Director-general

Part 1: Delegations, Directives, Expropriation, Condonation And Additional Powers

Part 1 of this chapter sets out various powers and duties of the Minister which are of a general nature, such as the powers of delegation and expropriation, and intervention in litigation. More specific powers and duties are dealt with elsewhere in the Act.

63. Delegation of powers and duties by Minister

- (1) The Minister may, in writing and subject to conditions, delegate a power and duty vested in the Minister in terms of this Act to:
 - (a) an official of the Department by name;
 - (b) the holder of an office in the Department;
 - (c) a water management institution;
 - (d) an advisory committee established under section 99; or
 - (e) a water board as defined in section 1 of the Water Services Act, 1997 (Act 108 of 1997).
- (2) The Minister may not delegate the power:
 - (a) to make a regulation;
 - (b) to authorise a water management institution to expropriate under section 64(1);
 - (c) to appoint a member of the governing board of a catchment management agency; or
 - (d) to appoint a member of the Water Tribunal.
- (3) The Minister may, in writing and subject to conditions, permit a person to whom a power or duty has been delegated to delegate that function to another person.

(4) The Minister may give a directive to the Director-General in relation to the exercise of any of the Director-General's powers or performance of any of the Director-General's duties, including any power delegated to the Director-General.

(5) The Director-General must give effect to a directive in terms of subsection (4).

64. Expropriation of property

(1) The Minister, or a water management institution authorised by the Minister in writing, may expropriate any property for any purpose contemplated in this Act, if that purpose is a public purpose or is in the public interest.

(2) Subject to this Act, the Expropriation Act, 1975 (Act 63 of 1975), applies to all expropriations in terms of this Act.

(3) Where the Minister expropriates any property under this Act, any reference to 'Minister' in the Expropriation Act, 1975, must be construed as being a reference to the Minister.

(4) Where any water management institution expropriates property under this Act, any reference to 'Minister' and 'State' in the Expropriation Act, 1975, must be regarded as being a reference to that water management institution.

65. Expropriation for rehabilitation and other remedial work

(1) If a person who is required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to that land in order to effect the rehabilitation or remedial work, but is unable to acquire access on reasonable terms, the Minister may:

- (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and
- (b) recover all costs incurred in connection with the expropriation, including any compensation payable, from the person for whose benefit the expropriation was effected.

(2) Where a servitude of abutment, aqueduct or submersion is expropriated under this section, the Minister or water management institution responsible for the expropriation has the same rights as those vesting in the holder of a servitude under section 128.

66. Condonation of failure to comply with time period

The Minister may, in exceptional circumstances and for a good reason, extend a time period or condone a failure to comply with a time period.

67. Dispensing with certain requirements of Act

(1) In an emergency situation, or in cases of extreme urgency involving the safety of humans or property or the protection of a water resource or the environment, the Minister may:

- (a) dispense with the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument contemplated in section 158(1) is made or issued;
 - (b) dispense with notice periods or time limits required by or under this Act;
 - (c) authorise a water management institution to dispense with:
 - (i) the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument is made or issued; and
 - (ii) notice periods or time limits required by or under this Act.
- (2) Anything done under subsection (1):

- (a) must be withdrawn or repealed within a maximum period of two years after the emergency situation or the urgency ceases to exist; and
- (b) must be mentioned in the Minister's annual report to Parliament.

68. Intervention in litigation

The Minister may intervene in litigation before a court or in a hearing before the Water Tribunal with regard to any matter contemplated in this Act.

Part 2: General Provisions Regarding Regulations

Part 2 requires the Minister to consult with the public when making regulations under this Act, and also to submit regulations for scrutiny by the National Assembly and by the National Council of Provinces. If the National Assembly rejects a regulation it must be repealed or amended.

69. Making of regulations

- (1) The Minister must, before making any regulations under this Act:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out the draft regulations; and
 - (ii) inviting written comments to be submitted on the proposed regulations, specifying an address to which and a date before which the comments must be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a)(ii); and
 - (d) on request by the National Assembly or the National Council of Provinces or a committee of the National Assembly or the National Council of Provinces report the extent to which a specific comment has been taken into account, or if a comment was not taken into account, provide the reason why it was not taken into account.
- (2) Any regulation made under this Act may provide that a contravention of or failure to comply with a regulation is an offence and that any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding 5 years.

70. Consideration of regulations

- (1) The Minister must, within 30 days after making any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces for consideration.
- (2) In considering regulations:
 - (a) tabled in the National Assembly, a committee of the National Assembly must consider and report to the National Assembly; and
 - (b) tabled in the National Council of Provinces, a committee of the National Council of Provinces must consider and report to the National Council of Provinces, whether the regulations:
 - (i) are consistent with the purposes of this Act;
 - (ii) are within the powers conferred by this Act;
 - (iii) are consistent with the Constitution; and
 - (iv) require clarification.
- (3) The National Council of Provinces may reject regulations tabled before the National Council of Provinces in terms of subsection (1) within 14 days after the date on which the regulations were so tabled, and should the

National Council of Provinces reject any regulation, the rejection must be referred to the National Assembly for consideration.

(4) The National Assembly may, not later than the twentieth sitting day of the National Assembly after the date on which the regulations were tabled and after considering any rejection of a regulation by the National Council of Provinces, reject those regulations.

(5) If the National Assembly or the National Council of Provinces rejects any regulations, it must state its reasons.

71. Rejected regulations

(1) The Minister must, within 30 days after being informed in writing that the National Assembly has rejected any regulations, repeal or amend those regulations so as to address the matters raised by the National Assembly.

(2) Any regulations rejected by the National Assembly remain in force until repealed or amended.

Part 3: Powers Relating to Catchment Management Agencies

The Minister has the responsibility to manage and authorise the use of the nation's water resources. This means that the Minister fulfils the functions of a catchment management agency in a water management area for which no catchment management agency is established, or where such an agency has been established but is not functional. The Minister may dispense with certain requirements of this Act for as long as is necessary to deal with an urgent situation or an emergency.

72. Powers and duties of catchment management agencies vest in Minister in certain circumstances

(1) In areas for which a catchment management agency is not established or, if established, is not functional, all powers and duties of a catchment management agency, including those powers and duties described in sections 79 and 80 and in schedule 3, vest in the Minister.

(2) In areas for which a catchment management agency is established, those powers and duties described in schedule 3 which have not been assigned by the Minister to the catchment management agency, vest in the Minister.

73. Assignment of powers and duties to catchment management agencies

(1) The Minister may, after consultation with the catchment management agency concerned, by notice in the *Gazette*, assign to that catchment management agency:

- (a) a power or duty of a responsible authority; and
- (b) any power or duty listed in schedule 3.

(2) In assigning any power or duty under subsection (1), the Minister may:

- (a) limit the area within which an assigned power may be exercised or duty may be performed; and
- (b) attach conditions to that assignment.

(3) Before assigning a power or duty to a catchment management agency under subsection (1), the Minister must consider:

- (a) the capacity of the catchment management agency to exercise the power or perform the duty; and
- (b) the desirability of assigning that power or duty.

(4) The Minister must promote the management of water resources at the catchment management level by assigning powers and duties to catchment management agencies when it is desirable to do so.

74. Directives to water management institutions

- (1) The Minister may give a directive to a water management institution in relation to the exercise of any of the institution's powers or the performance of any of the institution's duties, including any power or duty assigned or delegated to that institution.
- (2) The Minister must give a water management institution not less than 14 days' notice of the Minister's intention to give a directive under subsection (1) if it relates to any assigned power or duty, and must allow the institution an opportunity to comment.
- (3) Every directive, or a summary thereof, given to a water management institution by the Minister and which relates to an assigned power or duty:
- (a) must be published by the Minister in the *Gazette*; and
 - (b) must be included in the annual report of the institution.
- (4) A failure to comply with subsection (3) does not affect the validity of the directive.
- (5) A water management institution must give effect to a directive given to it by the Minister under subsection (1).

Part 4: Powers of Director-General**75. Delegation of powers by Director-General**

The Director-General may, for the purposes of this Act, in writing and subject to conditions, delegate a power, including a power granted or delegated to the Director-General under this Act, to:

- (a) an official of the Department by name;
- (b) the holder of an office in the Department; or
- (c) a water management institution.

76. Appointment of persons on contract

- (1) The Director-General may, when necessary, appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994).
- (2) Appointments made under subsection (1) must be limited to persons to perform duties at sites where the Department:
- (a) is engaged in actual construction or investigatory work; or
 - (b) is associated with specific projects relating to actual construction or investigatory work.
- (3) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees.
- (4) Such employees shall be remunerated from money appropriated for that purpose by Parliament.

CHAPTER 7: Catchment Management Agencies

This chapter provides for the progressive establishment by the Minister of catchment management agencies. The purpose of establishing these agencies is to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy established in terms of chapter 2. Whilst the ultimate aim is to establish catchment management agencies for all water management areas, the Minister acts as the catchment management agency where one has not been established. Where the necessary capacity does not exist to establish a catchment management agency, an advisory committee may be appointed under chapter 9 to develop the necessary capacity as a first step towards establishing an agency.

Part 1: Establishment and Powers of Catchment Management Agencies

Under part 1, a catchment management agency may be established for a specific water management area, after public consultation, on the initiative of the community and stakeholders concerned. In the absence of such a proposal the Minister may establish a catchment management agency on the Minister's own initiative. The provisions of schedule 4, on institutional and management planning, apply to a catchment management agency.

77. Proposal for establishment of catchment management agency

(1) A proposal to establish a catchment management agency must contain at least:

- (a) a proposed name and a description of the proposed water management area of the agency;
 - (b) a description of the significant water resources in the proposed water management area, and information about the existing protection, use, development, conservation, management and control of those resources;
 - (c) the proposed functions of the catchment management agency, including functions to be assigned and delegated to it;
 - (d) how the proposed catchment management agency will be funded;
 - (e) the feasibility of the proposed catchment management agency in respect of technical, financial and administrative matters; and
 - (f) an indication whether there has been consultation in developing the proposal and the results of the consultation.
- (2) The Director-General may assist a person to develop such a proposal.

78. Procedure for establishment of catchment management agencies

(1) The Minister may, subject to section 6(1)(c), on his or her own initiative or after receiving a proposal containing the information required in terms of section 77(1), by notice in the *Gazette*:

- (a) establish a catchment management agency, give it a name and identify and determine its water management area; or
- (b) amend the name or water management area of an established catchment management agency.

(2) The Minister may:

- (a) require a person who has submitted a proposal contemplated in subsection (1), to provide the Minister with information additional to that required by section 77(1); and
- (b) instruct the Director-General to conduct an investigation regarding:
 - (i) the establishment of a catchment management agency; or
 - (ii) a proposal submitted in terms of subsection (1).

(3) Before the establishment of a catchment management agency the Minister must:

- (a) publish a notice in the *Gazette*:
 - (i) setting out the proposed establishment of the catchment management agency, the proposed name and the proposed water management area; and
 - (ii) inviting written comments to be submitted on the proposal specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

- (c) consider all comments received on or before the date specified in paragraph (a)(ii).
- (4) If the Minister wants to amend the name of a catchment management agency or the water management area of a catchment management agency, the procedure set out in subsection (3) must be followed with any necessary changes: Provided that where an amendment does not affect the rights of any person the procedure set out in subsection (3) need not be followed.

79. General powers and duties of catchment management agencies

- (1) A catchment management agency is a body corporate, and has the powers of a natural person of full capacity, except those powers which:
 - (a) by nature can only attach to natural persons; or
 - (b) are inconsistent with this Act.
- (2) Schedule 4 applies to a catchment management agency, its governing board and committees and the members of the board and committees.
- (3) A catchment management agency may perform:
 - (a) any of its functions; or
 - (b) any function which is reasonably incidental to any of its functions, outside its water management area, if this does not:
 - (i) limit its capacity to perform its functions in its water management area; or
 - (ii) detrimentally affect another water management institution.
- (4) In performing its functions a catchment management agency must:
 - (a) be mindful of the constitutional imperative to redress the results of past racial and gender discrimination and to achieve equitable access for all to the water resources under its control;
 - (b) strive towards achieving co-operation and consensus in managing the water resources under its control; and
 - (c) act prudently in financial matters.

80. Initial functions of catchment management agencies

Subject to chapter 2 and section 79, upon the establishment of a catchment management agency, the initial functions of a catchment management agency are:

- (a) to investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its water management area;
- (b) to develop a catchment management strategy;
- (c) to co-ordinate the related activities of water users and of the water management institutions within its water management area;
- (d) to promote the co-ordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act, 1997 (Act 108 of 1997); and
- (e) to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.

Part 2: Governing Board of Catchment Management Agencies

Part 2 describes the appointment of members of the governing board of a catchment management agency. The board of a catchment management agency will be constituted in such a way that interests of the various stakeholders are represented or reflected in a balanced manner, and the necessary expertise to operate effectively is provided. Members of the governing board can be elected or nominated by the different water user groups for appointment by the Minister, and the Minister may of his or her own

accord appoint further members. The Minister may also remove board members for good reason.

81. Appointment of governing board of catchment management agency

(1) The members of a governing board of a catchment management agency must be appointed by the Minister who, in making such appointment, must do so with the object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups.

(2) Notwithstanding subsections (3) to (9) the Minister must, from time to time, determine the extent to which relevant local governments should be represented on the governing board of each catchment management agency.

(3) Before appointing members to the governing board, the Minister must establish an advisory committee contemplated in chapter 9, to recommend to the Minister:

(a) which organs of state and bodies representing different sectors and other interests within the water management area of the catchment management agency should be represented or reflected on the governing board; and

(b) the number of persons which each of them should be invited to nominate.

(4) The committee must consult with the relevant organs of state and interest groups before making its recommendations.

(5) After receiving the committee's recommendations, the Minister must decide which organs of state and bodies will be invited to nominate representatives for appointment to the governing board, and the number of representatives each may nominate.

(6) The Minister's decision must be communicated to the organs of state and bodies concerned and the Minister must take the necessary steps to obtain nominations from them by a date specified by the Minister.

(7) The Minister must appoint the persons nominated by the organs of state and the bodies concerned in accordance with the invitation, unless:

(a) any such person is not a fit and proper person to serve on the governing board; or

(b) any such organ of state or body has not followed its own internal procedures in making the nomination.

(8) If the Minister does not appoint a nominee, the Minister must:

(a) inform the organ of state or body concerned and state the reasons for not appointing that nominee; and

(b) invite a further nomination from that organ of state or body.

(9) If one or more nominations are still outstanding on the date specified under subsection (6), the Minister may appoint members of the board and fill any vacancy later.

(10) After appointing members to the board the Minister may appoint additional members selected by the Minister in order to:

(a) represent or reflect the interests identified by the advisory committee;

(b) achieve sufficient gender representation;

(c) achieve sufficient demographic representation;

(d) achieve representation of the Department;

(e) achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to water; and

(f) obtain the expertise necessary for the efficient exercise of the board's, powers and performance of its duties.

(11) A member must be appointed for a specified term of office.

(12) The Minister may extend the term of office of a member.

(13) If the term of office of a member expires before the first meeting of a new board takes place, the existing member remains in office until that first meeting takes place.

(14) A member nominated for appointment to the board by an organ of state or body is accountable to that organ of state or body.

82. Chairperson, deputy chairperson, chief executive officer and committees of catchment management agency

(1) The Minister must convene the first meeting of the governing board of a catchment management agency, which must be chaired by an official of the Department or a member of the committee.

(2) At the first meeting of the governing board, the members may recommend one of them for appointment as chairperson and another as deputy chairperson.

(3) The Minister must:

(a) with due regard to any recommendation made by the governing board at its first meeting, appoint one of the members as chairperson; and

(b) appoint any other member as deputy chairperson.

(4) The chief executive officer provided for in schedule 4 may be a member of the governing board, but may not be its chairperson or deputy chairperson.

(5) A catchment management agency may establish committees, including an executive committee and consultative bodies, to perform any of its functions within a particular area or generally or to advise it, and must determine how they must function.

83. Removal of members from governing board

(1) The Minister may remove a member from a governing board, or remove the chairperson or deputy chairperson from office, if:

(a) there is good reason for doing so;

(b) the person concerned has had an opportunity of making representations to the Minister; and

(c) the Minister has consulted with the governing board.

(2) The Minister must remove a member nominated by an organ of state or body from a governing board if that organ of state or body requests the Minister to do so.

(3) If a person ceases for any reason to be a member of a governing board before that person's term of office expires, the Minister may, for the remainder of the term of office:

(a) if that person was nominated by any organ of state or body, appoint another person nominated by that organ or body; or

(b) if that person was selected by the Minister, appoint another person.

Part 3: Operation of Catchment Management Agencies

Part 3 deals with the functions and operation of catchment management agencies. Initial functions, dealt with in part 2, include the investigation of and advice on water resources, the co-ordination of the related activities of other water management institutions within its water management area, the development of a catchment management strategy and the promotion of community participation in water resource management within its water management area. Additional powers and duties described in schedule 3 may be assigned or delegated to agencies such as to establish water use rules and management systems, to direct users to terminate illegal uses of water, and to temporarily limit the use of water during periods of shortage.

A catchment management agency may be financed by the state from water use charges made in its water management area or from any other source.

84. Funding of catchment management agencies

- (1) A catchment management agency may raise any funds required by it for the purpose of exercising any of its powers and carrying out any of its duties in terms of this Act.
- (2) A catchment management agency must be funded by:
 - (a) money appropriated by Parliament;
 - (b) water use charges; and
 - (c) money obtained from any other lawful source for the purpose of exercising its powers and carrying out its duties in terms of this Act.

85. Documents relating to litigation

A catchment management agency must provide the Director-General with copies of all pleadings, affidavits and other documents in the possession of the catchment management agency relating to any proceedings instituted against that catchment management agency.

86. Delegation of powers by catchment management agency

- (1) Subject to subsections (2) and (3), a catchment management agency may delegate any power to:
 - (a) a member of its governing board;
 - (b) an employee of any water management institution (including itself), by name, or to the holder of an office in that institution; or
 - (c) any committee established by the catchment management agency which consists only of members of the governing board or employees of the catchment management agency; and
 - (d) any other person or body only with the written consent of the Minister.
- (2) A catchment management agency may not delegate:
 - (a) the power of delegation; or
 - (b) any power to make water use charges.
- (3) A catchment management agency may only delegate a power to authorise the use of water, if this power is delegated to a committee consisting of three or more members of its governing board.

Part 4: Intervention, Disestablishment or Change of Water Management Areas of Catchment Management Agencies

Part 4 enables the Minister to disestablish a catchment management agency or make changes to its water management area, for reasons which include the need to reorganise water management institutions for more effective water resource management. An agency may also be disestablished if it does not operate effectively.

87. Intervention by Minister

- (1) If a catchment management agency:
 - (a) is in financial difficulties or is being otherwise mismanaged;
 - (b) has acted unfairly or in a discriminatory or inequitable way towards any person within its water management area;
 - (c) has failed to comply with any directive given by the Minister under this Act;
 - (d) has obstructed the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act;

- (e) is unable to exercise its powers or perform its duties effectively due to dissension among the members of the board or water users within its water management area;
 - (f) has failed to comply with this Act; or
 - (g) has become redundant or ineffective,
- the Minister may:
- (i) direct the catchment management agency to take any action specified by the Minister; and
 - (ii) withhold any financial assistance which might otherwise be available to the catchment management agency, until the catchment management agency has complied with such directive.
- (2) A directive contemplated in subsection (1)(i) must state:
- (a) the nature of the deficiency;
 - (b) the steps which must be taken to remedy the situation; and
 - (c) a reasonable period within which those steps must be taken.
- (3) If the catchment management agency fails to remedy the situation within the given period, the Minister may:
- (a) after having given that catchment management agency a reasonable opportunity to be heard; and
 - (b) after having afforded the catchment management agency a hearing on any submissions received,
- take over the relevant power or duty of the catchment management agency.
- (4) If the Minister takes over a power or duty of a catchment management agency:
- (a) the Minister may do anything which the catchment management agency might otherwise be empowered or required to do by or under this Act, to the exclusion of the catchment management agency;
 - (b) the board of the catchment management agency may not, while the Minister is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;
 - (c) an employee or a contractor of the catchment management agency must comply with a directive given by the Minister;
 - (d) as soon as the Minister is satisfied that the catchment management agency is once more able to exercise its powers or perform its duties effectively, the Minister must cease exercising any such powers and performing any such duties; and
 - (e) the Minister may recover from the catchment management agency all reasonable costs incurred, including any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister, or any person under the control of the Minister.

88. Disestablishment of catchment management agency

- (1) The Minister may, by notice in the *Gazette*, disestablish a catchment management agency if it is desirable:
- (a) for purposes of re-organising water management institutions in that area in the interests of effective water resource management;
 - (b) because the catchment management agency cannot or does not operate effectively; or
 - (c) because there is no longer a need for the catchment management agency.
- (2) Before disestablishing a catchment management agency the Minister must:
- (a) publish a notice in the *Gazette*:
 - (i) stating the intention to disestablish the catchment management agency and the reasons therefor; and

- (ii) inviting written comments on the proposed disestablishment and giving a specified address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the specified date.

89. Transfer of assets and liabilities after change of water management area or disestablishment

- (1) If the Minister changes the water management area of a catchment management agency under section 78 or disestablishes a catchment management agency under section 88, the Minister may direct the catchment management agency to transfer some or all of its assets and liabilities to another water management institution.
- (2) A catchment management agency must do everything in its power to give effect to a directive under subsection (1).
- (3) In issuing a directive under subsection (1) the Minister must consider:
 - (a) the interests of creditors and users of water; and
 - (b) any financial contributions directly or indirectly made by the users of water resources towards the infrastructure of the catchment management agency.
- (4) Where a catchment management agency is disestablished and its assets and liabilities are not transferred to another water management institution its assets and liabilities vest in the Minister and the Minister must wind up its affairs and assume the powers and duties of the catchment management agency for the period of winding up.
- (5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets in terms of this section.

90. Regulations on catchment management agencies

- (1) Subject to subsection (2), the Minister may make regulations:
 - (a) prescribing a maximum and a minimum number of members of a governing board;
 - (b) requiring the establishment of consultative forums and determining their composition and functions;
 - (c) determining, in consultation with the Minister of Finance, the basis and extent of remuneration and payment of expenses of members of governing boards and committees; and
 - (d) on any other matter which is necessary or desirable for the efficient functioning of catchment management agencies and their governing boards and committees.
- (2) In making regulations, the Minister must take into account all relevant considerations, including the need to:
 - (a) achieve adequate representation of and consultation with organs of state, bodies representing different sectors and other interests within the areas of jurisdiction of catchment management agencies; and
 - (b) secure the efficient and cost effective functioning of catchment management agencies and their management structures.

CHAPTER 8: Water User Associations

This chapter deals with the establishment, powers and disestablishment of water user associations. Although water user associations are water management institutions their primary purpose, unlike catchment

management agencies, is not water management. They operate at a restricted localised level, and are in effect co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit. A water user association may exercise management powers and duties only if and to the extent these have been assigned or delegated to it. The Minister establishes and disestablishes water user associations according to procedures set out in the chapter. A water user association for a particular purpose would usually be established following a proposal to the Minister by an interested person, but such an association may also be established on the Minister's initiative. The functions of a water user association depend on its approved constitution, which can be expected to conform to a large extent to the model constitution in schedule 5. This schedule also makes detailed provisions for the management and operation of water user associations. Although water user associations must operate within the framework of national policy and standards, particularly the national water resource strategy, the Minister may exercise control over them by giving them directives or by temporarily taking over their functions under particular circumstances.

Existing irrigation boards, subterranean water control boards and water boards established for stock watering purposes will continue in operation until they are restructured as water user associations.

91. Proposal for establishment of water user association

- (1) A proposal to establish a water user association must contain at least:
 - (a) the reasons for making the proposal;
 - (b) a proposed name and area of operation for the association;
 - (c) the proposed activities of the association;
 - (d) a description of any existing or proposed waterwork within the proposed area of operation which is relevant to the proposed activities of the association;
 - (e) a description of the water use licences or any other authorisations which the proposed members hold or intend applying for;
 - (f) the proposed constitution of the association, together with an explanation for any provisions which differ from those of the model constitution contained in schedule 5;
 - (g) a list of the proposed members or categories of members of the association; and
 - (h) an indication whether there has been consultation in developing the proposal and the results of the consultation.
- (2) The Director-General may assist a person to develop such a proposal.

92. Procedure for establishment of water user association

- (1) The Minister may on his or her own initiative or after receiving a proposal containing the information required in terms of section 91(1), by notice in the *Gazette*:
 - (a) establish a water user association, give it a name, determine its area of operation and approve its constitution subject to section 93(2); or
 - (b) amend the name, area of operation or approve an amendment to the constitution of an established water user association.
- (2) The Minister may:
 - (a) require a person who has submitted a proposal in terms of subsection (1) to provide the Minister with additional information to that required by section 91(1); and
 - (b) instruct the Director-General to conduct an investigation regarding:
 - (i) the establishment of a water user association; or

- (ii) a proposal submitted in terms of subsection (1).
- (3) Before the establishment of a water user association the Minister must:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out the proposed establishment of the water user association, the proposed name and the proposed area of operation; and
 - (ii) inviting written comments to be submitted on the proposals, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider any comments received on or before the date specified in paragraph (a)(ii).
- (4) The Minister need not fulfil all the requirements of subsection (3), if there has been sufficient consultation on a proposal submitted in terms of section 91.
- (5) The Minister may:
 - (a) recover the cost of complying with subsection (3) from the water user association once it has been established; or
 - (b) require the person proposing the establishment of the water user association to pay the costs in advance.

93. Constitution of water user association

- (1) Schedule 5 contains a model constitution which may be used as a basis for drawing up and proposing a constitution for a proposed water user association.
- (2) The constitution of a water user association must contain at least:
 - (a) details of the principal and ancillary functions of the association;
 - (b) the procedures and requirements for admitting new members to the association;
 - (c) the voting powers of members;
 - (d) procedures for terminating membership;
 - (e) procedures for electing the management committee of the association;
 - (f) procedural requirements for appointment of employees of the association;
 - (g) procedural requirements for obtaining loans; and
 - (h) the financial obligations of members towards the association.
- (3) A constitution must also incorporate such other provisions as the Minister may reasonably require and must be adopted by the members of the association and approved by the Minister before it can exercise any powers or perform any duties.
- (4) A constitution adopted by a water user association is binding on all its members.

94. Powers of water user association

- (1) A water user association is a body corporate and has the powers of a natural person of full capacity, except those powers which:
 - (a) by nature can only attach to natural persons; or
 - (b) are inconsistent with this Act.
- (2) Schedule 4 (excluding item 4(3) of part 1 of that schedule) applies to a water user association as if:
 - (a) the water user association were an institution; and
 - (b) a member of the management committee were a director,
 within the meaning of that schedule, except to the extent that the Minister may otherwise direct.

95. Directives to water user association

(1) The Minister may, after consulting with a water user association, direct that a person be admitted as a member of the association on such conditions as are fair and equitable.

(2) A water user association must comply with a directive given under subsection (1).

(3) If a water user association:

- (a) is in financial difficulties or is being otherwise mismanaged;
- (b) has acted unfairly or in a discriminatory or inequitable way towards any member of the association;
- (c) has failed to admit persons to membership unfairly or on discriminatory grounds;
- (d) has failed to comply with any directive given by the Minister under this Act;
- (e) has obstructed the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act;
- (f) is unable to exercise its powers or perform its duties effectively due to dissension among the management committee or its members;
- (g) has failed to comply with its constitution or this Act; or
- (h) has become redundant or ineffective,

the Minister may:

- (i) direct the association to take any action specified by the Minister;
- (ii) withhold any financial assistance which might otherwise be available to the water user association until the association has complied with such directive; or
- (iii) by notice addressed to the association and the member concerned, terminate the office of that member of the management committee and arrange for the resulting vacancy on the management committee to be filled.

(4) A directive contemplated in subsection (3)(i) must state:

- (a) the nature of the deficiency;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which those steps must be taken.

(5) If the water user association fails to remedy the situation within the given period, the Minister may:

- (a) after having given that association a reasonable opportunity to be heard; and
- (b) after having afforded the association a hearing on any submissions received,

take over the relevant function of the association, or appoint a suitable person to take over the power or duty.

(6) If the Minister, or a person appointed by the Minister, takes over a power or duty of a water user association:

- (a) the Minister or the appointee may do anything which the association might otherwise be empowered or required to do in terms of its constitution or by or under this Act, to the exclusion of the association;
- (b) the management committee of the association may not, while the Minister or the appointee is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;
- (c) an employee or a contractor of the association must comply with a directive given by the Minister or the appointee;
- (d) as soon as the Minister is satisfied that the association is once more able to exercise its powers and perform its duties effectively, the Minister or the appointee, as the case may be, must cease exercising such powers and performing such duties; and

- (e) the Minister may recover from the association all reasonable costs incurred by the Minister or the appointee, including:
 - (i) the reasonable fees or disbursements of the appointee; and
 - (ii) any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister or the appointee or any person under their control.

96. Disestablishment of water user association

- (1) The Minister may, by notice in the *Gazette*, disestablish an association:
 - (a) in circumstances provided for in the constitution of the association;
 - (b) if the functions of the association are, by agreement with another water management institution, to be combined with, or taken over by that water management institution;
 - (c) if it is in the best interests of the association or its members;
 - (d) if an investigation of its affairs or financial position reveals that disestablishment is appropriate;
 - (e) if the Minister has taken over a power or duty of the association as a result of dissensions among the management committee or its members; or
 - (f) if the association is no longer active or effective.
- (2) Before disestablishing a water user association the Minister must:
 - (a) publish a notice in the *Gazette*:
 - (i) stating the intention to disestablish the water user association;
 - (ii) setting out the reasons for disestablishing the water user association; and
 - (iii) inviting written comments on the proposal, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the specified date.

97. Winding up affairs of disestablished water user association

- (1) When a water user association is disestablished, its affairs must be wound up:
 - (a) as provided for in its constitution; or
 - (b) by a person appointed by the Minister in accordance with directives given by the Minister if the constitution does not provide for winding up.
- (2) The costs of winding up a water user association are a cost against the estate of the association.
- (3) Creditors of a water user association must be paid according to the order of preference established by the Insolvency Act, 1936 (Act 24 of 1936).
- (4) If the affairs of a water user association are wound up, the Minister may direct that an amount equivalent to any financial contributions with interest made to the association from public funds be reimbursed, before assets are distributed among the members of the association.
- (5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets under subsection (4).

98. Transitional provisions for certain existing organisations

- (1) This section applies to:

- (a) any irrigation board or subterranean water control board established by or deemed to be an irrigation board in terms of any law in force immediately before the commencement of this Act;
- (b) the Kalahari West Water Board, established by government Notice 143 of 13 August 1982;
- (c) the Karos-Geelkoppan Water Board, established by government Notice 145 of 7 October 1983; and
- (d) the Kalahari East Water Board, established by government Notice 2233 of 4 November 1988,

each of which is a board for the purposes of this section.

(2) A board continues to exist until it is declared to be a water user association in terms of subsection (6) or until it is disestablished in terms of the law by or under which it was established, which law must, for the purpose of such disestablishment, be regarded as not having been repealed by this Act.

(3) Subject to subsection (4):

- (a) the name, area of operation, management, property, rights, liabilities, obligations, powers and duties of a board remain the same as immediately before the commencement of this Act;
- (b) this section does not affect the continuity, status, operation or effect of any Act or omission of a board, or of any by-law made by a board, before the commencement of this Act;
- (c) any person holding office with a board when this Act commences continues in office for the term of that person's appointment; and
- (d) if a position becomes vacant prior to the declaration of the board as a water user association, the board may fill the vacancy according to the procedures laid down by or under the law which applied to that board immediately before the commencement of this Act.

(4) Within six months of the commencement of this Act, a board must prepare and submit to the Minister a proposal, prepared according to section 91, to transform the board into a water user association.

(5) The Minister may accept the proposal contemplated in subsection (4), with or without amendments, or reject it.

(6) If the Minister accepts the proposal, the Minister must by notice in the *Gazette*:

- (a) declare the board to be a water user association;
- (b) give it a name;
- (c) determine its area of operation; and
- (d) approve its constitution.

(7) Upon the publication of a notice under subsection (6), every property, right and liability of the board becomes a property, right and liability of the relevant water user association.

CHAPTER 9: Advisory Committees

This chapter empowers the Minister to establish advisory committees. Each advisory committee will be established for a particular purpose, and it is therefore possible for a variety of advisory committees to be established with different purposes and functions. Although primarily advisory in nature, such committees may exercise powers which are delegated to them. The Minister may amend the functions of an advisory committee, or disestablish it. Certain existing advisory committees will continue to function as though they were advisory committees established under this Act.

99. Establishment of advisory committees

(1) The Minister may:

- (a) establish an advisory committee;
- (b) give it a name or change its name;
- (c) determine its purpose and functions or effect amendments thereto;
- (d) make appointments to the committee, including the chairperson and deputy chairperson;
- (e) remove persons from the committee; and
- (f) disestablish an advisory committee.
- (2) Officials of the Department may be members of an advisory committee.
- (3) A member of a committee may be remunerated as directed by the Minister, with the concurrence of the Minister of Finance.
- (4) An act performed in good faith by a committee is valid, despite any failure to comply with a formal procedural requirement.
- (5) The Department may supply administrative support services to a committee.
- (6) An official of the Department who is not a member of the committee, if so directed by the Director-General, may attend a meeting of a committee, but may not vote at the meeting.
- (7) The Minister in appointing a member of a committee, must consider:
 - (a) the powers and duties of the committee;
 - (b) the need for the committee to represent various relevant interests; and
 - (c) the expertise necessary for the committee to exercise its powers and perform its duties effectively.

100. Regulations regarding advisory committees

The Minister may by regulation establish terms of reference and any other rules concerning the membership, powers and duties and operation of a committee.

101. Transitional provisions relating to advisory committees

- (1) The National Water Advisory Council established by section 3A of the Water Act, 1956 (Act 54 of 1956), the Advisory Committee on Safety of Dams established by section 9C(5)(a)(i) of the Water Act, 1956, and any advisory committee established under section 68(1) of the Water Act, 1956, must be regarded as being an advisory committee contemplated in this Act.
- (2) Subject to the Minister's powers under section 99:
 - (a) the name, powers and duties of a committee or body referred to in subsection (1) remain the same as they were immediately before the commencement of this Act;
 - (b) any provision of the Water Act, 1956, or a regulation or notice issued under that Act regulating any matter contemplated in section 99, continues to apply as if it were a regulation made under section 100; and
 - (c) any person holding office in a committee or body referred to in subsection (1) immediately before the commencement of this Act continues in office until the expiration of that person's term of appointment or until the committee or body is disestablished, whichever happens sooner.

CHAPTER 10: International Water Management

Under this chapter the Minister may establish bodies to implement international agreements in respect of the management and development of water resources shared with neighbouring countries, and on regional co-operation over water resources. The governance, powers and duties of these bodies are determined by the Minister in accordance with the relevant international agreement, but they may also be given additional functions, and

they may perform their functions outside the Republic. Certain existing international bodies are deemed to be bodies established under this Act.

102. Establishment of bodies to implement international agreements

The Minister may, in consultation with the Cabinet, by notice in the *Gazette*, establish a body to implement any international agreement entered into by the South African Government and a foreign government relating to:

- (a) investigating, managing, monitoring and protecting water resources;
- (b) regional co-operation on water resources;
- (c) acquiring, constructing, altering, operating or maintaining a waterwork; or
- (d) the allocation, use and supply of water.

103. Governance and functions of bodies

(1) A notice contemplated in section 102 must, with due regard to the relevant international agreement, give details of:

- (a) the governance of the body;
- (b) the functions of the body;
- (c) the financing of the body;
- (d) mechanisms for controlling and supervising the affairs of the body;
- (e) which items of schedule 4, if any, apply to the body;
- (f) the disestablishment of the body and the winding-up of the body's affairs; and
- (g) any other matter necessary to give effect to the agreement.

(2) If the Minister is satisfied that it will not prejudice the capacity of a body to perform the functions for which it was established, the Minister may direct a body established under section 102 to perform additional functions which may include, but are not limited to, providing water management institutions with:

- (a) management services;
 - (b) financial services;
 - (c) training; and
 - (d) other support services.
- (3) The body may perform its functions outside the Republic.

104. Powers of bodies

A body established under section 102 is a body corporate and has the powers of a natural person of full capacity, except those powers which:

- (a) by their nature can attach only to natural persons; or
- (b) are excluded by or are inconsistent with this Act or the relevant international agreement.

105. Bodies must manage different functions as separate units

(1) If given additional functions under section 103(2), a body must manage each of its functions separately, and must account for them separately.

(2) A body must apply accounting practices consistent with generally accepted accounting practices.

106. Reports on performance of functions

(1) Unless the international agreement provides otherwise, a body must report on the performance of its functions within three months after the end of its financial year.

(2) The report must:

- (a) be accompanied by the body's audited financial statements for that financial year; and

- (b) be submitted to the Minister and such other party as may be required by the international agreement.
- (3) The report must contain sufficient information to allow the Minister to assess the performance of the body in respect of all its functions against the objectives set out in the relevant agreement.
- (4) The Director-General must send a copy of the report to the Secretary to Parliament.

107. Investigation of affairs or financial position of bodies

- (1) The Minister may, with the consent of the other parties to the agreement, or if the agreement so provides, appoint a person to investigate the affairs or financial position of a body and that person may for this purpose attend any meeting of the body.
- (2) A body must, subject to subsection (1), on request, provide the Minister's appointee with such:
 - (a) information on the affairs and financial position of the body;
 - (b) access to all books, accounts, documents and assets of the body; and
 - (c) information and data on water resources,
 as may be required by the Minister or the Minister's appointee.
- (3) The Minister may recover from the body concerned the reasonable fees and disbursements of any person appointed under subsection (1).

108. Transitional provisions relating to existing bodies

The Trans-Caledon Tunnel Authority established by government Notice 2631 of 12 December 1986, the Komati Basin Water Authority established by an agreement dated 13 March 1992 with the Kingdom of Swaziland and the Vioolsdrift Noordoewer Joint Irrigation Authority established by an agreement dated 14 September 1992 with the Government of Namibia, must be regarded as being bodies contemplated in this chapter until disestablished by the Minister by notice in the *Gazette*.

CHAPTER 11: Government Waterworks

This chapter gives the Minister the power to establish and operate government waterworks in the public interest out of funds allocated by Parliament or from other sources. Examples of such waterworks include water storage dams, water transfer schemes and flood attenuation works. The Minister must satisfy certain procedural requirements before constructing a government waterwork, including a duty to obtain an environmental impact assessment and invite public comment, except for emergency, temporary or insignificant waterworks. Water from a government waterwork may be made available for allocation to water users and charges fixed for this water. Water in a government waterwork may also be made available for recreational purposes, subject to controls determined by the Minister and regulations made by the Minister. Existing government waterworks are subject to this chapter.

109. Acquisition, construction, alteration, repair, operation and control of government waterworks

The Minister may acquire, construct, alter, repair, operate or control government waterworks in order to protect, use, develop, conserve, manage and control the nation's water resources in the public interest.

110. Consultation and environmental impact assessment

- (1) Before constructing a waterwork, the Minister must:

- (a) prepare an environmental impact assessment relating to the proposed waterwork which must, where the Minister considers it appropriate, comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act 73 of 1989);
- (b) publish a notice in the *Gazette*:
 - (i) setting out the proposal to construct the waterwork;
 - (ii) containing a summary of the environmental impact assessment; and
 - (iii) inviting written comments to be submitted, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (c) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (d) consider:
 - (i) all comments received on or before the date specified in paragraph (b)(iii); and
 - (ii) the environmental impact assessment.
- (2) Subsection (1) does not apply:
 - (a) to a waterwork which is constructed in emergency circumstances;
 - (b) to a temporary waterwork in operation for a period of less than five years; or
 - (c) if the waterwork is a minor one.
- (3) Within two years after the completion of any waterwork contemplated in subsection (2)(a), the Minister must decide either:
 - (a) to demolish the waterwork; or
 - (b) after complying with subsection (1) to the appropriate extent, to retain the waterwork.

111. Financing of government waterworks

The Minister may finance the acquisition, construction, alteration, repair, operation and control of government waterworks from funds appropriated by Parliament or obtained from any other source.

112. Water from government waterworks

- (1) The Minister may make water from a government waterwork available for allocation in accordance with chapter 4.
- (2) The Minister may in accordance with chapter 5 fix a charge for water allocated from a government waterwork.

113. Access to and use of government waterworks for recreational purposes

- (1) The water of a government waterwork and the surrounding state-owned land may be made available for recreational purposes, either generally or for a specific purpose, on the conditions and to the persons determined by the Minister.
- (2) The Minister may:
 - (a) control or prohibit access to any government waterwork; and
 - (b) subject to this Act, make reasonable charges for:
 - (i) the use of;
 - (ii) entry into; and
 - (iii) the use of any water surface or land associated with, any government waterwork for recreational purposes.
- (3) Nothing done under this section exempts any person from complying with other provisions of this Act and with any other applicable law.

114. Government waterworks constructed before commencement of Act

This Act also applies to government waterworks constructed before the commencement of this Act.

115. Disposal of government waterworks

- (1) The Minister may transfer, sell or otherwise dispose of any government waterworks to any person.
- (2) No government waterwork referred to in subsection (1) may be transferred, sold or disposed of without the approval of the national executive, if its value exceeds an amount specified from time to time by the Minister in concurrence with the Minister of Finance.
- (3) Where a government waterwork is disposed of or transferred to a water management institution, the Minister of Finance may direct that no transfer duty, other tax or duty is payable.

116. Regulations regarding government waterworks

- (1) The Minister may, with regard to a government waterwork, make regulations providing for:
 - (a) the management of and control over government waterworks and surrounding state-owned land;
 - (b) the use of the water of a government waterwork and the surrounding state-owned land; and
 - (c) charges for:
 - (i) entrance to;
 - (ii) use of facilities at; and
 - (iii) the private development of, a government waterwork.
- (2) In making the regulations, the Minister must take into account all relevant considerations, including:
 - (a) the safety and protection of government waterworks;
 - (b) the need for control of the use of government waterworks;
 - (c) the safety and security of persons using government waterworks for recreational purposes; and
 - (d) the cost of protecting and controlling government waterworks and the recovery of these costs.

CHAPTER 12: Safety of Dams

This chapter contains measures aimed at improving the safety of new and existing dams with a safety risk so as to reduce the potential for harm to the public, damage to property or to resource quality. To reduce the risk of a dam failure, control measures require an owner to comply with certain directives and regulations, such as to submit a report on the safety of a dam, to repair or alter a dam, or to appoint an approved professional person to undertake these tasks. These measures are in addition to the owners' common law responsibility to ensure the safety of their dams. An approved professional person has a statutory duty of care towards the State and the general public and must fulfil, amongst other things, defined responsibilities when acting under this chapter. Not all dams are subject to regulation under this chapter, and the Minister may exempt certain persons from its requirements. Only dams of a defined size, dams which have been declared to be dams with a safety risk, or dams falling into a prescribed category are affected. All dams with a safety risk must be registered. Compliance with any directive or regulation under this chapter does not exempt an owner from complying with any other provision of this Act, such as the requirement for a licence or other authorisation for water use in respect of the dam.

117. Definitions

In this chapter:

- (a) '*approved professional person*' means a person registered in terms of the Engineering Profession of South Africa Act, 1990 (Act 114 of 1990), and approved by the Minister after consultation with the Engineering Council of South Africa (established by section 2 of that Act);
- (b) '*dam*' includes any existing or proposed structure which is capable of containing, storing or impounding water (including temporary impoundment or storage), whether that water contains any substance or not;
- (c) '*dam with a safety risk*' means any dam:
 - (i) which can contain, store or dam more than 50 000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall;
 - (ii) belonging to a category of dams declared under section 118(2) to be dams with a safety risk; or
 - (iii) declared under section 118(3)(a) to be a dam with a safety risk;
- (d) '*owner of a dam*' or '*owner of a dam with a safety risk*' includes the person in control of that dam; and
- (e) '*task*' includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk.

118. Control measures for dam with safety risk

- (1) The owner of a dam must:
 - (a) within the period specified, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents and test results requested by the Minister; or
 - (b) give any person authorised by the Minister access to that dam, to enable the Minister to determine whether:
 - (i) that dam is a dam with a safety risk;
 - (ii) that dam should be declared to be a dam with a safety risk;
 - (iii) a directive should be issued for specific repairs or alterations to that dam; or
 - (iv) the owner has complied with any provisions of this Act applicable to that dam.
- (2) The Minister may by notice in the *Gazette* declare a category of dams to be dams with a safety risk.
- (3) The Minister may:
 - (a) by written notice to the owner of a dam, declare that dam to be a dam with a safety risk;
 - (b) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Minister, a report by an approved professional person regarding the safety of that dam; or
 - (c) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Minister, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.
- (4) If the owner of the dam fails to comply with the directive contemplated in subsection (3)(c) within the period specified, the Minister may undertake the repairs or alterations and recover the costs from the owner.
- (5) Before issuing a directive, the Minister must:

- (a) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and
- (b) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.

119. Responsibilities of approved professional persons

(1) When carrying out a task in terms of this chapter, an approved professional person also has a duty of care towards the State and the general public.

(2) An approved professional person appointed to carry out a task on a dam must:

- (a) ensure that the task is carried out according to acceptable dam engineering practices;
- (b) keep the prescribed records;
- (c) compile the prescribed reports; and
- (d) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.

(3) An approved professional person appointed to carry out a dam safety evaluation must:

- (a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and
- (b) compile a report on the matters contemplated in paragraph (a) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

120. Registration of dam with safety risk

(1) The owner of a dam with a safety risk must register that dam.

(2) An application for registration must be made within 120 days:

- (a) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;
- (b) after the date on which an already completed dam is declared to be a dam with a safety risk; or
- (c) after publication of a notice declaring a category of dams to be dams with a safety risk,

as the case may be.

(3) A successor-in-title to an owner of a dam with a safety risk must promptly inform the Director-General of the succession, for the substitution of the name of the owner.

121. Factors to be considered in declaring dam or category of dams with safety risk

In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider:

- (a) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams;
- (b) the extent of potential loss or harm involved;
- (c) the cost of any prescribed measures and whether they are reasonably achievable;
- (d) the socio-economic impact if such a dam fails; and
- (e) in the case of a particular dam, also:
 - (i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;

- (ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and
- (iii) the manner in which the water is contained, stored or impounded in that dam.

122. Exemptions

- (1) The Minister may exempt owners of dams belonging to certain categories, by notice in the *Gazette*, from compliance with any provision of this chapter or any regulation made under this chapter, on conditions determined by the Minister.
- (2) The Minister may in writing exempt an owner of a dam belonging to a certain category from compliance with any provision of this chapter on conditions determined by the Minister.
- (3) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.
- (4) Before deciding on an exemption, the Minister must consider:
 - (a) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;
 - (b) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;
 - (c) the supervision involved in the dam or category of dams;
 - (d) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water in, inspection or abandonment of the dam or category of dams and the effectiveness of these measures;
 - (e) the knowledge and expertise of the persons involved in any task relating to the dam or category of dams;
 - (f) the costs relating to the dam or category of dams;
 - (g) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams; and
 - (h) whether the dam or category of dams are permitted in terms of a licence or any other authorisation issued by or under any other Act.

123. Regulations regarding dam safety

- (1) The Minister may make regulations:
 - (a) for the establishment of a register of approved professional persons for dealing with dams with a safety risk:
 - (i) providing for:
 - (aa) different classes of approved professional persons;
 - (bb) the tasks or category of tasks which each class of approved professional persons may perform; and
 - (cc) the conditions under which each class of approved professional persons may perform any task or category of tasks;
 - (ii) concerning the requirements for admission to each class;
 - (iii) setting out, in respect of each class, the procedure for:
 - (aa) approval;
 - (bb) withdrawal of an approval; and
 - (cc) suspension of an approval; and
 - (iv) providing for a processing fee for an approval;
 - (b) regulating the approval of a person as an approved professional person for a specific task:
 - (i) setting out the procedure for approval;
 - (ii) setting out the procedure for cancelling an approval;
 - (iii) requiring that the approved person be assisted in the task by another person or a group of persons with specific experience and qualifications; and

- (iv) providing for a processing fee for an approval;
- (c) in respect of dams with a safety risk:
 - (i) classifying such dams into categories;
 - (ii) requiring the owner of a dam of a specific category to appoint an approved professional person to:
 - (aa) design that dam or any repair, alteration or abandonment of the dam;
 - (bb) ensure that a task is carried out according to the applicable design, drawings and specifications; and
 - (cc) carry out dam safety evaluations on the dam;
 - (iii) requiring that licences be issued by the Minister before any task relating to a specific category of dams may commence, and the conditions, requirements and procedure to obtain any specific licence;
 - (iv) laying down licence conditions and requirements that must be met when carrying out a task on a specific category of dams;
 - (v) requiring an approved professional person, appointed for a dam of a specific category, to keep records of information and drawings, and to compile reports;
 - (vi) requiring:
 - (aa) an owner of a dam belonging to a specific category of dams; and
 - (bb) an approved professional person appointed for a specific task for a specific dam,
- to submit information, drawings, reports and manuals;
- (vii) determining the duties of:
 - (aa) an owner of a dam belonging to a specific category of dams; and
 - (bb) an approved professional person appointed for a specific task for a specific dam;
- (d) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and manner prescribed;
- (e) requiring the registration of a specific dam with a safety risk, and setting out the procedure and the processing fee payable for registration; and
- (f) specifying time periods that must be complied with.
- (2) In making regulations under subsection (1)(a), the Minister must consider:
 - (a) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and
 - (b) the qualifications and experience needed to provide the expertise for a particular category of tasks.
- (3) Before making regulations under subsection (1), the Minister must consult the Engineering Council of South Africa, established by section 2 of the Engineering Profession of South Africa Act, 1990 (Act 114 of 1990), and any other appropriate statutory professional bodies.

CHAPTER 13: Access to and Rights Over Land

Part 1: Entry and inspection

Part 1 of this chapter allows authorised persons to enter and inspect property for a number of purposes associated with the implementation of the Act. The rights of property owners are protected in that only authorised persons may enter and inspect property; authorised persons must carry a certificate of authorisation and must produce that certificate on request; in certain circumstances notice of entry must be given and the consent of the person owning or occupying the property must be obtained before entry; and in certain circumstances a warrant must be obtained prior to entry.

124. Appointment of authorised persons

- (1) The Minister or a water management institution may, in writing, appoint any suitable person as an authorised person to perform the functions contemplated in section 125(1), (2) and (3).
- (2) An authorised person must be provided with a certificate of appointment signed by or on behalf of the Minister or a water management institution in which the nature of the authorised person's functions is described.

125. Powers and duties of authorised persons

- (1) An authorised person may, at any reasonable time and without prior notice, enter or cross a property with the necessary persons, vehicles, equipment and material in order to carry out routine inspections of the use of water under any authorisation.
- (2) An authorised person may enter a property with the necessary persons, vehicles, equipment and material:
 - (a) after giving reasonable notice to the owner or occupier of the property, which notice must state the purpose of the proposed entry; and
 - (b) after obtaining the consent of the owner or occupier of that property, in order to:
 - (i) clean, repair, maintain, remove or demolish any government waterwork operated by any water management institution;
 - (ii) undertake any work necessary for cleaning, clearing, stabilising and repairing the water resource and protecting the resource quality;
 - (iii) establish the suitability of any water resource or site for constructing a waterwork;
 - (iv) undertake any work necessary to comply with an obligation imposed on any person under this Act, where that person has failed to fulfil that obligation;
 - (v) erect any structure and to install and operate any equipment on a temporary basis for monitoring and gathering information on water resources; or
 - (vi) bring heavy equipment on to a property or occupy a property for any length of time.
- (3) An authorised person may, at any reasonable time and without prior notice, on the authority of a warrant, enter a property with the necessary persons, vehicles, equipment and material, and perform any action necessary to:
 - (a) investigate whether this Act, any condition attached to any authorised water use by or under this Act or any notice or directive is being contravened;
 - (b) investigate whether any information supplied in connection with the use of water is accurate; or
 - (c) carry out any of the activities referred to in subsection (2) where the consent of the owner or occupier of that property has been withheld.
- (4) A warrant referred to in subsection (3) must be issued by a judge or a magistrate who has jurisdiction in the area where the property in question is situated, and must only be issued if it appears from information obtained on oath that:
 - (a) there are reasonable grounds for believing that this Act, any condition attached to any authorised water use by or under this Act or any notice or directive, is being contravened;
 - (b) there are reasonable grounds for believing that any information supplied in connection with the use of water is inaccurate; or
 - (c) it is necessary to carry out an activity mentioned in subsection (2) and access to that property has been denied.

(5) If a warrant is likely to be issued if applied for but the delay involved in obtaining a warrant is likely to defeat the object of an inspection in terms of subsection (3)(a) or (b), an authorised person may enter a property without a warrant.

(6) An authorised person entering property in terms of this section must, at the request of any person on that property, identify himself or herself and present a certificate of appointment contemplated in section 124(2).

(7) Notwithstanding any provision of this section an authorised person may not, under any circumstances, enter a dwelling without the consent of the occupier or without a warrant authorising entry.

Part 2: Servitudes

Part 2 deals with servitudes. A servitude is a right that a person has over property belonging to another person. This part allows a person who is authorised to use water under the Act to claim a servitude over another person's land where this is necessary to make that water use effective. For example it might be necessary to lead water over another person's land to take it from the source to the authorised water user's land, and a servitude would be necessary to do this. A servitude cannot be claimed unless the claimant is authorised to use water, and if the authorisation is withdrawn or otherwise terminated, the servitude will lapse. Servitudes are acquired by agreement between the authorised water user and the relevant land owner, either according to existing procedures laid down in the Deeds Registries Act or by way of an agreement which is made an order of court. Procedural details regarding the acquisition of servitudes and their registration are not set out in this part but are contained in schedule 2.

126. Definitions

In this chapter:

- (a) 'servitude of abutment' means the right to occupy, by means of a waterwork, the bed or banks of a stream or adjacent land belonging to another;
- (b) 'servitude of aqueduct' means the right to occupy land belonging to another by means of a waterwork for abstracting or leading water; and
- (c) 'servitude of submersion' means the right to occupy land belonging to another by submerging it under water.

127. Acquisition of servitudes

- (1) A person who is authorised under this Act to use water may:
 - (a) claim a servitude of:
 - (i) abutment;
 - (ii) aqueduct; or
 - (iii) submersion; or
 - (b) obtain an amendment to any existing servitude of abutment, aqueduct or submersion,
 to the extent that this is necessary to give effect to that authorisation.
- (2) The servitude claimed under subsection (1)(a) may be:
 - (a) a personal servitude in favour of the claimant; or
 - (b) a praedial servitude in favour of the claimant in the claimant's capacity as owner of property on which the claimant may use the water.
- (3) A servitude under this chapter may also be claimed in respect of an existing waterwork.
- (4) A person who intends to claim a servitude under this section must follow the procedure set out in schedule 2.

128. Rights and duties of servitude holders and landowners

(1) A holder of a servitude contemplated in this chapter has a reasonable right of access to the land which is subject to the servitude for the purpose of constructing, altering, replacing, inspecting, maintaining, repairing or operating the relevant waterwork, or for any other purpose necessary for the effective enjoyment of that servitude.

(2) The holder of a servitude contemplated in this chapter may, in a reasonable manner and subject to any other applicable law:

- (a) take from the land subject to the servitude, any material or substance reasonably required for constructing, altering, replacing, maintaining or repairing any waterwork or part of a waterwork in respect of which the servitude has been acquired;
- (b) remove and use vegetation or any other obstacle which is on the land subject to the servitude and which is detrimental to the reasonable enjoyment of the servitude;
- (c) deposit on the land subject to the servitude any material or substance excavated or removed from the waterwork in the reasonable exercise of the servitude;
- (d) occupy, during the period of construction of the waterwork in respect of which the servitude has been acquired, as much of the land subject to the servitude as may reasonably be required for:
 - (i) constructing camps or roads;
 - (ii) constructing houses, reservoirs or other buildings or structures; or
 - (iii) installing machinery or equipment,
 necessary for the construction of the waterwork;
- (e) occupy, for the duration of the servitude, as much of the land subject to the servitude as is reasonably required for:
 - (i) accommodating people;
 - (ii) workshops; or
 - (iii) storage purposes,
 to the extent that this is necessary for the control, operation and maintenance of the relevant waterwork.

(3) A holder of a servitude contemplated in this chapter must, when requested in writing by the owner of the land subject to the servitude, at the holder's cost:

- (a) maintain the servitude area;
 - (b) repair and maintain waterworks relating to the servitude; and
 - (c) repair and maintain access roads associated with the servitude.
- (4) If the holder of a servitude fails to carry out the requested work, the owner of the land may arrange for the necessary work to be done and may recover any reasonable cost incurred from the servitude holder.
- (5) On termination of a servitude, the holder of the servitude must rehabilitate the land subject to the servitude to the extent that this is reasonably possible.

129. Procedure for acquisition and amendment of servitudes

(1) A servitude contemplated in this chapter may be acquired or an amendment or cancellation of a servitude obtained by:

- (a) executing and registering an applicable deed in terms of the Deeds Registries Act, 1937 (Act 47 of 1937); or
- (b) by means of an order of a High Court.

(2) A person claiming a servitude or an amendment of a servitude under this chapter may, on reasonable notice to the landowner:

- (a) enter;
- (b) make any investigation; and
- (c) undertake any operation,

on the land which will be subject to the servitude, where this is reasonable in the circumstances and necessary for determining the nature and extent of the servitude and for complying with item 3 of schedule 2.

- (3) A person acting under subsection (2) must:
 - (a) cause as little damage as possible to the land; and
 - (b) where any damage is caused:
 - (i) repair the damage where possible; or
 - (ii) pay compensation to the landowner in an agreed amount or an amount determined by a competent court.
- (4) An owner of the land against which a servitude contemplated in this chapter is claimed, may claim to share in the use of any proposed waterwork relating to the servitude if:
 - (a) the owner of the land is authorised to use water from a specific water resource;
 - (b) the use of the waterwork is compatible with the authorised water use; and
 - (c) the owner of the land agrees to be responsible for a proportionate share of the cost of constructing, repairing and maintaining the waterwork.
- (5) A claim to share in the use of a waterwork under subsection (4) must be dealt with:
 - (a) in the agreement between the parties; or
 - (b) in a High Court order contemplated in section 130.

130. Powers of High Court in respect of claim for servitude

On hearing a claim for a servitude or for an amendment to a servitude in terms of this chapter, a High Court may:

- (a) award the claim with or without modifications, on such terms as it considers just;
- (b) award compensation or refuse to award compensation;
- (c) determine whether a proportionate amount of compensation should be paid to the holder of a right of lease, mortgage, usufruct or similar right over the property, and order that such compensation be paid; or
- (d) dismiss the claim.

131. Compensation payable for granting of servitudes

(1) In determining just and equitable compensation a High Court must take into account all relevant factors including, in addition to the matters contemplated in section 25 of the Constitution:

- (a) the nature of the servitude or amendment, including the nature and function of the waterwork relating to the servitude or amendment;
- (b) whether any existing waterwork will be used to give effect to the servitude;
- (c) the probable duration of the servitude;
- (d) the extent of the deprivation of use of the land likely to be suffered as a result of the servitude or amendment;
- (e) the rental value of the land affected by the servitude or amendment;
- (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the servitude or amendment;
- (g) the extent to which the land can reasonably be rehabilitated on termination of the servitude;
- (h) any advantage that the landowner, or other person with a compensatable interest in the land subject to the servitude, is likely to derive as a result of the servitude or amendment; and
- (i) the public interest served by the waterwork relating to the servitude or amendment.

(2) A High Court may determine the time and manner of payment of the compensation.

132. Noting of servitude and amendment by endorsement against title deed

(1) The acquisition, amendment or cancellation of a servitude by virtue of an order of the High Court takes effect when the order is noted in terms of the Deeds Registries Act, 1937, (Act 47 of 1937).

(2) Nothing in this section prevents a person from electing to register the acquisition, amendment or cancellation of a servitude in accordance with the Deeds Registries Act, 1937 (Act 47 of 1937).

133. Cancellation of servitude

An owner of land subject to a servitude of abutment, aqueduct or submersion may:

- (a) if the relevant authorisation associated with the servitude is terminated;
 - (b) if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of three years; or
 - (c) for any other lawful reason,
- apply to a High Court for the cancellation of that servitude.

134. Joint waterwork involving servitude

Subject to chapter 4, two or more persons who are authorised to use water may agree to:

- (a) construct a joint waterwork; and
 - (b) create a servitude associated with that waterwork,
- to give effect to their authorised water use.

Part 3: Waterworks and personal servitudes

Part 3 deals with ownership and restoration relating to waterworks placed on the land of another, and creates an exception to the general common law rule that personal servitudes are not transferable from the holder to another person. It allows transfers of personal servitudes that are held by the State and water management institutions.

135. Ownership of waterworks on land belonging to another

(1) A water management institution (including the State):

- (a) retains ownership of a waterwork placed in good faith on land belonging to another;
- (b) may remove such a waterwork from the land; and
- (c) may transfer the rights held in respect of improvement on such land to another person or authority.

(2) When a waterwork is removed under subsection (1)(b), the owner of the property:

- (a) may require the Minister or the water management institution concerned to restore, as far as possible, any physical damage to the land caused by the removal; and
- (b) has no other claim against the Minister or the water management institution concerned.

(3) The rights of the State or a water management institution in respect of improvements on property not owned by the State or the institution may be transferred to another person or authority.

136. Transfer of personal servitudes

(1) Despite any law to the contrary, a personal servitude, whether registered or not, held by the Minister or a water management institution may be transferred:

- (a) from the Minister to a water management institution; or
- (b) from a water management institution to the Minister or to another water management institution.

(2) The relevant Registrar of Deeds must register a notarially executed deed of cession to transfer a registered personal servitude in terms of subsection (1).

CHAPTER 14: Monitoring, Assessment and Information

Monitoring, recording, assessing and disseminating information on water resources is critically important for achieving the objects of the Act. Part 1 of this chapter places a duty on the Minister, as soon as it is practicable to do so, to establish national monitoring systems. The purpose of the systems will be to facilitate the continued and co-ordinated monitoring of various aspects of water resources by collecting relevant information and data, through established procedures and mechanisms, from a variety of sources including organs of state, water management institutions and water users.

Part 1: National monitoring systems**137. Establishment of national monitoring systems**

(1) The Minister must establish national monitoring systems on water resources as soon as reasonably practicable.

(2) The systems must provide for the collection of appropriate data and information necessary to assess, among other matters:

- (a) the quantity of water in the various water resources;
- (b) the quality of water resources;
- (c) the use of water resources;
- (d) the rehabilitation of water resources;
- (e) compliance with resource quality objectives;
- (f) the health of aquatic ecosystems; and
- (g) atmospheric conditions which may influence water resources.

138. Establishment of mechanisms to co-ordinate monitoring of water resources

The Minister must, after consultation with relevant:

- (a) organs of state;
- (b) water management institutions; and
- (c) existing and potential users of water,

establish mechanisms and procedures to co-ordinate the monitoring of water resources.

Part 2: National information systems on water resources

Part 2 requires the Minister, as soon as it is practicable to do so, to establish national information systems, each covering a different aspect of water resources, such as a national register of water use authorisations, or an information system on the quantity and quality of all water resources. The Minister may require any person to provide the Department with information prescribed by the Minister in regulations. In addition to its use by the Department and water management institutions, and subject to any

limitations imposed by law, information in the national systems should be generally accessible for use by water users and the general public.

139. Establishment of national information systems

- (1) The Minister must, as soon as reasonably practicable, establish national information systems regarding water resources.
- (2) The information systems may include, among others:
 - (a) a hydrological information system;
 - (b) a water resource quality information system;
 - (c) a groundwater information system; and
 - (d) a register of water use authorisations.

140. Objectives of national information systems

The objectives of national information systems are:

- (a) to store and provide data and information for the protection, sustainable use and management of water resources;
- (b) to provide information for the development and implementation of the national water resource strategy; and
- (c) to provide information to water management institutions, water users and the public:
 - (i) for research and development;
 - (ii) for planning and environment impact assessments;
 - (iii) for public safety and disaster management; and
 - (iv) on the status of water resources.

141. Provision of information

The Minister may require in writing that any person must, within a reasonable given time or on a regular basis, provide the Department with any data, information, documents, samples or materials reasonably required for:

- (a) the purposes of any national monitoring network or national information system; or
- (b) the management and protection of water resources.

142. Access to information

Information contained in any national information system established in terms of this chapter must be made available by the Minister, subject to any limitations imposed by law, and the payment of a reasonable charge determined by the Minister.

143. Regulations for monitoring, assessment and information

The Minister may make regulations prescribing:

- (a) guidelines, procedures, standards and methods for monitoring; and
- (b) the nature, type, time period and format of data to be submitted in terms of this chapter.

Part 3: Information on floodlines, floods and droughts

Part 3 requires certain information relating to floods, droughts and potential risks to be made available to the public. Township layout plans must indicate a specific floodline. Water management institutions must use the most appropriate means to inform the public about anticipated floods, droughts or risks posed by water quality, the failure of any dam or any other waterworks or any other related matter. The Minister may establish early warning systems to anticipate such events.

144. Floodlines on plans for establishment of townships

For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years.

145. Duty to make information available to public

(1) A water management institution must, at its own expense, make information at its disposal available to the public in an appropriate manner, in respect of:

- (a) a flood which has occurred or which is likely to occur;
- (b) a drought which has occurred or which is likely to occur;
- (c) a waterwork which might fail or has failed, if the failure might endanger life or property;
- (d) any risk posed by any dam;
- (e) levels likely to be reached by floodwaters from time to time;
- (f) any risk posed by the quality of any water to life, health or property; and
- (g) any matter connected with water or water resources, which the public needs to know.

(2) The Minister may, where reasonably practicable, establish an early warning system in relation to the events contemplated in subsection (1).

CHAPTER 15: Appeals and Dispute Resolution

This chapter establishes the Water Tribunal to hear appeals against certain decisions made by a responsible authority, catchment management agency or water management institution under this Act. The Tribunal is an independent body, whose members are appointed through an independent selection process, and which may conduct hearings throughout the Republic. A person may appeal to a High Court against a decision of the Tribunal on a question of law. This chapter also provides for disputes to be resolved by mediation, if so directed by the Minister.

146. Establishment of Water Tribunal

- (1) The Water Tribunal is hereby established.
- (2) The Tribunal is an independent body which:
 - (a) has jurisdiction in all the provinces of the Republic; and
 - (b) may conduct hearings anywhere in the Republic.
- (3) The Tribunal consists of a chairperson, a deputy chairperson and as many additional members as the Minister considers necessary.
- (4) Members of the Tribunal must have knowledge in law, engineering, water resource management or related fields of knowledge.
- (5) The chairperson, the deputy chairperson and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution and the Water Research Commission established by section 2 of the Water Research Act, 1971 (Act 34 of 1971), in accordance with item 3 of schedule 6.
- (6) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the additional members must be appointed in a part-time capacity.
- (7) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Tribunal in consultation with the Minister of Finance.

(8) The Minister may, after consultation with the Judicial Service Commission or the Water Research Commission referred to in subsection (5), as the case may be, and after giving the member an opportunity to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.

147. Operation of Water Tribunal

(1) Subject to section 146(4), after having considered the necessary field of knowledge for the purposes of hearing a particular matter, the chairperson may nominate one or more members of the Water Tribunal to hear a matter and a decision by such member or members constitutes a decision by the Tribunal.

(2) Administrative support for the Tribunal must be provided by officials of the Department designated by the Director-General, subject to the laws pertaining to the secondment of officers in the Public Service.

(3) The expenditure of the Tribunal must be defrayed out of money appropriated by Parliament for that purpose or from any other source.

(4) Neither the Tribunal, the chairperson, the deputy chairperson nor any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.

148. Appeals to Water Tribunal

(1) There is an appeal to the Water Tribunal:

- (a) against a directive issued by a catchment management agency under section 19(3) or 20(4)(d), by the recipient thereof;
- (b) against a claim by a catchment management agency for the recovery of costs under section 19(5) or 20(7) by the person affected thereby;
- (c) against the apportionment by a catchment management agency of a liability for costs under section 19(8) or 20(9), by a person affected thereby;
- (d) against a decision of a water management institution on the temporary transfer of a water use authorisation under section 25(1), by a person affected thereby;
- (e) against a decision of a responsible authority on the verification of a water use under section 35 by a person affected thereby;
- (f) against a decision of a responsible authority on an application for a licence under section 41, or on any other application to which section 41 applies, by the applicant or by any other person who has timeously lodged a written objection against the application;
- (g) against a preliminary allocation schedule published by a responsible authority under section 46(1), by any interested person;
- (h) against the amendment of a condition of a licence by a responsible authority on review under section 49(2), by any person affected thereby;
- (i) against a decision of a responsible authority on an adjudication of claims made under section 51(1), by any person affected thereby;
- (j) against a directive issued by a responsible authority under section 53(1), by the recipient thereof;
- (k) against a claim by a water management institution for the recovery of costs under section 53(2)(a), by the person against whom the claim is made;
- (l) against a decision by a responsible authority on the suspension, withdrawal or reinstatement of an entitlement under section 54, or on the surrender of a licence under section 55, by the person entitled to use water or by the licensee; and

- (m) against a declaration made by, directive given by or costs claimed by the Minister in respect of a dam with a safety risk under section 118(3) or (4).
- (2) An appeal under subsection (1):
 - (a) does not suspend a directive given under section 19(3), 20(4)(d) or 53(1); and
 - (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Minister directs otherwise.
- (3) An appeal must be commenced within 30 days after:
 - (a) publication of the decision in the *Gazette*;
 - (b) notice of the decision is sent to the appellant; or
 - (c) reasons for the decision are given,
 whichever occurs last.
- (4) The procedure for lodging, hearing and deciding:
 - (a) an appeal under subsection (1); and
 - (b) an application for the determination of compensation under section 22, is contained in part 2 of schedule 6.
- (5) The chairperson may make rules which:
 - (a) govern the procedure of the Tribunal, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Tribunal;
 - (b) may provide for application or appeal fees payable by a claimant or appellant; and
 - (c) must be approved and published in the *Gazette* by the Minister.

149. Appeals from decisions of Water Tribunal

- (1) A party to a matter in which the Water Tribunal:
 - (a) has given a decision on appeal under section 148, may, on a question of law, appeal to a High Court against that decision; or
 - (b) has determined the liability for compensation or the amount of compensation under section 22(9), may, on a question of law, appeal to a High Court against that determination.
- (2) The appeal must be noted in writing within 21 days of the date of the decision of the Tribunal.
- (3) The notice of appeal must:
 - (a) set out every question of law in respect of which the appeal is lodged;
 - (b) set out the grounds for the appeal;
 - (c) be lodged with the relevant High Court and with the Water Tribunal; and
 - (d) be served on every party to the matter.
- (4) The appeal must be prosecuted as if it were an appeal from a Magistrate's Court to a High Court.

150. Mediation

- (1) The Minister may at any time and in respect of any dispute between any persons relating to any matter contemplated in this Act, at the request of a person involved or on the Minister's own initiative, direct that the persons concerned attempt to settle their dispute through a process of mediation and negotiation.
- (2) A directive under subsection (1) must specify the time when and the place where such process must start.
- (3) Unless the persons concerned have informed the Minister at least seven days before the date specified in terms of subsection (2) that they have appointed a mediator, the Minister must appoint a mediator.

(4) Notwithstanding subsection (3), the parties may at any time during the course of mediation or negotiation proceedings, by agreement between them, appoint another person to act as mediator.

(5) A person appointed by the Minister in terms of subsection (3) must either be an official of the Department or an independent mediator.

(6) Where the Minister or the Department is a party to the dispute, the mediator may not be an official of the Department.

(7) The contents of all discussions which took place and of all submissions made as part of a mediation process under this section are privileged in law, and may not be received in evidence by any court of law, unless the parties agree otherwise.

(8) The fees and expenses of a mediator must be paid by:

- (a) the Department, if the Minister has appointed the mediator; or
- (b) the parties, if they have appointed the mediator.

CHAPTER 16: Offences and Remedies

In common with other acts of Parliament which aim to make non-compliance a criminal offence, this chapter lists the acts and omissions which are offences under this Act, with the associated penalties. It also gives the courts and water management institutions certain powers associated with prosecutions for these offences, such as the power to remove the cause of a stream flow reduction.

151. Offences

(1) No person may:

- (a) use water otherwise than as permitted under this Act;
- (b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act;
- (c) fail to comply with any condition attached to a permitted water use under this Act;
- (d) fail to comply with a directive issued under section 19, 20, 53 or 118;
- (e) unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;
- (f) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;
- (g) fail to register an existing lawful water use when required by a responsible authority to do so;
- (h) intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any of that person's duties in terms of this Act;
- (i) unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;
- (j) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;
- (k) fail to register a dam with a safety risk;
- (l) fail to comply with a temporary restriction on the use of water in terms of item 6 of schedule 3; or
- (m) commit contempt of the Water Tribunal.

(2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

152. Enquiry in respect of compensation for harm, loss or damage suffered

Where any person is convicted of an offence under this Act and:

- (a) another person has suffered harm or loss as a result of the Act or omission constituting the offence; or
- (b) damage has been caused to a water resource, the Court may, in the same proceedings:
 - (i) at the written request of the person who suffered the harm or loss; or
 - (ii) at the written request of the Minister in respect of the damage caused to a water resource; and
 - (iii) in the presence of the convicted person,

enquire without pleadings into the harm, loss or damage and determine the extent thereof.

153. Award of damages

After making a determination in terms of section 152, the Court may:

- (a) award damages for the loss or harm suffered by the person referred to in section 152 against the accused;
- (b) order the accused to pay for the cost of any remedial measures implemented or to be implemented; and
- (c) order that the remedial measures to be implemented, be undertaken either by the accused or the relevant water management institution.

154. Offences in relation to employer and employee relationships

Whenever an act or omission by an employee or agent:

- (a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of the employer or principal, as the case may be, the employer or principal, as the case may be, is, in addition to the employee or agent, liable to conviction for that offence; or
- (b) would constitute an offence by the employer or principal, as the case may be, in terms of this Act, that employee or agent will in addition to that employer or principal be liable to conviction for that offence.

155. Interdict or other order by High Court

A High Court may, on application by the Minister or the water management institution concerned, grant an interdict or any other appropriate order against any person who has contravened any provision of this Act, including an order to discontinue any activity constituting the contravention and to remedy the adverse effects of the contravention.

CHAPTER 17: General and Transitional Provisions

This chapter contains a number of unrelated provisions which, being of general importance to the Act as a whole, are less suited to other chapters. They relate, among other things, to the binding of all organs of state, to delegations, to the amendment and substitution of legal instruments, to the limitation of liability, and to the authorisation and service of documents. The chapter refers to the list, in schedule 7, of laws or parts of laws which are repealed by this Act and which will no longer have effect. However, any act performed under a repealed law remains valid if not inconsistent with this Act and until overridden by this Act. Regulations made under repealed laws also remain valid if not inconsistent with this Act and until repealed by the Minister. This chapter also provides for overriding any provision in a prior law which exempts a person from payment of a charge or limiting payment to a fixed charge for water use.

Part 1: Liability

156. State bound

This Act binds all organs of state.

157. Limitation of liability

Neither the State nor any other person is liable for any damage or loss caused by:

- (a) the exercise of any power or the performance of any duty in terms of this Act; or
- (b) the failure to exercise any power, or perform any duty in terms of this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

158. Amendment or substitution of instruments

(1) For the purposes of this section, 'instrument' includes any regulation, strategy, licence, directive or notice made, determined, issued or given in terms of this Act.

(2) If the proposed amendment or substitution of an instrument:

- (a) is not likely to alter the rights and obligations of any person materially;
 - (b) corrects any clerical mistake, unintentional error or omission in an instrument;
 - (c) corrects any figure miscalculated in an instrument; or
 - (d) corrects any misdescription of any person, thing or property,
- the amendment or substitution may be made without following the procedure required for establishing or giving effect to the instrument.

159. Effect of delegation

Where a power is conferred on a person to delegate the exercise of a power then, unless the contrary intention appears:

- (a) such a delegation does not prevent the exercise of that power, or the performance of that duty by the person who made the delegation;
- (b) such a delegation may be made subject to such conditions or limitations as the person making that delegation may specify; and
- (c) a power so delegated, when exercised or performed by the delegatee, must be regarded as having been exercised or performed by the person making the delegation.

Part 2: Powers and authorisations

160. Documents deemed to be properly authorised and issued

(1) A notice, directive or other document issued in terms of this Act in good faith by any water management institution and purporting to have been signed by the chairperson, secretary or chief executive officer of the institution must be regarded as having been properly authorised and issued in terms of a valid decision, until evidence to the contrary is adduced.

(2) Any document issued in terms of this Act without authority may be ratified subsequently.

161. Documents and steps valid under certain circumstances

(1) A notice, directive or other document issued in good faith in terms of this Act, but which does not comply with this Act, is valid if the non-compliance is not material and does not prejudice any person.

- (2) The failure to take any steps required in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure:
- (a) is not material;
 - (b) has subsequently been rectified; and
 - (c) does not prejudice any person.
- (3) A failure in good faith to consult with or send notice to any relevant person or body as required by this Act does not invalidate any Act of or process for which such consultation is a prerequisite.

162. Service of documents

- (1) Any notice, directive or other document in terms of this Act, must be served:
- (a) if it is to be served on a natural person:
 - (i) by hand delivery to that person;
 - (ii) by hand delivery to a responsible individual at that person's business or residential address;
 - (iii) by sending it by registered mail to that person's business or residential address; or
 - (iv) where that person's business and residential address is unknown, despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address; or
 - (b) if it is intended for a juristic person:
 - (i) by hand delivery to a responsible individual at the registered address or principal place of business of that juristic person;
 - (ii) by sending it by facsimile to the registered address or principal place of business of that juristic person;
 - (iii) by sending it by registered mail to the registered address or principal place of business of that juristic person;
 - (iv) by conspicuously attaching it to the main entrance of the registered address or the principal place of business of that juristic person; or
 - (v) by hand delivery to any member of that juristic person's board of directors or governing body.
- (2) Any notice, directive or other document served according to subsection (1) is considered to have come to the notice of the person, unless the contrary is proved.

163. Repeal of laws, and savings

- (1) The laws set out in schedule 7 are hereby repealed to the extent set out in the third column of that schedule.
- (2) This Act overrides any provision in a prior law exempting a person from payment of a charge, or limiting payment to a fixed charge for water use.
- (3) Anything done under a law repealed by this Act remains valid:
- (a) to the extent that it is not inconsistent with this Act; and
 - (b) until anything done under this Act overrides it.
- (4) Any regulation made under a law repealed by this Act remains in force and is considered to have been made under this Act:
- (a) to the extent that it is not inconsistent with this Act; and
 - (b) until it is repealed by the Minister under this Act.

164. Short title and commencement

This is the National Water Act, 1998, which takes effect on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1: PERMISSIBLE USE OF WATER

Sections 4(1) and 22(1)(a)(i) and item 2 of schedule 3

- (1) A person may, subject to this Act:
 - (a) take water for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access;
 - (b) take water for use on land owned or occupied by that person, for:
 - (i) reasonable domestic use;
 - (ii) small gardening not for commercial purposes; and
 - (iii) the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land,

from any water resource which is situated on or forms a boundary of that land, if the use is not excessive in relation to the capacity of the water resource and the needs of other users;

 - (c) store and use run-off water from a roof;
 - (d) in emergency situations, take water from any water resource for human consumption or firefighting;
 - (e) for recreational purposes:
 - (i) use the water or the water surface of a water resource to which that person has lawful access; or
 - (ii) portage any boat or canoe on any land adjacent to a watercourse in order to continue boating on that watercourse; and
 - (f) discharge:
 - (i) waste or water containing waste; or
 - (ii) run-off water, including storm water from any residential, recreational, commercial or industrial site,

into a canal, sea outfall or other conduit controlled by another person authorised to undertake the purification, treatment or disposal of waste or water containing waste, subject to the approval of the person controlling the canal, sea outfall or other conduit.

(2) An entitlement under this schedule does not override any other law, ordinance, bylaw or regulation, and is subject to any limitation or prohibition thereunder.

Schedule 2: PROCEDURAL MATTERS REGARDING SERVITUDES

Sections 127(4) and 129(2)

- (1) A person who intends to claim a servitude or an amendment of a servitude under the Act must give the owner of the land which will be subject to the servitude written notice of his or her claim.
- (2) Where a claimant is not the owner of the land in favour of which the servitude is claimed, the claimant must give the owner written notice of the claimant's claim.
- (3) The notice must include details of at least the following, where relevant:
 - (a) the entitlement of the claimant to the use of the water;
 - (b) a description of the land which will be subject to the servitude;
 - (c) whether the servitude claimed is a personal or a praedial servitude;
 - (d) in the case of a personal servitude, the name, identity number or registration number (if applicable) of the person in whose favour the servitude is claimed;
 - (e) in the case of a praedial servitude, a description of the land in favour of which the servitude is claimed;
 - (f) the likely impact of the servitude on the land or its use;

- (g) in the case of a servitude of aqueduct, the route along which the water is to be led over the land which will be subject to the servitude and other affected land;
 - (h) in the case of a servitude of submersion, where the water will be stored and the area that will be submerged;
 - (i) the nature and locality of any proposed waterwork, including any road or other structure, which will reduce the loss and inconvenience to the owner or occupier of the land which will be subject to the servitude, as a result of the servitude;
 - (j) how and when maintenance of the proposed waterwork is likely to be carried out;
 - (k) the nature, quantity and situation of any materials required from the land which will be subject to the servitude for the purpose of constructing any proposed waterwork;
 - (l) the land reasonably required during the construction period for:
 - (i) construction camps;
 - (ii) accommodating people;
 - (iii) workshops; or
 - (iv) storage purposes;
 - (m) the extent and location of any land reasonably required for construction, operating and maintaining a proposed waterwork on the land which will be subject to the servitude; and
 - (n) the compensation offered.
- (4) A plan depicting the location of the proposed waterworks on the land which will be subject to the servitude must be attached to the notice.
- (5) When a person gives a notice of a claim for a servitude or for an amendment of a servitude, that person must also send, by registered post, a copy of the notice to:
- (a) the lessee of the land;
 - (b) the national, provincial or local government authority responsible for controlling, maintaining or repairing a road across which the claimant intends constructing a waterwork in terms of the servitude or amendment; and
 - (c) every person who, from a perusal of:
 - (i) the title deeds of the land;
 - (ii) the records of the Registrar of Mining Titles; or
 - (iii) the records of any other government office which records prospecting or mining rights,
 appears to have any interest in the land which may be negatively affected by the servitude, if the whereabouts of the person can be readily ascertained.
- (6) A notice under item 1 or 2 may be amended as a result of:
- (a) the claimant exercising his or her rights under section 128 of the Act; or
 - (b) objections to the notice by the owner of the land subject to the servitude or the owner of the land in favour of which the servitude is claimed.
- (7) An amended notice must be dealt with in the same way as the original notice.
- (8) A claimant may, not earlier than 14 days and not later than 90 days after the notices required in terms of this schedule have been given, apply to the High Court for the award of a servitude claimed in terms of the procedure set out in this schedule and the High Court may make such order as it deems fit.

Schedule 3: POWERS WHICH MAY BE EXERCISED AND DUTIES TO BE PERFORMED BY CATCHMENT MANAGEMENT AGENCIES ON ASSIGNMENT OR DELEGATION

Sections 72, 73 and 151(1)(l)

1. General

Subject to chapter 2 and sections 72 and 73 of this Act a catchment management agency may exercise any of the powers or perform any of the duties set out in this schedule and any other powers or duties necessary or desirable in order to ensure compliance with the Act, to the extent that such powers and duties have been assigned or delegated to it, and within the constraints of the assignment or delegation.

2. Power to manage, monitor, conserve and protect water resources and to implement catchment management strategies

A catchment management agency may:

- (a) manage and monitor permitted water use within its water management area;
- (b) conserve and protect the water resources and resource quality within its water management area;
- (c) subject to the provisions of the Act, develop and operate a waterwork in furtherance of its catchment management strategy;
- (d) do anything necessary to implement catchment management strategies within its water management area; and
- (e) by notice to a person taking water, and after having given that person a reasonable opportunity to be heard, limit the taking of water in terms of schedule 1.

3. Catchment management agencies may make rules to regulate water use

- (1) A catchment management agency may make rules to regulate water use.
- (2) The rules made under subitem (1) may relate, amongst other things, to:
 - (a) the times when;
 - (b) the places where;
 - (c) the manner in which; and
 - (d) the waterwork through which, water may be used.
- (3) A water user must adhere to any such rules which apply to that user.
- (4) A rule made under subitem (1) prevails over a conflicting distribution condition contained in any authorisation.
- (5) Before making rules a catchment management agency must:
 - (a) publish a notice in the *Gazette*:
 - (i) setting out the proposed rules;
 - (ii) inviting written comments to be submitted on the proposed rules, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate;
 - (c) consider all comments received on or before the date specified in paragraph (a)(ii); and

- (d) consider all applicable conditions for provision of services and bylaws made under the Water Services Act, 1997 (Act 108 of 1997), by water services institutions having jurisdiction in the area in question.
- (6) After complying with subitem (5), a catchment management agency must:
 - (a) finalise the rules; and
 - (b) make it known, in an appropriate manner, that the rules have been finalised and where they may be read; or
 - (c) deliver or send a copy of the rules to each water user to whom the rules apply.

4. Catchment management agencies may require establishment of management systems

- (1) A catchment management agency may require in writing that a water user:
 - (a) install a recording or monitoring device to monitor storing, abstraction and use of water;
 - (b) establish links with any monitoring or management system to monitor storing, abstraction and use of water; and
 - (c) keep records on the storing, abstraction and use of water and submit the records to the catchment management agency.
- (2) If the water user fails to comply with a requirement of subitem (1)(a) or (b), a catchment management agency may undertake the installation or establishment of such links and recover any reasonable cost from that water user.

5. Catchment management agencies may require alterations to waterworks

- (1) A catchment management agency may, by written notice to the owner or person in control of a waterwork, require that person to collect and submit particular information within a period specified to enable the catchment management agency to determine whether that waterwork is constructed, maintained and operated in accordance with the Act.
- (2) A catchment management agency may direct the owner or person in control of a waterwork at the owner's own cost and within a specified period, to:
 - (a) undertake specific alterations to the waterwork;
 - (b) install a specific device; or
 - (c) demolish, remove or alter the waterwork or render the waterwork inoperable in a manner specified in the directive.
- (3) A catchment agency may only issue such a directive if it is reasonably necessary in order to:
 - (i) protect authorised uses of other persons;
 - (ii) facilitate monitoring and inspection of the water use; or
 - (iii) protect public safety, property or the resource quality.
- (4) If the owner fails to comply with a directive, the catchment management agency may:
 - (a) undertake the alterations;
 - (b) install the device; or
 - (c) demolish, remove or alter the waterwork or render the waterwork inoperable,
 and recover any reasonable costs from the person to whom the directive was issued.

6. Catchment management agencies may temporarily control, limit or prohibit use of water during periods of water shortage

(1) If a catchment management agency on reasonable grounds believes that a water shortage exists or is about to occur within an area it may, despite anything to the contrary in any authorisation, by notice in the *Gazette* or by written notice to each of the water users in the area who are likely to be affected:

- (i) limit or prohibit the use of water;
- (ii) require any person to release stored water under that person's control;
- (iii) prohibit the use of any waterwork; and
- (iv) require specified water conservation measures to be taken.

(2) A notice contemplated in subitem (1) must:

- (a) specify the geographical area or water resource to which the notice relates;
- (b) set out the reason for the notice; and
- (c) specify the date of commencement of the measures.

(3) In exercising the powers under subitem (1), the catchment management agency must:

- (a) give preference to the maintenance of the Reserve;
- (b) treat all water users on a basis that is fair and reasonable; and
- (c) consider:
 - (i) the actual extent of the water shortage;
 - (ii) the likely effects of the shortage on the water users;
 - (iii) the strategic importance of any water use; and
 - (iv) any water rationing or water use limitations by a water services institution having jurisdiction in the area in question under the Water Services Act, 1997 (Act 108 of 1997).

(4) If the owner or person in control of a waterwork contravenes a notice issued under subitem (1), the catchment management agency may:

- (a) modify, or require the owner of the waterwork to modify the waterwork so that it cannot be used to take more water than that allowed for in the notice; or
- (b) remove the waterwork or require the owner to remove the waterwork if the notice contains a prohibition on the use of that waterwork.

(5) A catchment management agency may recover from the owner any reasonable costs incurred by it in acting under subitem (4).

Schedule 4: MANAGEMENT AND PLANNING OF WATER MANAGEMENT INSTITUTIONS

Sections 79(2) and 82(4)

Part 1: Governing board

1. Governing board

(1) The board:

- (a) is responsible for the management of the affairs of the water management institution; and
- (b) may exercise the powers of the institution.

(2) Without limiting subitem (1), it is the role of the board:

- (a) to decide the strategies and policies to be followed by the institution; and
- (b) to ensure that the institution exercises its powers or performs its duties in a proper, efficient, economical and sustainable manner.

- (3) The board must carry out its functions as efficiently as possible, consistent with prudent commercial practice.
- (4) In the absence of the chairperson, the deputy chairperson performs all the functions of the chairperson.

2. Terms and conditions of appointment

- (1) A board member holds office for a term:
 - (a) specified in the constitution, if the institution has a constitution; or
 - (b) determined by the Minister, if the institution has no constitution.
- (2) The institution may pay a board member from the revenues of the institution an amount of remuneration, determined by the board from time to time, in accordance with any directive from the Minister.

3. Chief executive officer

- (1) The board may appoint a suitably qualified person as chief executive officer of the institution.
- (2) The chief executive officer of the institution holds office on the terms and conditions determined by the board.
- (3) The board may remove the chief executive officer of the institution from office.
- (4) The Minister may, for good reasons and after consultation with the board, direct the board to remove the chief executive officer from office.
- (5) The board must comply with a directive given by the Minister under subparagraph (4).
- (6) The functions to be performed by the chief executive officer in terms of this schedule may also be performed by the chairperson or any other officer designated by the chairperson.
- (7) The board must, in consultation with the Minister of Public Service and Administration, determine the salary of its chief executive officer, subject to the approval of the Minister.

4. Vacancies, resignations and removal from office

- (1) The position of a board member becomes vacant if the member:
 - (a) has been declared to be of unsound mind by a competent authority;
 - (b) is declared insolvent;
 - (c) resigns;
 - (d) is convicted of any offence involving dishonesty;
 - (e) is absent without prior consent of the chairperson from two consecutive meetings of the board; or
 - (f) fails to make any disclosure required to be made in terms of item 7.
- (2) An ordinary member or the deputy chairperson may resign in writing addressed to the chairperson.
- (3) The chairperson may resign in writing addressed to the Minister.

5. Validity of decisions

- (1) An act or decision of the board is not invalid merely because of:
 - (a) a defect or irregularity in, or in connection with, the appointment of a board member; or
 - (b) a vacancy in the membership of the board, including a vacancy resulting from the failure to appoint an original board member.
- (2) Anything done by or in relation to a person purporting to act as chairperson or as a board member is not invalid merely because:
 - (a) the occasion for the person to act had not arisen or had ceased;
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect.

Part 2: Board members

6. Duties of board members

- (1) A board member must at all times act honestly in performing the functions of his or her office.
- (2) A board member must at all times exercise a reasonable degree of care and diligence in performing a member's functions, and in furtherance of this duty without limiting its scope, must:
 - (a) take reasonable steps to inform himself or herself about the institution, its business and activities and the circumstances in which it operates;
 - (b) take reasonable steps, through the processes of the board, to obtain sufficient information and advice about all matters to be decided by the board to enable him or her to make conscientious and informed decisions; and
 - (c) exercise an active discretion with respect to all matters to be decided by the board.
- (3) A board member need not give continuous attention to the affairs of the board, but is required to exercise reasonable diligence in relation to:
 - (a) the business of; and
 - (b) preparation for and attendance at meetings of, the board and any committee to which the board member is appointed.
- (4) In determining the degree of care and diligence required to be exercised by a board member, regard must be had to the skills, knowledge or insight possessed by that member, and to the degree of risk involved in any particular circumstances.
- (5) A board member, or former board member, must not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to prejudice the institution.
- (6) This item must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body of a corporate body, and it does not prevent any criminal or civil proceedings being instituted in respect of such a liability.

7. Disclosure of interest

- (1) If a board member has a direct or indirect pecuniary or other interest in any matter in which the institution is concerned, which could conflict with the proper performance of his or her duties in relation to that matter, he or she must disclose that interest as soon as practicable after the relevant facts come to his or her knowledge.
- (2) If the board member is present at a meeting of the board at which the matter is to be considered, the board member must disclose the nature of his or her interest to the meeting immediately before the matter is considered.
- (3) If the board member is aware that the matter is to be considered at a meeting of the board at which he or she does not intend to be present, he or she must disclose the nature of his or her interest to the chairperson before the meeting is held.
- (4) A board member who has made a disclosure under this paragraph must not:
 - (a) be present during any deliberation; or
 - (b) take part in any decision, of the board in relation to the matter in question.
- (5) Any disclosure made under this paragraph must be noted in the minutes of the relevant meeting of the board.

8. Recovery of improper profits

If a person contravenes item 7, the institution, or the Minister in the name of the institution, may recover from the person as a debt due to the institution, through a competent court, either or both of the following:

- (a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the institution has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

Part 3: Proceedings of the board**9. Convening meetings**

- (1) The board must meet at least twice in each year.
- (2) Meetings must be held at the times and, subject to subitem (4), the places determined by the board.
- (3) The chairperson may convene a meeting at any time and must do so when requested by one third of the board members.
- (4) The chairperson may, from time to time, determine that a meeting be held by telephone, closed-circuit television or other means of communication.

10. Notices of meeting

- (1) Except as provided in subitem (3), the chairperson or the chief executive officer must give at least seven days' written notice to board members of any meeting convened at the request of one third of the board members.
- (2) A notice given in terms of subitem (1) must:
 - (a) specify the date and time of the meeting; and
 - (b) state the general nature of the business of the meeting; and either
 - (c) state the place of the meeting; or
 - (d) specify the means of communication by which the meeting will be held.
- (3) The chief executive officer or chairperson must give notice of a meeting:
 - (a) in writing; and
 - (b) not less than seven days in advance except in cases of emergency or where every board member agrees to accept short notice.
- (4) If notice of a meeting is given the board must, if requested by a board member, allow that member to participate in the meeting in the manner contemplated in item 16.
- (5) The proceedings of, or resolutions passed at a meeting of, a board are not invalid merely because:
 - (a) the chief executive officer omitted to send a notice to a board member; or
 - (b) a member did not receive a notice of the meeting.

11. Quorum

- (1) No business may be conducted at a meeting unless a quorum of members is present.
- (2) A quorum is a majority of the members for the time being.
- (3) If a quorum is not present within 30 minutes after the time appointed for a meeting, the person presiding at the meeting may adjourn the meeting to the same time and place, seven days after the adjournment.
- (4) If a quorum is not present at an adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting is automatically cancelled.

12. Adjournment

- (1) The person presiding at a meeting at which a quorum is present:
 - (a) may adjourn the meeting with the meeting's consent; and
 - (b) must adjourn the meeting if the meeting so directs.
- (2) An adjourned meeting must be held at the time and place agreed to by the meeting before it is adjourned.
- (3) Only unfinished business of an initial meeting can be conducted at an adjourned meeting.

13. Person presiding at meetings

- (1) Subject to item 7(4):
 - (a) the chairperson must preside at all meetings of the board at which the chairperson is present; and
 - (b) in the absence of the chairperson, the deputy chairperson must preside at a meeting of the board.
- (2) If neither the chairperson nor the deputy chairperson is present, the meeting must appoint a board member present at the meeting to preside.

14. Voting

- (1) A question arising at a meeting must be determined by a majority of votes of board members present and voting.
- (2) If voting on a question is equal, the person presiding has a casting vote as well as a deliberative vote.

15. Minutes

- (1) The chief executive officer must ensure that complete and accurate minutes of each meeting are kept.
- (2) Draft minutes of each meeting must:
 - (a) be presented to the next meeting of the board for amendment, if necessary, and adoption; and
 - (b) be entered in a durable, bound volume of minutes.
- (3) The person presiding at the next meeting must sign and date an affirmation to the effect that any minutes of the previous meeting have been adopted by the meeting.

16. Participation in meetings

- (1) The board may, by resolution, permit board members to participate in a particular meeting by telephone, closed-circuit television or other means of communication.
- (2) A board member who participates in a meeting under permission given under subitem (1) must be regarded as being present at the meeting.

17. Resolutions without meetings

- (1) If all the board members for the time being (other than a board member who is absent from South Africa at the time) sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last member signs the document.
- (2) For the purpose of subitem (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more board members, must be taken to be one document.
- (3) A document referred to in this item may be in the form of a telex or facsimile.

18. Execution of documents

- (1) Subject to subitem (2), a document is duly executed by the board if it is executed on behalf of the board by any two board members.
- (2) The board may, either generally or in a particular case or class of cases, by resolution authorise the chief executive officer to execute documents on behalf of the board.

19. Appointment of committees

- (1) The board may, from time to time:
 - (a) appoint such temporary or standing committees as it sees fit from among its members;
 - (b) appoint persons other than board members to a committee;
 - (c) remove any person appointed to a committee from such committee; and
 - (d) determine the terms of reference of any committee, which may include:
 - (i) full decision making powers on particular matters; or
 - (ii) a requirement to refer decisions back to the board for ratification.
- (2) Items 7, 11, 12, 14, 15, 16, 17, 18(1) and 20 apply to a committee as if it were the board.
- (3) Part 2 also applies to any member of a committee who is not a board member.
- (4) A committee must report to the board at the times and in the manner determined by the board.

20. Power to regulate proceedings

Subject to this part, the board may regulate its own proceedings.

Part 4: Institutional planning**21. Business plans**

- (1) The board must prepare business plans.
- (2) The first business plan must be for a period of not less than three years and must begin when the first financial year starts, which must be not more than six months after the board is established.
- (3) Each subsequent business plan must be updated annually.
- (4) The board may review and revise a business plan at any time, and must do so when so directed by the Minister.

22. General matters to be included in business plans

Each business plan must be in the form determined by the Minister and:

- (a) must set out the objectives of the institution;
- (b) must outline the overall strategies and policies that the institution is to follow to achieve the objectives;
- (c) must include a statement of the services which the institution expects to provide and the standards expected to be achieved in providing those services;
- (d) must include the financial and performance indicators and targets considered by the board to be appropriate;
- (e) may include any other information which the board considers appropriate; and
- (f) must include any other information determined by the Minister.

23. Financial matters to be included in business plans

Each business plan:

- (a) must include a financial target;

- (b) must outline the overall financial strategies for the institution including the setting of charges, borrowing, investment and purchasing and disposal strategies;
- (c) must include a forecast of the revenue and expenditure of the institution, including a forecast of capital expenditure and borrowings;
- (d) must provide for capacity building amongst its board members and officials;
- (e) may include any other financial information which the board considers appropriate; and
- (f) must include any other financial information determined by the Minister.

24. Matters to be considered in setting financial targets

In preparing or revising a financial target, the board must have regard to:

- (a) the need to maintain the institution's financial viability;
- (b) the need to maintain a reasonable level of reserves, especially to provide for:
 - (i) corrective action to redress the results of past racial and gender discrimination in the use of water resources;
 - (ii) any estimated future demand for the services of the institution; and
 - (iii) any need to improve the accessibility of, and performance standards for, the services provided by the institution; and
- (c) other matters determined by the Minister.

25. Business plans to be given to Minister

- (1) When the board prepares or revises a business plan, it must immediately make a copy of the plan available to the Minister.
- (2) The Minister may:
 - (a) within 60 days after receiving a copy of a prepared plan; or
 - (b) within 30 days after receiving a copy of a revised plan,
 make comments on the plan to the board.
- (3) The board must consult in good faith with the Minister following communication to it of the Minister's comments and must make any changes to the plan that are agreed upon by the Minister and the board.
- (4) The Minister may, from time to time, direct the board to include in, or omit from, a business plan, any matter, including a financial matter.
- (5) Before giving a directive under this item, the Minister must consult with the board as to the matters to be included in the directive.
- (6) The board must comply with a directive given under this item.

26. Board to notify Minister of significant events

If matters arise that might prevent, or materially affect, achievement of the objectives of the institution in terms of the business plan or financial targets contained in the business plan, the board must immediately notify the Minister of the existence of such matters.

27. Institution must act in accordance with business plan

The institution must act only in accordance with its business plan, as it exists from time to time, unless the Minister has directed otherwise.

28. Minister may require information

- (1) The Minister may direct the board to give him or her specific information.
- (2) The board must comply with such directive.

Part 5: Monitoring and intervention

29. Provision of information by an institution

- (1) An institution must provide the Minister or any person authorised by the Minister with:
 - (a) the information which the Minister requires on the affairs and financial position of the institution; and
 - (b) access to such books, accounts, documents and assets of the institution as the Minister may require.
- (2) The Minister may appoint a person to investigate the affairs or financial position of an institution and recover the reasonable fees and disbursements of that person from that institution.
- (3) A board member and an employee of a board have the same duties towards the Minister or a person authorised by the Minister as an institution has in subitem (1), except to the extent that the board member or employee can show that he or she is unable to comply.

30. Taking possession of books, records and assets

The Minister or a person authorised by the Minister may enter into the premises of any institution and take possession of any book, record or asset of the institution where this is necessary in order to obtain any information to which the Minister is entitled in terms of this part or for the purposes of any investigation that the Minister is entitled to conduct in terms of this part.

31. Offence

Any institution, board member or employee of the board who does not comply with items 28 to 30 or obstructs a person appointed under item 29(2) is guilty of an offence and liable on conviction to a sentence contemplated in section 151 of the Act.

Part 6: Records and reporting

32. Financial records and accountability

- (1) The financial year of an institution is for a 12-month period determined by the board.
- (2) The board must ensure that the chief executive officer of the institution keeps:
 - (a) proper records and accounts of the activities, transactions and affairs of the institution and of the board; and
 - (b) any other records or accounts that are necessary to explain sufficiently the financial operations and financial position of the institution.
- (3) The board and the chief executive officer of the institution must each do all things necessary to:
 - (a) ensure that all money payable to the institution is properly collected;
 - (b) ensure that all money spent by the institution is properly spent and properly authorised;
 - (c) ensure that there is adequate control over all assets acquired for the purposes of the institution, or managed or controlled by it;
 - (d) ensure that all liabilities incurred on behalf of the institution are properly authorised;
 - (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
 - (f) develop and maintain an adequate budgeting and accounting system; and
 - (g) develop and maintain an adequate financial control system.

33. Annual report

(1) An institution must, in respect of each financial year, prepare an annual report containing:

- (a) a report of its operations during the financial year;
- (b) financial statements for the financial year; and
- (c) a copy of each directive given to it during that year by the Minister.

(2) The institution must submit the report to the Minister not later than six months after the end of the financial year in question.

(3) The report of operations referred to in subitem (1)(a) must be prepared in a form and contain information determined by the Minister.

(4) The financial statements referred to in subitem (1)(b) must be consistent with generally accepted accounting practices and must contain the information and be prepared in the manner and form determined by the Minister.

(5) Such financial statements must:

- (a) fairly present the results of the financial transactions of the institution during the financial year to which they relate and the financial position of the institution as at the end of the year; and
- (b) be audited by a chartered accountant appointed by the board.

(6) The institution must publish its annual report and make copies available at the offices of the institution for inspection and purchase by the public.

(7) The institution must:

- (a) if it is a catchment management agency, table its annual report in Parliament; or
- (b) if it is a water user association, send a copy of its annual report to the Secretary to Parliament.

Schedule 5: MODEL CONSTITUTION OF WATER USER ASSOCIATION

Sections 91(1)(f), 93(1) and 94(2)

1. Name of Association

The name of the Association is [specify the name] (hereinafter referred to as 'the Association').

2. Application of the National Water Act of 1998 to the Constitution

This Constitution is subject to chapter 8 of the National Water Act of 1998 (hereafter referred to as the Act) and schedule 4 to the Act.

3. Objects of the Association

The objects of the Association are: [briefly describe the objects]

4. Principal functions of the Association

The principal functions to be performed by the Association in its area of operation are:

[Note: The following are options. Others may be proposed. Choose and number your options.]

- To prevent water from any water resource being wasted.
- To protect water resources.
- To prevent any unlawful water use.
- To remove or arrange to remove any obstruction unlawfully placed in a watercourse.
- To prevent any unlawful act likely to reduce the quality of water in any water resource.
- To exercise general supervision over water resources.
- To regulate the flow of any watercourse by:
 - clearing its channel;

- reducing the risk of damage to the land in the event of floods; or
- changing a watercourse back to its previous course where it has been altered through natural causes.
- To investigate and record:
 - the quantity of water at different levels of flow in a watercourse;
 - the times when; and
 - the places where water may be used by any person entitled to use water from a water resource.
- To construct, purchase or otherwise acquire, control, operate and maintain waterworks considered to be necessary for:
 - draining land; and
 - supplying water to land for irrigation or other purposes.
- To supervise and regulate the distribution and use of water from a water resource according to the relevant water use entitlements, by erecting and maintaining devices for:
 - measuring and dividing; or
 - controlling the diversion of the flow of water.

5. Ancillary functions of Associations

(1) The Association may perform functions other than its principal functions only if it is not likely:

- (a) to limit the Association's capacity to perform its principal functions; and
- (b) to be to the financial prejudice of itself or its members.

(2) Other functions of the Association may include:

[Note: The following are options. Others may be proposed. Choose and number your options.]

- Providing management services, training and other support services to:
 - (a) water services institutions; and
 - (b) rural communities.
- Providing catchment management services to or on behalf of responsible authorities.

6. Founding members

(1) The founding members of the Association are the members whose names appear in Annexure 1 of this Constitution and who have been authorised by the proposed participants to act on their behalf in establishing the Association.

(2) The founding members will, for purposes of arranging the first election of members of the Management Committee, be considered to be the Management Committee of the Association with powers and duties limited to arranging the election in accordance with this Constitution.

7. Membership of the Association

(1) The first members of the Association are the persons who, during the consultation process, indicated their willingness to become members of the Association and whose names appear in Annexure 2 of this Constitution.

(2) Application for new membership of the Association must be addressed to the Management Committee which must, at a meeting of the Committee, consider an application and approve it unless there is good reason to refuse it.

(3) An association must allow a person to become a member of the Association if directed by the Minister to do so.

(4) A member may only resign as a member of the Association with the approval of the Management Committee, which may not unreasonably withhold its approval. [Note: A reason for not accepting a resignation would be, for example, if the resignation would detrimentally affect the

Association's ability to meet its financial commitments in respect of infrastructure provided to serve the member concerned.]

8. Register of members

All members must communicate their addresses from time to time to the person acting as secretary of the Association, who must keep a register of the names of members and of their addresses.

9. Rights of members

(1) Membership of the Association does not give any member a right to any of the moneys, property or assets of the Association, but only gives members the privileges of membership, subject to such charges and reasonable restrictions as are imposed by the Management Committee from time to time.

(2) A member whose application for membership has been approved is bound by the Constitution and rules of the Association which are then in force or as they are subsequently amended.

10. Liability of members

The liability of members is limited to the amount of unpaid charges and interest thereon owing by them to the Association.

11. Qualification of candidates for membership of Management Committee

Any member of the Association is, subject to disqualifications contemplated in schedule 4 to the Act, eligible for election as a member of the Management Committee. If the Association's area of operation is divided into sub-areas, a member will only be eligible for election as a member of the Management Committee for the sub-area in which that member resides.

12. Nomination of and voting for members of Management Committee

Any person whose name is on the voters list of the Association may nominate candidates for election as members of the Management Committee and may vote at an election of members of the Committee. A person whose name appears on a voters list prepared for a sub-area of the Association's area of operation, will be entitled to nominate candidates and to vote only in elections for that sub-area.

13. Membership of Management Committee

[Note: The following are options. Others may be proposed. Choose and number your options.]

(1) Option (a) The Management Committee of the Association will consist of [specify the number] members.

Option (b) [Note: This option is additional to option (a) and applies where the area of operation of the Association is divided into sub-areas.] The area of operation of the Association will be divided into sub-areas as described in Annexure 3 to this Constitution. Each area will be represented on the Management Committee on the basis set out in that Annexure.

(2) Membership of the Management Committee will be determined by an election process in which all members whose names are on the Association's voters list may participate.

(3) Option (a) Members will, subject to the disqualifications contemplated in schedule 4, be elected for a fixed term of [specify period] years.

Option (b) [Applies to election process only] Members will, subject to the disqualifications contemplated in schedule 4, be elected for a fixed term of [specify period] years. The first election will take place as follows:

- (i) one-third of the members elected who stand highest on the poll will hold office for a period of [specify period] years;
- (ii) one-third of the members elected who stand next highest on the poll will hold office for a period of [specify period] years; and
- (iii) the remaining members elected will hold office for a period of [specify period] years.

If, in any case:

- (a) no poll is required because the nominations received were not greater than the number of members to be elected; or
 - (b) two or more candidates have received an equal number of votes, the respective periods of office of the members will be determined by lot under supervision of the returning officer.
- (4) If a vacancy occurs on the Management Committee, the vacancy must be filled according to this item, provided that the member must be elected for a period equal to the remainder of the period for which the member who has vacated the office would otherwise have continued in office.
- (5) At least 30 days' notice of an election must be given to all members of the Association.

14. Appointment of chairperson and deputy chairperson

[Note: The following are options. Others may be proposed. Choose and number your options.]

Option (a):

After the election of the Management Committee the members of that Committee must elect a chairperson and deputy chairperson of the Association from amongst their members. The Management Committee may appoint any person to chair the proceedings for that purpose.

Option (b):

(1) After the election of the Management Committee the members of the Association must elect a chairperson and a deputy chairperson of the Association from amongst the elected members of the Management Committee. The members of the Association may appoint any person to chair the proceedings for that purpose.

(2) The chairperson and deputy chairperson hold office for a period of 12 months from the date of their election and may be re-elected.

(3) When the period of office of a chairperson or deputy chairperson expires, that person will, provided that he or she remains a member of the Association, remain in office until the next meeting of the Management Committee.

(4) A new chairperson and deputy chairperson of the Management Committee will be elected annually. Should any of these offices be vacated before the term expires, the office must be filled immediately according to the procedure set out in this item.

15. Voter's list

(1) The founding members of the Association must select a person to prepare a voters list for the first election of members of the Management Committee. The voters' list must show:

- (a) the names of all members included in Annexure 2 to this Constitution and, where appropriate, the name of a member's accredited representative;
- (b) particulars of each member's entitlement to water use; and
- (c) the number of votes a member is entitled to.

(2) If the Association's area of operation is divided into sub-areas, the voters' list must also be divided into subareas and the particulars referred to in subitem (1) must be shown under the respective subareas.

(3) The number of votes will be determined on the following basis:
[Note: The following are options. Others may be proposed. Choose and number your options.]

Option (a) One vote per entitlement to water use.

Option (b) A pro-rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all of the entitlements registered with the Association. In this calculation all fractions must be rounded off to the next higher figure.

Option (c) A pro-rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all the entitlements registered with the Association. In this calculation:

(i) all fractions must be rounded off to the next higher figure; and

(ii) no member will be awarded more than 10 votes.

Option (d) One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member's entitlement.

Option (e) One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member's entitlement, provided that no member will be awarded more than 10 votes.

(4) If the entitlement to use water is not in the name of a natural person, the holder must nominate an accredited representative whose name must appear on the voters' list and who may exercise the vote.

(5) If the entitlement is in the name of two or more persons they must designate one of their numbers to represent them and that person's name must appear on the voters' list and he or she may exercise the vote.

(6) The voters' list must annually be revised by the Management Committee and also whenever there is an amendment to the Association's area of operation.

16. Appointment of employees

[Note: The appointment of a Chief Executive Officer for the Association is dealt with in schedule 4 to the Act.]

(1) The Management Committee may employ such persons as it considers necessary to perform the Association's functions under this Constitution.

(2) The appointment of employees or any change in their conditions of service must be approved by resolution of the Management Committee.

(3) All employees of the Association will remain in office despite any change in the composition and membership of the Management Committee.

17. Raising of loans

(1) The Management Committee may raise by way of loans, including bank overdrafts, any funds required by it for the purpose of carrying out any of its functions under this Constitution or the Act.

(2) Whenever the Management Committee proposes to raise a loan, it must give notice in writing of its intention, setting out details of the proposal. The notice must be given to every member of the Association not less than 21 days before the date of the meeting of the Committee at which the proposal will be considered.

(3) No loan may be raised without a resolution of the Management Committee passed at a meeting at which not less than two-thirds of the members of the Committee are present.

18. Charges and the recovery of charges

(1) For the purpose of defraying any expenditure that the Management Committee has lawfully incurred or may lawfully incur in carrying out its

functions and duties it may annually assess charges on members according to the pricing strategy for water use set by the Minister.

(2) The Management Committee may recover the charges assessed from either:

- (a) the owners of the land concerned; or
 - (b) any person to whom water is supplied on the land.
- (3) Whenever the Management Committee has assessed a charge, the Committee must prepare an assessment roll setting forth:
- (a) the name of each member liable to pay charges;
 - (b) a description of the piece of land, which may be a specially delineated area, in respect of which the charge is assessed;
 - (c) the quantity of water or abstraction time period to which the member is entitled;
 - (d) the amount of the charge assessed;
 - (e) the date or dates on which payment is due and the amount due on each date; and
 - (f) the rate of interest payable on non-payment and the effective date of interest.
- (4) A copy of the assessment roll must lie open for inspection in the office of the Association at all reasonable times by any member of the Association.

19. Annual Report

[Note: The following are options. Others may be proposed. Choose and number your options.]

Option (a) The procedure as set out in schedule 4 to the Act applies.

[Note: This option is only recommended for use by well-established irrigation boards with a large membership and which are transformed into water user associations after promulgation of the Act.]

Option (b) The Management Committee must, within three months after the end of the Association's financial year, convene a general meeting of members and must at the meeting:

- (i) table an audited financial statement of the Association's accounts for the preceding financial year, including full particulars of any remuneration paid by the Association to members of the Management Committee and employees of the Association; and
- (ii) give an account to the members of its activities during the year.

20. Winding up

[Note: The following are options. Others may be proposed. Choose and number your options.]

Option (a):

(1) The Association may be dissolved by a resolution passed at a special general meeting held for that purpose, provided that:

- (i) the resolution is passed by a majority of two-thirds of the members present and entitled to vote at the meeting; and
- (ii) the resolution is confirmed at a further special general meeting held not less than four weeks after the preceding special general meeting by a majority vote of members entitled to vote thereon.

(2) A meeting passing a resolution referred to in subitem (1)(i) of this Constitution may also pass resolutions by a majority vote for:

- (a) the appointment of a liquidator; and
- (b) the disposal of surplus funds and assets of the Association after winding up and after the payment of all debts and obligations of the Association, provided that any surplus assets may only be transferred to an Association or institution with objects similar to those of the Association, or to the Minister.

Option (b):

The affairs of the Association will be wound up by a person appointed by the Minister in accordance with any directives given by the Minister, and subject to section 97 of the Act.

LIST OF FOUNDING MEMBERS

ANNEXURE 1

(In alphabetical order)

LIST OF MEMBERS

ANNEXURE 2

(In alphabetical order)

DESCRIPTION OF SUB-AREAS AND REPRESENTATION IN MANAGEMENT COMMITTEE

ANNEXURE 3

Schedule 6: WATER TRIBUNAL

Section 148(4)

Part 1: Water Tribunal members

1. Terms of office of members

- (1) A member of the Water Tribunal is appointed for a period of office determined by the Minister, which may not exceed four years.
- (2) A member may be re-appointed.

2. Disqualification of members

No person may hold office as a member of the Water Tribunal:

- (a) if that person is an unrehabilitated insolvent; or
- (b) if that person has been convicted of any offence involving dishonesty or has been sentenced to imprisonment without the option of a fine. A disqualification under this subitem ends three years after the sentence has been served.

3. Nominations for appointment to Water Tribunal

- (1) Whenever necessary, the Minister must:
 - (a) publish a notice in the *Gazette* calling for nominations for appointment to the Water Tribunal; and
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which he or she considers to be appropriate.
- (2) A notice in terms of subitem (1) must set out, in general terms, at least:
 - (a) the activities of the Tribunal;
 - (b) the time commitments reasonably expected from members of the Tribunal;
 - (c) the term of office for which appointments will be considered;
 - (d) the criteria for disqualification as a member;
 - (e) the requirements with which a nomination must comply;
 - (f) the date by which nominations must be submitted, which may not be earlier than 30 days after publication of the notice; and
 - (g) the address to which nominations must be sent.

(3) Every nomination of a person for appointment to the Tribunal must be signed by a proposer and a seconder, neither of whom may be the nominee, and must contain the nominee's signed acceptance.

(4) Each of the Judicial Service Commission and the Water Research Commission:

- (a) must consider all valid nominations received before the date contemplated in subitem (2)(f);
 - (b) may prepare a short list of nominees;
 - (c) may interview all short-listed nominees; and
 - (d) must, subject to subitem (6), make recommendations to the Minister on the appointment of members of the Tribunal.
- (5) In recommending a nominee for appointment each of the Judicial Service Commission and the Water Research Commission must consider:
- (a) the criteria set out in section 146(4) of the Act;
 - (b) the reputation and integrity of the nominee; and
 - (c) any conflict of interests which the nominee may have.
- (6)(a) The Judicial Service Commission must recommend at least two persons qualified in law for appointment as chairperson of the Tribunal.
- (b) The Water Research Commission must recommend persons qualified in water resource management or engineering or with knowledge in related fields, for appointment as deputy chairperson and additional members of the Tribunal.
- (c) The Judicial Service Commission or the Water Research Commission, as the case may be, must recommend two candidates for appointment for every vacancy, including that of chairperson or deputy chairperson, where necessary.
- (7) The Department must pay all costs:
- (a) relating to the publication of notices in terms of subitem (1); and
 - (b) incurred by the Judicial Service Commission and the Water Research Commission in the performance of their tasks.

4. Termination of office of members

- (1) A member of the Water Tribunal ceases to hold office:
- (a) from the effective date of the member's resignation;
 - (b) if the member is absent without leave from the chairperson on two consecutive sittings of the Tribunal at which the member's presence is required. Leave may be granted retrospectively if the absence of the member was due to unforeseen circumstances;
 - (c) if the member has become disqualified in terms of item 2;
 - (d) if the member has been declared to be of unsound mind by a competent authority; or
 - (e) if the member's appointment has been terminated in terms of section 146 of the Act.
- (2) A member who is not the chairperson must notify the chairperson of his or her resignation. The chairperson must notify the Minister of his or her own resignation and the resignation of any other member.

Part 2: Lodging and hearing of appeals and applications

5. Lodging of appeals and applications

- (1) An appeal to the Water Tribunal under section 148(1) and an application for determination of compensation must be commenced by serving a copy of a written notice of appeal or application on the relevant responsible authority or catchment management agency and lodging the original with the Tribunal.
- (2) The Tribunal may, for good reason, condone the late lodging of an appeal or application.

(3) A responsible authority or a catchment management agency against whose decision or offer an appeal or application is lodged must within a reasonable time:

- (a) send to the Tribunal all documents relating to the matter, together with the reasons for its decision; and
- (b) allow the appellant or applicant and every party opposing the appeal or application to make copies of the documents and reasons.

6. Hearing of appeals or applications by Water Tribunal

(1) An appeal or application before the Water Tribunal must be heard by one or more members, as the chairperson may determine.

(2) A party to an appeal or application may be represented by a person of that party's choice.

(3) Appeals and applications to the Tribunal take the form of a rehearing. The Tribunal may receive evidence, and must give the appellant or applicant and every party opposing the appeal or application an opportunity to present their case.

(4) The Tribunal must keep minutes containing a summary of the proceedings of every hearing.

7. Subpoenas and evidence

(1) The Water Tribunal may:

- (a) subpoena for questioning any person who may be able to give information relevant to the issues; and
- (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the issues, to appear before the Tribunal and to produce that book, document or object.

(2) A subpoena must be signed by a Tribunal member and must:

- (a) specifically require the person named in it to appear before the Tribunal;
- (b) state the date, time and place at which the person must appear; and
- (c) sufficiently identify any book, document or object to be produced by that person.

(3) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies to the questioning of any person and to the production of any book, document or object in terms of this item.

(4) The party at whose request a subpoena was issued must pay witness fees, travel and subsistence allowances to a person subpoenaed to appear before the Tribunal, at the applicable High Court scale.

(5) The Tribunal may administer an oath or accept an affirmation from any person called or subpoenaed to give evidence.

8. Contempt of the Water Tribunal

(1) A person commits contempt of the Water Tribunal:

- (a) if, after having been subpoenaed to appear before the Tribunal, the person without good cause does not attend;
- (b) if the person, without good cause, fails to produce any book, document or object specified in a subpoena;
- (c) if, after having appeared in response to a subpoena, the person fails to remain in attendance until excused by the Tribunal;
- (d) by refusing to take the oath or to make an affirmation as a witness when the Tribunal so requires;
- (e) by refusing to answer any question fully and to the best of that person's knowledge and belief, but subject to item 7(3);
- (f) if during the proceedings, the person behaves improperly; or

- (g) if the person prejudices or improperly influences the proceedings of the Tribunal.
- (2) The Water Tribunal may refer any contempt to a High Court. A High Court may make an appropriate order.

9. Decisions of the Water Tribunal

- (1) The Water Tribunal must give its decision in writing. A majority decision of members hearing a matter (if the matter is heard by more than two members) constitutes a decision of the Tribunal.
- (2) The Tribunal must, at the request of any party and within a reasonable time, give written reasons for its decision on any matter.

Schedule 7: (ACTS REPEALED)

NATIONAL WATER AMENDMENT ACT 45 OF 1999

To amend the National Water Act, 1998, so as to effect textual improvements; and to change the procedure for the appointment of members of the Water Tribunal; and to provide for matters connected therewith.

- 1 Amends section 32 of the National Water Act 36 of 1998 by substituting subsection (1).
 - 2 Amends section 33 of the National Water Act 36 of 1998 by substituting subsections (1), (2) and (3).
 - 3 Amends section 146 of the National Water Act 36 of 1998, as follows: paragraph (a) substitutes subsection (5); and paragraph (b) substitutes subsection (8).
 - 4 Amends item 3 of schedule 6 to the National Water Act 36 of 1998 by substituting subitems (1), (4), (5), (6) and (7).
 - 5 Short title
- This is the National Water Amendment Act, 1999.

2.2.2.3.2 Water Services Act

Description: The Water Services Act of 1997 was enacted to provide for matters ranging from the right of access to basic water supply and basic sanitation, to the provisions of a regulatory framework for water services institutions and water services intermediaries, as well as the gathering and the distribution of information in a national information system.

Water Services Act 108 of 1997

As last amended by the Water Services Amendment Act 30 of 2004.

Preamble

Recognising the rights of access to basic water supply and basic sanitation necessary to ensure sufficient water and an environment not harmful to health or well-being;

Acknowledging that there is a duty on all spheres of government to ensure that water supply services and sanitation services are provided in a manner which is efficient, equitable and sustainable;

Acknowledging that all spheres of government must strive to provide water supply services and sanitation services sufficient for subsistence and sustainable economic activity;

Recognising that in striving to provide water supply services and sanitation services, all spheres of government must observe and adhere to the principles of co-operative government;

Acknowledging that although municipalities have authority to administer water supply services and sanitation services, all spheres of government have a duty, within the limits of physical and financial feasibility, to work towards this object;

Recognising that the provision of water supply services and sanitation services, although an activity distinct from the overall management of water resources, must be undertaken in a manner consistent with the broader goals of water resource management;

Recognising that water supply services and sanitation services are often provided in monopolistic or near monopolistic circumstances and that the interests of consumers and the broader goals of public policy must be promoted; and

Confirming the National Government's role as custodian of the nation's water resources.

CHAPTER 1: Introductory Provisions

1. Definitions

In this Act, unless the context shows that another meaning is intended:

'*approve*' means approve in writing, and 'approval' has a corresponding meaning;

'*basic sanitation*' means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households, including informal households;

'*basic water supply*' means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene;

'*consumer*' means any end user who receives water services from a water services institution, including an end user in an informal settlement;

'*consumer installation*' means a pipeline, fitting or apparatus installed or used by a consumer to gain access to water services and includes a meter attached to such pipeline, fitting or apparatus;

'*development plan*' means a water services development plan adopted in terms of this Act;

'*disposal of industrial effluent*' means the collection, removal, disposal or treatment of effluent emanating from industrial use of water;

'*emergency situation*' means any situation declared as such in terms of a law and which is likely to cause injury or loss of life;

'*industrial use*' means the use of water for mining, manufacturing, generating electricity, land-based transport, construction or any related purpose;

'*Minister*' means the Minister of Water Affairs and Forestry;

'*organisation representing municipalities*' means an organisation recognised under a law contemplated in section 163 of the Constitution as representing municipalities, or in the absence of such a law, any organisation or organisations considered by the Minister after consultation with the Minister for Provincial Affairs and Constitutional Development as representing municipalities, and includes an organisation representing district or rural councils as defined in the Local Government Transition Act, 1993 (Act 209 of 1993);

'*person*' includes a water services institution;

'*prescribe*' means prescribe by regulation;

'*Province*' means the Member of the Executive Council responsible for local government in the Province concerned;

'*regulation*' means a regulation made under this Act;

'*sanitation services*' means the collection, removal, disposal or purification of human excreta, domestic waste-water, sewage and effluent resulting from the use of water for commercial purposes;

'*this Act*' includes the regulations;

'*Water board*' means an organ of state established or regarded as having been established in terms of this Act to perform, as its primary activity, a public function;

'*water services*' means water supply services and sanitation services;

'*water services authority*' means any municipality, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act 209 of 1993), responsible for ensuring access to water services;

'*water services institution*' means a water services authority, a water services provider, a water board and a water services committee;

'*water services intermediary*' means any person who is obliged to provide water services to another in terms of a contract where the obligation to provide water services is incidental to the main object of that contract;

'*water services provider*' means any person who provides water services to consumers or to another water services institution, but does not include a water services intermediary;

'*water services work*' means a reservoir, dam, well, pumphouse, borehole, pumping installation, purification work, sewage treatment plant, access road, electricity transmission line, pipeline, meter, fitting or apparatus built, installed or used by a water services institution:

- (i) to provide water services;
- (ii) to provide water for industrial use; or
- (iii) to dispose of industrial effluent;

'*water supply services*' means the abstraction, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use but not water for industrial use.

2. Main objects of Act

The main objects of this Act are to provide for:

- (a) the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being;

- (b) the setting of national standards and norms and standards for tariffs in respect of water services;
- (c) the preparation and adoption of water services development plans by water services authorities;
- (d) a regulatory framework for water services institutions and water services intermediaries;
- (e) the establishment and disestablishment of water boards and water services committees and their duties and powers;
- (f) the monitoring of water services and intervention by the Minister or by the relevant Province;
- (g) financial assistance to water services institutions;
- (h) the gathering of information in a national information system and the distribution of that information;
- (i) the accountability of water services providers; and
- (j) the promotion of effective water resource management and conservation.

3. Right of access to basic water supply and basic sanitation

- (1) Everyone has a right of access to basic water supply and basic sanitation.
- (2) Every water services institution must take reasonable measures to realise these rights.
- (3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.
- (4) The rights mentioned in this section are subject to the limitations contained in this Act.

4. Conditions for provision of water services

- (1) Water services must be provided in terms of conditions set by the water services provider.
- (2) These conditions must:
 - (a) be accessible to the public;
 - (b) accord with conditions for the provision of water services contained in bylaws made by the water services authority having jurisdiction in the area in question; and
 - (c) provide for:
 - (i) the technical conditions of existing or proposed extensions of supply;
 - (ii) the determination and structure of tariffs;
 - (iii) the conditions for payment;
 - (iv) the circumstances under which water services may be limited or discontinued;
 - (v) procedures for limiting or discontinuing water services; and
 - (vi) measures to promote water conservation and demand management.
- (3) Procedures for the limitation or discontinuation of water services must:
 - (a) be fair and equitable;
 - (b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless:
 - (i) other consumers would be prejudiced;
 - (ii) there is an emergency situation; or
 - (iii) the consumer has interfered with a limited or discontinued service; and
 - (c) not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.

(4) Every person who uses water services provided by a water services provider does so subject to any applicable condition set by that water services provider.

(5) Where one water services institution provides water services to another water services institution, it may not limit or discontinue those services for reasons of non-payment, unless it has given at least 30 days' notice in writing of its intention to limit water services or 60 days' notice in writing of its intention to discontinue those water services to:

- (a) the other water services institution;
- (b) the relevant Province; and
- (c) the Minister.

5. Provision of basic water supply and basic sanitation to have preference

If the water services provided by a water services institution are unable to meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them.

6. Access to water services through nominated water services provider

(1) Subject to subsection (2), no person may use water services from a source other than a water services provider nominated by the water services authority having jurisdiction in the area in question, without the approval of that water services authority.

(2) A person who, at the commencement of this Act, was using water services from a source other than one nominated by the relevant water services authority, may continue to do so:

- (a) for a period of 60 days after the relevant water services authority has requested the person to apply for approval; and
- (b) if the person complies with a request in terms of paragraph (a) within the 60 day period, until:
 - (i) the application for approval is granted, after which the conditions of the approval will apply; or
 - (ii) the expiry of a reasonable period determined by the water services authority, if the application for approval is refused.

7. Industrial use of water

(1) Subject to subsection (3), no person may obtain water for industrial use from any source other than the distribution system of a water services provider nominated by the water services authority having jurisdiction in the area in question, without the approval of that water services authority.

(2) Subject to subsection (3), no person may dispose of industrial effluent in any manner other than that approved by the water services provider nominated by the water services authority having jurisdiction in the area in question.

(3) A person who, at the commencement of this Act, obtains water for industrial use or disposes of industrial effluent from a source or in a manner requiring the approval of a water services authority under subsection (1) or (2), may continue to do so:

- (a) for a period of 60 days after the relevant water services authority has requested the person to apply for approval; and
- (b) if the person complies with a request in terms of paragraph (a) within the 60 day period, until:
 - (i) the application for approval is granted, after which the conditions of the approval will apply; or
 - (ii) the expiry of a reasonable period determined by the water services authority, if the application for approval is refused.

- (4) No approval given by a water services authority under this section relieves anyone from complying with any other law relating to:
- (a) the use and conservation of water and water resources; or
 - (b) the disposal of effluent.

8. Approvals and appeal

- (1) A water services authority whose approval is required in terms of section 6 or 7:
- (a) may not unreasonably withhold the approval; and
 - (b) may give the approval subject to reasonable conditions.
- (2) A water services authority may require a person seeking approval to provide water services to others on reasonable terms, including terms relating to:
- (a) payment for the services; and
 - (b) compensation for the cost of reticulation and any other costs incurred in providing the water service.
- (3) In determining what is reasonable under subsections (1)(a), (1)(b) and (2), a water services authority:
- (a) must consider the following factors, to the extent that the water services authority considers them to be relevant:
 - (i) The cost of providing;
 - (ii) the practicability of providing;
 - (iii) the quality of;
 - (iv) the reliability of;
 - (v) the financial, technological and managerial advisability of providing;
 - (vi) the economic and financial efficiency of; and
 - (vii) the socio-economic and conservation benefits that may be achieved by providing,
 - (b) the water services in question; and
 - (c) may consider any other relevant factor.
- (4) A person who has made an application in terms of section 6 or 7 may appeal to the Minister against any decision, including any condition imposed, by that water services authority in respect of the application.
- (5) An appellant, under subsection (4), must note an appeal by lodging a written notice of appeal with:
- (a) the Minister; and
 - (b) the person against whose decision the appeal is made, within 21 days of the appellant becoming aware of the decision.
- (6) A person who has made an application in terms of section 6 or 7 may appeal to the Minister if the water services authority in question fails to take a decision on the application within a reasonable time.
- (7) An appeal under subsection (6):
- (a) must be conducted as if the application had been refused; and
 - (b) must be noted by lodging a written notice of appeal with the Minister and the water services authority in question.
- (8) A relevant Province may intervene as a party in an appeal under subsection (4) or (6).
- (9) The Minister may on appeal confirm, vary or overturn any decision of the water services authority concerned.
- (10) The Minister may prescribe the procedure for conducting an appeal under this section.

CHAPTER 2: Standards and Tariffs

9. Standards

- (1) The Minister may, from time to time, prescribe compulsory national standards relating to:
 - (a) the provision of water services;
 - (b) the quality of water taken from or discharged into any water services or water resource system;
 - (c) the effective and sustainable use of water resources for water services;
 - (d) the nature, operation, sustainability, operational efficiency and economic viability of water services;
 - (e) requirements for persons who install and operate water services works; and
 - (f) the construction and functioning of water services works and consumer installations.
- (2) The standards prescribed under subsection (1) may differentiate between:
 - (a) different users of water services; and
 - (b) different geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area.
- (3) In prescribing standards under subsection (1), the Minister must consider:
 - (a) the need for everyone to have a reasonable quality of life;
 - (b) the need for equitable access to water services;
 - (c) the operational efficiency and economic viability of water services;
 - (d) any norms and standards for applicable tariffs for water services;
 - (e) any other laws or any standards set by other governmental authorities;
 - (f) any guidelines recommended by official standard-setting institutions;
 - (g) any impact which the water services might have on the environment; and
 - (h) the obligations of the National Government as custodian of water resources.
- (4) Every water services institution must comply with the standards prescribed under subs (1).

10. Norms and standards for tariffs

- (1) The Minister may, with the concurrence of the Minister of Finance, from time to time prescribe norms and standards in respect of tariffs for water services.
- (2) These norms and standards may:
 - (a) differentiate on an equitable basis between:
 - (i) different users of water services;
 - (ii) different types of water services; and
 - (iii) different geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area;
 - (b) place limitations on surplus or profit;
 - (c) place limitations on the use of income generated by the recovery of charges; and
 - (d) provide for tariffs to be used to promote or achieve water conservation.
- (3) In prescribing the norms and standards, the Minister must consider, among other factors:
 - (a) any national standards prescribed by him or her;
 - (b) social equity;
 - (c) the financial sustainability of the water services in the geographic area in question;

- (d) the recovery of costs reasonably associated with providing the water services;
 - (e) the redemption period of any loans for the provision of water services;
 - (f) the need for a return on capital invested for the provision of water services; and
 - (g) the need to provide for drought and excess water availability.
- (4) No water services institution may use a tariff which is substantially different from any prescribed norms and standards.

CHAPTER 3: Water Services Authorities

11. Duty to provide access to water services

- (1) Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services.
- (2) This duty is subject to:
 - (a) the availability of resources;
 - (b) the need for an equitable allocation of resources to all consumers and potential consumers within the authority's area of jurisdiction;
 - (c) the need to regulate access to water services in an equitable way;
 - (d) the duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;
 - (e) the duty to conserve water resources;
 - (f) the nature, topography, zoning and situation of the land in question; and
 - (g) the right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.
- (3) In ensuring access to water services, a water services authority must take into account, among other factors:
 - (a) alternative ways of providing access to water services;
 - (b) the need for regional efficiency;
 - (c) the need to achieve benefit of scale;
 - (d) the need for low costs;
 - (e) the requirements of equity; and
 - (f) the availability of resources from neighbouring water services authorities.
- (4) A water services authority may not unreasonably refuse or fail to give access to water services to a consumer or potential consumer in its area of jurisdiction.
- (5) In emergency situations a water services authority must take reasonable steps to provide basic water supply and basic sanitation services to any person within its area of jurisdiction and may do so at the cost of that authority.
- (6) A water services authority may impose reasonable limitations on the use of water services.

12. Duty to prepare draft water services development plan

- (1) Every water services authority must, within one year after the commencement of this Act:
 - (a) as part of the process of preparing any integrated development plan in terms of the Local Government Transition Act, 1993 (Act 209 of 1993); or
 - (b) separately, if no process contemplated in paragraph (a) has been initiated, prepare:
 - (i) a draft water services development plan for its area of jurisdiction; and

- (ii) a summary of that plan.
- (2) The Minister may extend the one-year period in respect of a water services authority in consultation with the Minister for Provincial Affairs and Constitutional Development and the relevant Province.

13. Contents of draft water services development plan

Every draft water services development plan must contain details:

- (a) of the physical attributes of the area to which it applies;
- (b) of the size and distribution of the population within that area;
- (c) of a time frame for the plan, including the implementation programme for the following five years;
- (d) of existing water services;
- (e) of existing industrial water use within the area of jurisdiction of the relevant water services authority;
- (f) of existing industrial effluent disposed of within the area of jurisdiction of the relevant water services authority;
- (g) of the number and location of persons within the area who are not being provided with a basic water supply and basic sanitation;
- (h) regarding the future provision of water services and water for industrial use and the future disposal of industrial effluent, including:
 - (i) the water services providers which will provide those water services;
 - (ii) the contracts and proposed contracts with those water services providers;
 - (iii) the proposed infrastructure necessary;
 - (iv) the water sources to be used and the quantity of water to be obtained from and discharged into each source;
 - (v) the estimated capital and operating costs of those water services and the financial arrangements for funding those water services, including the tariff structures;
 - (vi) any water services institution that will assist the water services authority;
 - (vii) the operation, maintenance, repair and replacement of existing and future infrastructure;
- (i) of the number and location of persons to whom water services cannot be provided within the next five years, setting out:
 - (i) the reasons therefor; and
 - (ii) the time frame within which it may reasonably be expected that a basic water supply and basic sanitation will be provided to those persons; and
- (j) of existing and proposed water conservation, recycling and environmental protection measures.

14. Draft water services development plan

- (1) A water services authority must:
 - (a) take reasonable steps to bring its draft water services development plan to the notice of its consumers, potential consumers, industrial users and water services institutions within its area of jurisdiction;
 - (b) invite public comment thereon to be submitted within a reasonable time; and
 - (c) send copies of the draft water services development plan to the Minister, the relevant Province and all neighbouring water services authorities.
- (2) A copy of the draft water services development plan, a copy of its summary, all written comments and a report on all comments, other than written comments, must be:
 - (a) available for inspection at the offices of the water services authority; and

- (b) obtainable against payment of a nominal fee.

15. Adoption of development plan

- (1) A water services authority must consider all comments received by it before adopting a development plan.
- (2) A water services authority must, on request, report on the extent to which a specific comment has been taken into account or, if a comment was not taken into account, provide reasons therefor.
- (3) A water services authority must supply a copy of every development plan to the Minister, the Minister for Provincial Affairs and Constitutional Development, the relevant Province and all neighbouring water services authorities.
- (4) A copy of the development plan:
 - (a) must be available for inspection at the offices of the water services authority; and
 - (b) must be obtainable against payment of a nominal fee.
- (5) A water services development plan must form part of any integrated development plan contemplated in the Local Government Transition Act, 1993 (Act 209 of 1993).

16. New development plan

A water services authority must prepare and adopt a new development plan at intervals determined by the Minister in consultation with the Minister for Provincial Affairs and Constitutional Development, in accordance with the procedure set out in sections 12 to 15.

17. Deviation from development plan

No substantial deviation from a development plan is valid unless it is embodied in a new development plan adopted in accordance with the procedure set out in sections 12 to 16.

18. Reporting on implementation of development plan

- (1) A water services authority must report on the implementation of its development plan during each financial year.
- (2) The report:
 - (a) must be made within four months after the end of each financial year; and
 - (b) must be given to the Minister, the Minister for Provincial Affairs and Constitutional Development, the relevant Province and every organisation representing municipalities having jurisdiction in the area of the water services authority.
- (3) The water services authority must publicise a summary of its report.
- (4) A copy of the report and of its summary must be:
 - (a) available for inspection at the offices of the water services authority; and
 - (b) obtainable against payment of a nominal fee.

19. Contracts and joint ventures with water services providers

- (1) A water services authority:
 - (a) may perform the functions of a water services provider itself; and
 - (b) may:
 - (i) enter into a written contract with a water services provider; or
 - (ii) form a joint venture with another water services institution, to provide water services.
- (2) A water services authority may only enter into a contract with a private sector water services provider after it has considered all known public sector

water services providers which are willing and able to perform the relevant functions.

- (3) Before entering into or renewing:
 - (a) a contract with a water services provider; or
 - (b) a joint venture with another water services institution other than a public sector water services institution which will provide services within the joint venture at cost and without profit, the water services authority must publicly disclose its intention to do so.
- (4) Any water services provider entering into a contract or joint venture with a water services authority must, before entering into such a contract or joint venture, disclose and provide information on:
 - (a) any other interests it may have, which are ancillary to or associated with the relevant water services authority; and
 - (b) any rate of return on investment it will or may gain by entering into such a contract or joint venture.
- (5) The Minister may, after consultation with the Minister for Provincial Affairs and Constitutional Development, prescribe:
 - (a) matters which must be regulated by a contract between a water services provider and a water services authority;
 - (b) compulsory provisions to be included in such a contract; and
 - (c) requirements for a joint venture between a water services authority and a water services institution,
 to ensure:
 - (i) that water services are provided on an efficient, equitable, cost-effective and sustainable basis;
 - (ii) that the terms of the contract are fair and equitable to the water services authority, the water services provider and the consumer; and
 - (iii) compliance with this Act.
- (6) As soon as such a contract or joint venture agreement has been concluded, the water services authority must supply a copy thereof to the relevant Province and to the Minister.
- (7) The Minister may provide model contracts to be used as a guide for contracts between water services authorities and water services providers.

20. Water services authority acting as water services provider

- (1) When performing the functions of a water services provider, a water services authority must manage and account separately for those functions.
- (2) A water services authority may act as a water services provider outside its area of jurisdiction, if contracted to do so by the water services authority for the area in question.

21. Bylaws

- (1) Every water services authority must make bylaws which contain conditions for the provision of water services, and which must provide for at least:
 - (a) the standard of the services;
 - (b) the technical conditions of supply, including quality standards, units or standards of measurement, the verification of meters, acceptable limits of error and procedures for the arbitration of disputes relating to the measurement of water services provided;
 - (c) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - (d) the determination and structure of tariffs in accordance with section 10;
 - (e) the payment and collection of money due for the water services;

- (f) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
- (g) the prevention of unlawful connections to water services works and the unlawful or wasteful use of water.
- (2) Conditions under which water services are provided:
 - (a) may place limits on the areas to which water services will be provided according to the nature, topography, zoning and situation of the land in question;
 - (b) may provide for the limitation or discontinuation of water services where a consumer fails to meet his or her obligations to the water services provider, including:
 - (i) a failure to pay for services; or
 - (ii) a failure to meet other conditions for the provision of services;
 - (c) may place an obligation on a payment defaulter:
 - (i) to pay a higher deposit;
 - (ii) to pay a reconnection fee after disconnection of water services;
 - (d) may require a payment defaulter to pay a higher tariff for water services, where that defaulter gains access to water services through a communal water services work and the provision thereof cannot be disconnected or limited without other consumers being prejudiced;
 - (e) may provide for the general limitation or discontinuation of water services where:
 - (i) national disasters cause disruptions in the provision of services; or
 - (ii) sufficient water is not available for any other reason;
 - (f) may include an option to retain limited access to at least basic water supply or basic sanitation for a consumer whose water services are to be discontinued; and
 - (g) must be accessible to consumers and potential consumers.
- (3) A water services authority which:
 - (a) provides water for industrial use; or
 - (b) controls a system through which industrial effluent is disposed of, must make bylaws providing for at least:
 - (i) the standards of service;
 - (ii) the technical conditions of provision and disposal;
 - (iii) the determination and structure of tariffs;
 - (iv) the payment and collection of money due; and
 - (v) the circumstances under which the provision and disposal may be limited or prohibited.
- (4) The Minister may provide model bylaws to be used as a guide for water services authorities.

CHAPTER 4: Water Services Providers

22. Approval to operate as water services provider

- (1) No person may operate as a water services provider without the approval of the water services authority having jurisdiction in the area in question.
- (2) Any approval in terms of subsection (1):
 - (a) must be for a limited period; and
 - (b) may be granted subject to conditions.
- (3) Any person who, at the commencement of this Act, was acting as a water services provider without approval from the water services authority having jurisdiction in the area in question, may continue to do so until the expiry of reasonable notice, which notice must not be longer than one year, given by that water services authority:

- (i) that it requires the provider to enter into a contract; or
- (ii) that the continuation will be subject to approval as contemplated in subsection (1).

23. Water services provider must give information

A water services provider must give such information concerning the provision of water services as may reasonably be called for by:

- (a) the water services authority having jurisdiction in the area in question;
- (b) the relevant Province;
- (c) the Minister; or
- (d) a consumer or potential consumer.

CHAPTER 5: Water Services Intermediaries

24. Registration of water services intermediaries

A water services authority may, in its bylaws, require the registration of water services intermediaries or classes of such intermediaries within its area of jurisdiction.

25 Duties of water services intermediaries

- (1) The quality, quantity and sustainability of water services provided by a water services intermediary must meet any minimum standards prescribed by the Minister and any additional minimum standards prescribed by the relevant water services authority.
- (2) A water services intermediary may not charge for water services at a tariff which does not comply with any norms and standards prescribed under this Act and any additional norms and standards set by the relevant water services authority.

26. Default by water services intermediaries

- (1) If a water services intermediary fails to perform its functions effectively, the water services authority having jurisdiction in the area in question may direct the water services intermediary to rectify its failure.
- (2) A direction in terms of subsection (1) must set out:
 - (a) the nature of the failure;
 - (b) the steps which must be taken to rectify the failure; and
 - (c) a reasonable period within which those steps must be taken.
- (3) If the water services intermediary fails to rectify its failure within that period, the water services authority may:
 - (a) after having given the water services intermediary a reasonable opportunity to make written submissions to it; and
 - (b) after having afforded the water services intermediary a hearing on any submissions received,
 take over the relevant functions of the water services intermediary.
- (4) Where a water services authority takes over any functions in terms of subsection (3):
 - (a) it may exercise all relevant powers and perform all relevant duties on behalf of the water services intermediary to the exclusion of the water services intermediary; and
 - (b) it may use the infrastructure of the water services intermediary to the extent necessary to perform those functions.
- (5) A water services authority may appoint another water services institution to act on its behalf in performing the functions of a water services intermediary in terms of subsection (4).

(6) As soon as a water services intermediary is in a position to resume its functions effectively, the water services authority must stop exercising the powers and performing the duties on the intermediary's behalf.

(7) A water services authority may recover from a water services intermediary:

- (a) all outstanding expenses which it incurred; and
- (b) all losses which it suffered,

as a result of having acted in terms of this section.

(8) The procedure set out in subsection (3) need not be followed in an emergency situation.

27. Monitoring performance of water services providers and water services intermediaries

Every water services authority must monitor the performance of water services providers and water services intermediaries within its area of jurisdiction to ensure that:

- (a) standards and norms and standards for tariffs prescribed under sections 9 and 10 are complied with;
- (b) any condition set by a water services authority under sections 6, 7 and 22 is met;
- (c) any additional standards set by a water services authority, for water services intermediaries are complied with; and
- (d) any contract is adhered to.

CHAPTER 6: Water Boards

28. Establishment and disestablishment of water boards

(1) Subject to subsection (2) the Minister may by notice in the *Gazette*:

- (a) establish a water board;
- (b) give it a name or approve a change of its name;
- (c) determine or change its service area; or
- (d) disestablish it.

(2) The Minister may only act in terms of subsection (1) after consultation with:

- (a) every Province concerned;
- (b) the water board concerned, if in existence; and
- (c) every water services authority having jurisdiction in the service area or proposed service area.

(3) The Minister must, when acting in terms of subsection (1)(d), have regard to the interests of consumers and creditors.

(4) The Minister must, from time to time, review the provision of water services to water services authorities and make recommendations to Parliament on the establishment, functions and disestablishment of water boards.

29. Primary activity of water boards

The primary activity of a water board is to provide water services to other water services institutions within its service area.

30. Other activities of water boards

(1) A water board may perform an activity other than its primary activity only if:

- (a) it is not likely to limit the water board's capacity to perform its primary activity;

- (b) it is not likely to be to the financial prejudice of itself, any water services institution, existing consumers and other users serviced by it within its service area;
- (c) it is in accordance with the board's policy statement; and
- (d) it is provided for in a business plan.
- (2) Other activities of a water board may include, but are not limited to:
 - (a) providing management services, training and other support services to water services institutions, in order to promote co-operation in the provision of water services;
 - (b) supplying untreated or non-potable water to end users who do not use the water for household purposes;
 - (c) providing catchment management services to or on behalf of the responsible authorities;
 - (d) with the approval of the water services authority having jurisdiction in the area:
 - (i) supplying water directly for industrial use;
 - (ii) accepting industrial effluent; and
 - (iii) acting as a water services provider to consumers;
 - (e) providing water services in a joint venture with water services authorities; and
 - (f) performing water conservation functions.
- (3) The Minister must, in consultation with the Minister of Finance, the Minister of Trade and Industry and the Minister of Public Enterprises and by notice in the *Gazette*, determine:
 - (a) the nature of the activities that a water board may perform outside the borders of the Republic;
 - (b) the countries in which such activities may be performed; and
 - (c) the maximum amount of capital that a water board may take out of the Republic when an activity contemplated in subsection (4) is performed.
- (4) The Minister may, in consultation with the Minister of Finance, authorise a water board to perform an activity outside the borders of the Republic.

31. Powers of water boards

- (1) A water board is a body corporate, and has the powers of a natural person of full capacity, except those powers:
 - (a) which by nature can only attach to natural persons; and
 - (b) which are inconsistent with this Act.
- (2) A water board may:
 - (a) perform its primary activity and the other activities contemplated in section 30;
 - (b) set and enforce general conditions, including tariffs, for the provision of water services;
 - (c) determine the procedure for convening and conducting meetings of its board;
 - (d) do all things necessary for or in connection with or incidental to the performance of its activities in a manner consistent with this Act; and
 - (e) enter into contracts with any person in terms of which that person undertakes and is authorised to exercise any of the powers or to perform any of the duties of the water board, provided that a water board may not by contract make over to another person its power to set general conditions, including tariffs, for the provision of water services.
- (3) Subject to section 4, a water board may limit or discontinue water services or other services provided to water services institutions, consumers or users.
- (4) A water board may establish:
 - (a) advisory forums; and

- (b) committees consisting of board members or any other persons, and determine how they must function.
- (5) The quorum for any meeting of a water board is one half of its members.

32. Duties of water boards

Every water board:

- (a) must give priority to its primary activity;
- (b) must enter into written contracts when performing its primary and other activities;
- (c) must consider every request by a water services institution for the provision of water services within its service area and may only refuse such request if, for sound technical and financial reasons, it would not be viable to provide those water services;
- (d) must provide water services and other services to water services institutions, consumers and users in accordance with section 4 and any conditions set in terms of section 33; and
- (e) must obtain a permit, authorisation or licence from the relevant authority for abstracting water or discharging any effluent.

33. Conditions for provision of services

- (1) A water board must set conditions for the provision of services not inconsistent with this Act, relating to at least:
 - (a) the technical conditions of supply, including demand patterns, water storage, units or standards of measurement, verification of meters, acceptable limits of error and procedures for settlement of disputes relating to the measurement of water services provided;
 - (b) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - (c) the determination and structure of tariffs;
 - (d) the payment and collection of money due to the water board;
 - (e) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - (f) water conservation and the prevention of wasteful or unlawful use of water provided by the water board.
- (2) Conditions may be set generally or agreed specifically.
- (3) Before setting general conditions a water board must invite comment from water services institutions within its service area, its consumers and users.
- (4) General conditions set by a water board must be accessible to the public.
- (5) Every person who uses services provided by a water board does so subject to any applicable general conditions set by that board, unless specifically agreed otherwise.

34. Parameters for functions of water boards

- (1) In performing its activities, exercising its powers and carrying out its duties a water board must achieve a balance between:
 - (a) striving to provide efficient, reliable and sustainable water services;
 - (b) optimally using available resources;
 - (c) striving to be financially viable;
 - (d) promoting the efficiency of water services authorities;
 - (e) taking cognisance of the needs of water services institutions, consumers and users;
 - (f) taking into account national and provincial policies, objects and developments;

- (g) acting in an equitable, transparent and fair manner;
 - (h) complying with health and environmental policies; and
 - (i) taking reasonable measures to promote water conservation and water demand management, including promoting public awareness of these matters.
- (2) For the purpose of subsection (1)(c) a water board is financially viable if it is able to:
- (a) repay and service its debts;
 - (b) recover its capital, operational and maintenance costs;
 - (c) make reasonable provision for depreciation of assets;
 - (d) recover the costs associated with the repayment of capital from revenues (including subsidies) over time; and
 - (e) make reasonable provision for future capital requirements and expansion.

35. Governance of water boards

- (1) A water board consists of a chairperson and such other members as the Minister may appoint from time to time.
- (2) Schedule 1 regulates the terms of office of board members, the procedure for the recommendation of persons for appointment as chairperson or board members and the termination of office of board members.
- (3) When appointing a member, the Minister must have regard to:
 - (a) the objects of the water board;
 - (b) the need for the board to be representative of:
 - (i) the water services authorities to which it provides water services;
 - (ii) the other interests served by the water board; and
 - (iii) the broad population;
 - (c) the expertise required for the board to function effectively; and
 - (d) the desirability or otherwise of executive employees being members of the board.
- (4) The extent to which relevant water services authorities should be represented on a water board must be determined by the Minister after consultation with every relevant organisation representing municipalities having jurisdiction in the service area.
- (5) The Minister may terminate the appointment of any or all the members of a water board.
- (6) Non-executive members of a water board may be paid out of the funds of the water board for carrying out their duties as board members, according to a level of remuneration approved by the Minister.

36. Chief executive of water board

- (1) Every water board must:
 - (a) appoint a suitable person as chief executive of the water board, for a renewable period; and
 - (b) determine the duties, conditions of service and remuneration of the chief executive.
- (2) A water board must determine the salary of its chief executive, subject to the approval of the Minister.
- (3) Subject to any existing rights of a person appointed before the commencement of this Act, a water board may terminate the services of the chief executive of the water board:
 - (a) for good reason; and
 - (b) in accordance with fair labour practices and the terms of his or her contract of employment.

37. Delegation of powers

A water board may delegate any operational power to:

- (a) a committee of the board;
- (b) its chief executive; or
- (c) any of its employees.

38. Duties of water board and members

(1) A water board must:

- (a) ensure that its functions are performed within the parameters set in section 34(1); and
- (b) promote its policy statement and its business plan and ensure that they are implemented.

(2) Members of a water board must:

- (a) perform their duties with honesty, care and diligence; and
- (b) disclose any interest in contracts or dealings of the water board and must abstain from voting on any resolution proposed in connection with such contracts or dealings.

39. Policy statement

(1) A water board must prepare and adopt a policy statement.

(2) The first policy statement of a water board must be prepared and adopted within one year after:

- (a) the commencement of this Act; or
- (b) the establishment of that water board.

(3) The policy statement must contain information concerning the water board and all other companies, institutions or bodies in which it has an interest, including:

- (a) the nature and extent of the primary and other activities to be undertaken;
- (b) the area within which the activities will be undertaken;
- (c) the measures to be taken to separate the primary and other activities from each other;
- (d) details concerning the management of any financial risks relating to the board's primary and other activities;
- (e) the board's accounting and investment policies;
- (f) the rules and procedures to be followed before any investments are made by the board;
- (g) the board's policy on human resources and human resource development;
- (h) the board's policy on the environment, including measures to reduce water wastage to an acceptable level;
- (i) the measures by which the performance of the water board will be assessed;
- (j) whether any advisory forums have been or are to be established, and if so, the functions and composition thereof;
- (k) the procedures for consultation with water services institutions, consumers, users and advisory forums, if established;
- (l) the nature and extent of activities aimed at ensuring access to water services provided by the board within its service area, and the extension and improvement of those services; and
- (m) the measures, including public awareness campaigns, to be taken to promote water conservation and water demand management; and
- (n) any other relevant information which the Minister may prescribe from time to time.

(4) A policy statement may be amended from time to time, and must be revised at least every five years.

- (5) Every policy statement and every amendment thereof must:
 - (a) be submitted to the Minister, the relevant Province and all water services institutions within the water board's service area; and
 - (b) be accessible to the public.
- (6) The Minister may direct a water board to amend its policy statement if the policy statement:
 - (a) is not in the best interests of the general population within its service area; or
 - (b) is not in accordance with the parameters laid down in section 34(1).

40. Business plan

- (1) A water board must, not later than one month before the commencement of each financial year, prepare and adopt a business plan relating to the following five financial years.
- (2) The business plan must at least contain information regarding:
 - (a) each specific primary and other activity to be undertaken and the performance targets for each;
 - (b) the tariff applicable to each service, the method by which it was determined, the motivation for the tariff and the estimated tariff income;
 - (c) forecasts of capital expenditure for the primary and other activities for the next five years; and
 - (d) any other information which the Minister may prescribe from time to time.
- (3) A water board may, with the approval of the Minister, exclude commercially sensitive information from its business plan.
- (4) Every business plan must be submitted to the Minister.
- (5) A business plan may be amended from time to time.
- (6) The Minister may direct a water board:
 - (a) to amend its business plan if the plan:
 - (i) is not in the best interests of the general population within its service area; or
 - (ii) is not in accordance with the parameters laid down in section 34(1); or
 - (b) to submit additional business plans addressing specific issues.

41. Directives to water boards

- (1) The Minister may, to the extent that it is reasonable, from time to time issue directives to a water board:
 - (a) to undertake a specific activity:
 - (i) at its own cost where the activity is financially viable; or
 - (ii) against full or partial payment, as directed by the Minister; or
 - (b) to desist from a specific activity if that activity:
 - (i) is not in the best interests of the general population within its service area; or
 - (ii) is not in accordance with the parameters laid down in section 34(1).
- (2) The water board must comply with any directive given under subsection (1).

42. Different activities to be managed as separate units

- (1) A water board must manage its primary activity and each of its other activities as separate units.
- (2) A water board must maintain separate and itemised financial accounts for its primary activity and each of its other activities.
- (3) All transactions between units of a water board engaged in different activities of the water board must be carried out on terms and conditions

which could be expected to apply to similar transactions between unrelated businesses.

43. Financial matters and accounts

- (1) The financial year of a water board is from 1 July to 30 June.
- (2) The accounts of a water board must be audited by a chartered accountant appointed by the water board.
- (3) A water board must, within four months after the end of each financial year, issue audited financial statements.
- (4) The accounting policy of a water board must be consistent with generally accepted accounting practices.

44. Reporting

- (1) A water board must, within four months after the end of each financial year, issue a report on the activities of the water board for that financial year.
- (2) The report:
 - (a) must be accompanied by the audited financial statements for that financial year;
 - (b) must be submitted to the Minister, any relevant Province and Parliament; and
 - (c) must be accessible to the public.
- (3) The report must contain sufficient information to allow:
 - (a) the Minister;
 - (b) any relevant Province;
 - (c) any relevant water services institutions; and
 - (d) the public,
 to assess the performance of the water board.

45. Investigation of affairs and financial position

- (1) A water board must give the Minister or any person authorised by him or her:
 - (a) such information as he or she reasonably requires on the affairs and financial position of the water board; and
 - (b) reasonable access to such books, accounts, documents and other assets of the water board as he or she may reasonably require.
- (2) The Minister may appoint a person to investigate the affairs or financial position of a water board.
- (3) The Minister may recover the reasonable fees and disbursements of any person so appointed from the water board concerned.

46. Assets and liabilities upon disestablishment

- (1) If the Minister, after consultation in terms of section 28, has notified a water board that he or she intends:
 - (a) to change its service area; or
 - (b) to disestablish it,
 the Minister may direct that water board to transfer some or all of its assets and liabilities to another water board or water services authority.
- (2) A water board must do everything within its power to give effect to that direction.
- (3) Upon the disestablishment of any water board and if its assets and liabilities are not transferred to another water board or a water services authority:
 - (a) its assets and liabilities vest in the Minister;
 - (b) the Minister must wind up its affairs; and

- (c) the Minister must assume the functions of the water board for the period of winding up.
- (4) In exercising his or her powers under subsection (1), the Minister must have regard to:
 - (a) the interests of creditors and consumers; and
 - (b) any financial contributions directly or indirectly made by consumers towards the infrastructure of the water board.
- (5) Subject to the approval of the Minister of Finance, no transfer duty, other tax or duty is payable in respect of the transfer of any assets:
 - (a) from the Minister to a water board or a water services authority;
 - (b) from a water board to the Minister; or
 - (c) from a water board to another water board or to a water services authority.

47. Litigation against water board

No court may grant an order or judgment against a water board unless the papers on which that order or judgment is sought, have also been served on the Minister.

48. Formal irregularities

A decision taken or Act authorised by a water board is not invalid merely because, at the time the decision was taken or the Act was authorised:

- (a) there was a casual vacancy on the board; or
- (b) a person not entitled to sit as a member of the board sat as a member, if:
 - (i) the decision was taken or Act was authorised by a majority of board members who were present and who were entitled to sit as members; and
 - (ii) the members contemplated in subparagraph (i) constituted a quorum.

49. Regulations

- (1) The Minister may make regulations relating to:
 - (a) the matters to be dealt with in policy statements of a water board;
 - (b) the matters to be dealt with in the annual business plan of a water board;
 - (c) the information to be supplied in the financial statements of a water board;
 - (d) the information to be supplied in the annual report of a water board; and
 - (e) any other matter relating to the functioning of the water board and to the exercise of its powers which the Minister may consider advisable to ensure the water board's efficiency and to promote good order.
- (2) The Minister may make different regulations for different water boards.
- (3) In making regulations under this section, the Minister must consider:
 - (a) the basic values and principles required for public administration in terms of the Constitution;
 - (b) the main objects of this Act as set out in section 2;
 - (c) the activities, powers and duties of the water board;
 - (d) the financial position of the water board; and
 - (e) the interests of consumers and potential consumers.

50. Effect of inclusion of this chapter in this Act

The inclusion of this chapter in this Act must not be construed as giving any executive or legislative power to any Province in respect of water boards.

CHAPTER 7: Water Services Committees

51. Establishment and disestablishment of water services committees

(1) Subject to subsections (2), (3) and (4) the Minister may by notice in the *Gazette*:

- (a) establish a water services committee;
 - (b) give it a name or approve a change of its name;
 - (c) determine or change its service area;
 - (d) determine its powers; or
 - (e) disestablish it.
- (2) The Minister may only act in terms of subsection (1):
- (a) after consultation with either the inhabitants of the proposed service area or with the established water services committee for that area; and
 - (b) in consultation with the water services authority for the area in question, the Minister for Provincial Affairs and Constitutional Development and the relevant Province, with regard to:
 - (i) the period for which the water services committee will operate;
 - (ii) the nature and extent of the water services to be provided;
 - (iii) the area or the community to be served;
 - (iv) the composition of the water services committee and the appointment of its members;
 - (v) any contribution to be made by the community or its members to the provision of water services; and
 - (vi) any other related matter.

(3) No water services committee may be established if the water services authority having jurisdiction in the area in question is able to provide water services effectively in the proposed service area.

(4) The Minister must, after consultation with the water services committee and the inhabitants of the area:

- (a) himself or herself; or
- (b) at the request of the water services authority having jurisdiction in the area concerned,

disestablish a water services committee once he or she is satisfied that the relevant water services authority is able to provide water services effectively within the service area.

52. Function of water services committees

(1) The function of a water services committee is to provide water services to consumers within its service area.

(2) A water services committee may not unreasonably exclude any person within its service area from those water services.

53. Powers of water services committees

(1) A water services committee is a body corporate, and has the powers of a natural person of full capacity except those powers:

- (a) which by nature can only attach to a natural person;
- (b) excluded by or inconsistent with this Act; and
- (c) excluded by the Minister by notice in the *Gazette*.

(2) A water services committee may set conditions, including tariffs consistent with this Act, for the provision of water services.

(3) A water services committee may, subject to section 4, limit or discontinue water services to a consumer.

(4) A water services committee may delegate any of its powers to a competent employee.

54. Conditions for provision of services

- (1) A water services committee must set conditions for the provision of services not inconsistent with this Act, relating to:
 - (a) the technical conditions of supply, including units or standards of measurement, verification of meters, limits of error and settlement of disputes relating to the measurement of water services provided;
 - (b) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - (c) the determination and structure of tariffs;
 - (d) the payment and collection of money due to the water services committee;
 - (e) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - (f) the prevention of wasteful or unlawful use of water provided by the water services committee.
- (2) A water services committee must invite comment from the inhabitants of its service area before setting conditions.
- (3) Conditions set by a water services committee must be submitted to the Minister and come into effect upon approval by the Minister.
- (4) Conditions set by a water services committee must be accessible to the inhabitants of the service area in question.
- (5) Every person who uses water services provided by a water services committee does so subject to any applicable conditions set by that water services committee.

55. Governance of water services committees

- (1) A water services committee consists of a chairperson and such other committee members as the Minister may determine from time to time.
- (2) The Minister must appoint the chairperson and members of the committee after taking into account any nominations made by members of the community served or to be served by the committee.
- (3) When appointing a member, the Minister must have regard to:
 - (a) the need for the committee to be representative of the inhabitants of the service area in question; and
 - (b) the expertise required for the committee to function effectively.
- (4) The Minister may terminate the appointment of any of the members of a water services committee after consultation with the members of the community served by that committee.
- (5) Members of a water services committee may be paid out of the funds of the committee, according to a level of remuneration approved by the Minister with the concurrence of the Minister of Finance.
- (6)(a) A water services committee must draw up and adopt a constitution, which provides for the day to day functioning of the committee.
- (b) A constitution adopted by a water services committee must be consistent with any regulations made in terms of section 61.
- (7) The Minister may provide model constitutions to be used as a guide for water services committees.

56. Duties of committee members

Members of a water services committee must:

- (a) perform their duties with honesty, care and diligence; and
- (b) disclose any conflict of interest.

57. Financial matters and accounts

- (1) The financial year of a water services committee is from 1 July to 30 June.
- (2) The accounts of a water services committee must be audited by a chartered accountant appointed by the committee if the Minister so requires.
- (3) Every water services committee must, within three months after the end of each financial year, issue financial statements and submit a copy thereof to the Minister.
- (4) The accounting policy of a water services committee must be consistent with generally accepted accounting practices.

58. Formal irregularities

A decision taken or Act authorised by a water services committee is not invalid merely because, at the time the decision was taken or the Act was authorised:

- (a) there was a casual vacancy on the committee; or
- (b) a person not entitled to sit as a member of the committee sat as a member, if:
 - (i) the decision was taken or Act was authorised by a majority of committee members who were present and who were entitled to sit as members; and
 - (ii) the members contemplated in subparagraph (i) constituted a quorum.

59. Provision of information

- (1) A water services committee must give the Minister or any person authorised by him or her:
 - (a) such information as he or she requires on the affairs and financial position of the water services committee; and
 - (b) access to such books, accounts, documents and other assets of the water services committee as he or she may require.
- (2) The Minister or a water services authority may appoint a person to investigate the affairs or financial position of a water services committee.
- (3) The Minister may recover the fees and disbursements of any person so appointed from the water services committee concerned.
- (4) Any investigation undertaken by a water services authority under subsection (2), is undertaken at the cost of that water services authority.
- (5) A water services committee must, on request, provide information on its affairs and financial position to any person, subject to the limitations necessitated by the rights enshrined in chapter 2 of the Constitution.

60. Assets and liabilities upon disestablishment

- (1) Upon the disestablishment of a water services committee:
 - (a) its assets and liabilities vest in the Minister;
 - (b) the Minister must wind up its affairs; and
 - (c) the Minister must assume the functions of the water services committee for the period of winding up.
- (2) The Minister may, after the disestablishment of a water services committee, transfer any of its assets to the water services authority or a water board having jurisdiction in the area.
- (3) Subject to the approval of the Minister of Finance, no transfer duty, other tax or duty is payable in respect of the transfer of any assets:
 - (a) from a water services committee to the Minister; or
 - (b) from the Minister to a water services authority or a water board.

61. Regulations

- (1) The Minister may make regulations relating to:

- (a) the nomination and selection of candidates for appointment as members of a water services committee;
 - (b) the criteria for qualification of members of a water services committee;
 - (c) the number, appointment and reappointment, terms of office and duties of members of a water services committee;
 - (d) the quorum for meetings of a water services committee;
 - (e) the procedure for convening and conducting meetings of a water services committee;
 - (f) the remuneration for services payable to members of a water services committee with the concurrence of the Minister of Finance;
 - (g) the appointment of staff by a water services committee, their conditions of service and remuneration;
 - (h) the information to be furnished in the financial statements of a water services committee; and
 - (i) the procedure for setting conditions for the provision of services.
- (2) In making regulations under this section, the Minister must consider:
- (a) the basic values and principles required for public administration in terms of the Constitution;
 - (b) the main objects of this Act as set out in section 2;
 - (c) the financial position of the water services committee; and
 - (d) the interests of consumers and potential consumers.

CHAPTER 8: Monitoring and Intervention

62. Monitoring of water services institutions

- (1) The Minister and any relevant Province must monitor the performance of every water services institution in order to ensure:
- (a) compliance with all applicable national standards prescribed under this Act;
 - (b) compliance with all norms and standards for tariffs prescribed under this Act; and
 - (c) compliance with every applicable development plan, policy statement or business plan adopted in terms of this Act.
- (2) Every water services institution must:
- (a) furnish such information as may be required by the Minister after consultation with the Minister for Provincial Affairs and Constitutional Development; and
 - (b) allow the Minister access to its books, records and physical assets to the extent necessary for the Minister to carry out the monitoring functions contemplated in subsection (1).

63. Intervention

- (1) If a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development, request the relevant Province to intervene in terms of section 139 of the Constitution.
- (2) If, within a reasonable time after the request, the Province:
- (a) has unjustifiably failed to intervene; or
 - (b) has intervened but has failed to do so effectively,
- the Minister may assume responsibility for that function to the extent necessary:
- (i) to maintain essential national standards;
 - (ii) to meet established minimum standards for providing services; or
 - (iii) to prevent that Province from taking unreasonable action that is prejudicial to the interests of another province or the country as a whole.

- (3) If the Minister assumes responsibility for any function of a water services authority in terms of subsection (2):
 - (a) the Minister must table a notice to that effect in the National Council of Provinces within 14 days of the commencement of its first sitting after the Minister has assumed responsibility for that function;
 - (b) the assumption of responsibility for that function must end if it is not approved by the National Council of Provinces within 30 days after the commencement of its first sitting after the Minister has assumed responsibility for that function; and
 - (c) the National Council of Provinces must regularly review that assumption of responsibility and make appropriate recommendations to the Minister.
- (4) After assuming responsibility for a function under subsection (2), the Minister may issue a directive to the water services authority to perform that function effectively.
- (5) If the water services authority fails to comply with that directive, the Minister may intervene:
 - (a) by taking appropriate steps to facilitate the performance of that function, including giving financial, managerial and technical advice and assistance; or
 - (b) on notice to the water services authority, by taking over that function.
- (6) If the Minister takes over any function of a water services authority:
 - (a) the Minister must table a notice to that effect in the National Council of Provinces within 14 days of the commencement of its first sitting after taking over that function;
 - (b) the Minister may, on behalf of that water services authority, exercise all the powers and carry out all the duties relating to that function;
 - (c) the governing body of that water services authority may not, while the Minister is responsible for that function, exercise any of its powers or carry out any of its duties relating to that function;
 - (d) the Minister may utilise all financial and other resources available to that water services authority relating to that function;
 - (e) the Minister may appoint a water services institution to perform that function or any part thereof; and
 - (f) the take-over of that function must end:
 - (i) if it is not approved by the National Council of Provinces within 30 days after the commencement of its first sitting after the take-over; or
 - (ii) when the water services authority is in a position to resume that function effectively.
- (7) The National Council of Provinces may from time to time review the take-over of any function of a water services authority by the Minister and make appropriate recommendations to the Minister.
- (8) Any expenses incurred or losses suffered by the Minister in taking over any function of a water services authority may be recovered from that water services authority.
- (9) In the interests of co-operative government, a Province must immediately inform the Minister of its intention to intervene by taking over any function of a water services authority under section 139 of the Constitution.
- (10) In considering the manner and implementation of any intervention under this section, the Minister must consider:
 - (a) the reasons for the extent and the period of non-compliance by the water services authority concerned;
 - (b) the attempts made to achieve compliance;
 - (c) the effect of the non-compliance; and
 - (d) any other relevant matter.

CHAPTER 9: Financial Assistance to Water Services Institutions

64. Powers of Minister

- (1) The Minister may after consultation with any relevant Province make grants and loans and give subsidies to a water services institution from funds:
 - (a) appropriated by Parliament;
 - (b) contributed by individuals or non-governmental organisations; or
 - (c) contributed by other governments and governmental institutions.
- (2) In making any grant or loan or giving any subsidy, the Minister must consider:
 - (a) the requirements of equity and transparency;
 - (b) the purpose of the grant, loan or subsidy;
 - (c) the main objects of this Act as set out in section 2; and
 - (d) the financial position of the applicant.

65. Applications for financial assistance

- (1) The Minister may prescribe the manner in which an application for financial assistance must be made.
- (2) The Minister may on reasonable grounds refuse financial assistance to any water services institution which fails to comply with its obligations in terms of this Act or any other law.

66. Regulations on financial assistance

- (1) The Minister may make regulations relating to financial assistance in terms of this Act concerning:
 - (a) the financial feasibility of the construction, operation and maintenance of water services;
 - (b) the manner in which financial assistance must be applied for; and
 - (c) the terms and conditions whereunder any grant or loan may be made or subsidy may be given.
- (2) In making such regulations, the Minister must consider:
 - (a) the main objects of this Act as set out in section 2;
 - (b) the need for equity and transparency; and
 - (c) all relevant legislation relating to financial controls.

CHAPTER 10: National Information System

67. Establishment of national information system

- (1) The Minister must ensure that there is a national information system on water services.
- (2) The information system may form part of a larger system relating to water generally.
- (3) The public is entitled to reasonable access to the information contained in the national information system, subject to limitations necessitated by the rights enshrined in chapter 2 of the Constitution.
- (4) The Minister must take reasonable steps to ensure that information provided is in an accessible format.

68. Purpose of national information system

The purpose of the national information system is:

- (a) to record and provide data for the development, implementation and monitoring of national policy on water services; and
- (b) to provide information to water services institutions, consumers and the public:
 - (i) to enable them to monitor the performance of water services institutions;

- (ii) for research purposes; and
- (iii) for any other lawful reason.

69. Provision of information

The Minister may require any Province, water services institution and consumer to furnish information to be included in the national information system.

70. Funding of national information system

- (1) The Minister may fund reasonable expenditure incurred in establishing and maintaining the national information system from money appropriated by Parliament for that purpose or received from any other source for that purpose.
- (2) The Minister or the provider of the national information system may charge a reasonable fee for making information available.

CHAPTER 11: General Powers and Duties of Minister

71. Procedure for making regulations

- (1) The Minister must, before making regulations under this Act:
 - (a) publish the draft regulations in the *Gazette* for public comment within a specified time;
 - (b) send copies of and invite comment on the draft regulations from:
 - (i) the Minister for Provincial Affairs and Constitutional Development;
 - (ii) any relevant Province;
 - (iii) any relevant organisation representing municipalities; and
 - (iv) any relevant water board;
 - (c) consider all comments timeously received; and
 - (d) on request, report on the extent to which a specific comment or comments have been taken into account, or, if a comment was not taken into account, provide reasons therefor.
- (2) The Minister must, within 30 days after making a regulation under this Act, table it in Parliament for consideration in terms of section 75.

72. Consultation by Minister

If anything is required in terms of this Act to be done by the Minister after consultation with another person or body, it is sufficient compliance with such requirement if the Minister has:

- (a) requested the written comments of that person or body; and
- (b) considered any comments received.

73. General powers of Minister

- (1) The Minister may:
 - (a) acquire a water services work and may transfer or dispose of any water services work belonging to the National Government;
 - (b) construct, operate, alter or repair any water services work with the permission of the relevant water services institution;
 - (c) contract with any person to perform any work which the Minister is authorised to perform under this Act;
 - (d) act as a water services provider under contract or approval only if the relevant water services authority is unable to provide the water services;
 - (e) provide water services in emergency situations;
 - (f) perform the functions of a water services authority or water board;
 - (g) levy tariffs for water services provided by him or her;

- (h) issue guidelines to water services institutions on performing their functions in terms of this Act;
 - (i) issue model conditions for the provision of services for use by water boards and water services committees;
 - (j) prescribe measures to be taken by water services institutions to conserve water;
 - (k) prescribe how any matter arising out of the repeal of any law by this Act must be dealt with, to the extent that this Act or any other law does not sufficiently provide for it; and
 - (l) on good cause, extend any time period provided for in this Act.
- (2) No water services work owned by the Minister may be transferred or disposed of:
- (a) without the approval of Parliament if its value exceeds an amount specified by notice in the *Gazette* from time to time by the Minister with the concurrence of the Minister of Finance; or
 - (b) without prior consultation with all affected water services institutions, if its value is within the specified amount.
- (3) The Minister acts on behalf of the National Government in owning, taking transfer or disposing of any water services work.

74. Delegation of powers

- (1) Subject to subsection (2), the Minister may in writing delegate any power vested in him or her by or under this Act.
- (2) The Minister may not delegate the power:
 - (a) to make regulations;
 - (b) to issue directives under section 41;
 - (c) to intervene under section 63;
 - (d) to appoint members of a water board;
 - (e) to prescribe policy; or
 - (f) to expropriate.
- (3) A Province may in writing delegate any power given to it by this Act.

75. Consideration of draft regulations

- (1) In considering a draft regulation submitted to it, Parliament must consider whether the regulation:
 - (a) is consistent with the objectives of this Act;
 - (b) is within the powers conferred by this Act;
 - (c) is consistent with the Constitution; and
 - (d) requires clarification.
- (2) Parliament may, within 30 days after a regulation has been tabled in terms of section 71, or within 30 days after the commencement of the first sitting after the tabling of a regulation, reject that regulation.
- (3) If Parliament rejects a regulation, it must state its reasons.
- (4) The Minister must, within 30 days after being informed in writing that Parliament has rejected a regulation, repeal that regulation.

76. Advisory committees

- (1) The Minister may appoint advisory committees for matters falling within the scope of this Act.
- (2) An advisory committee consists of a chairperson and such members as the Minister may determine, with due regard to the expertise required.
- (3) A member of an advisory committee may be paid an allowance determined by the Minister.
- (4) An advisory committee has the functions conferred on it by the Minister.

CHAPTER 12: General Provisions

77. Transferability of servitudes

- (1) The rights and obligations of any water services institution in terms of a personal servitude (whether registered or not) are transferable to another water services institution, notwithstanding any law to the contrary.
- (2) A registrar of deeds must register a notarially executed deed of cession to transfer a personal servitude from one water services institution to another.

78. Compliance with other laws

No approval given under this Act and nothing in this Act relieves anyone from complying with any other law relating to:

- (a) the abstraction and use of water; or
- (b) the disposal of effluent.

79. Ownership of water services works

- (1) Any water services work placed in good faith by a water services institution in or on property not owned by it, remains the property of that water services institution, whether the work is fixed to any part of that property or not, and may be removed by it.
- (2) When a water services work is removed under subsection (1), the owner or occupier of the property:
 - (a) may require the water services institution concerned to restore any physical damage caused to the property by the removal, as far as may be reasonably possible; and
 - (b) has no other claim against the water services institution concerned.
- (3) Any water services institution may transfer its rights in respect of improvements on property not owned by it to another water services institution.

80. Entry and inspection of property

- (1) Any person authorised in writing by the Minister, the Province or any water services institution may:
 - (a) at any reasonable time and without prior notice, except in the circumstances set out in subsection (3), enter any property and inspect any water services work in order to ascertain whether this Act or any regulation or directive made under it is being complied with;
 - (b) after reasonable notice to the owner or occupier of any property, enter that property with the necessary persons, vehicles, equipment and material:
 - (i) to repair, maintain, remove or demolish any water services work belonging to or operated by the Minister, the Province or water services institution concerned;
 - (ii) to remove vegetation interfering with any water services work belonging to or operated by the Minister, the Province or the water services institution concerned;
 - (iii) to establish the suitability of any water source or site for the construction of a water services work;
 - (iv) search, excavate, bore or carry on any activity necessary for the recovery or measurement of water; and
 - (c) after reasonable notice to the owner or occupier of any property, cross the property in order to enter another property lawfully.
- (2) Any person entering property must identify himself or herself and present his or her authorisation.
- (3) A dwelling may only be entered:

- (a) where it is necessary in terms of this Act to do so;
- (b) on reasonable notice; and
- (c) at a reasonable time.

81. Expropriation

- (1) Property may be expropriated by the Minister or by any water board or water services committee acting with the written approval of the Minister.
- (2) The Expropriation Act, 1975 (Act 63 of 1975), applies to all expropriations under this Act.
- (3) Where the Minister expropriates any property under a power given by this Act, any reference to 'Minister' in the Expropriation Act, 1975, must be construed as being a reference to the Minister of Water Affairs and Forestry.
- (4) Where any water board or water services committee expropriates property under a power given by this Act, any reference to 'Minister' and 'State' in the Expropriation Act, 1975, must be construed as being a reference to that water board or water services committee, as the case may be.

82. Offences

- (1) No person may:
 - (a) continue the wasteful use of water after being called upon to stop by the Minister, a Province or any water services authority;
 - (b) unlawfully and intentionally or negligently interfere with any water services work;
 - (c) intentionally utilise water services, use water or dispose of effluent in contravention of section 6 or 7;
 - (d) intentionally obstruct any person exercising or attempting to exercise any right of entry and inspection of property under section 81;
 - (e) fail or refuse to give information, or give false or misleading information when required to give information in terms of this Act; and
 - (f) fail to provide access to any books, accounts, documents or assets when required to do so in terms of this Act.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine or to imprisonment or to both such fine and imprisonment.
- (3) Whenever an act or omission by any employee or agent:
 - (a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of any employer, the employer shall, in addition to the employee or agent, be liable to conviction for that offence; or
 - (b) would constitute an offence by the employer in terms of this Act, that employee or agent shall in addition to that employer be liable to conviction for that offence.

83. State bound by Act

This Act binds the State and its organs.

84. Repeal of laws, and savings

- (1) The laws set out in schedule 2 are hereby repealed to the extent set out in the third column of that schedule.
- (2) Notwithstanding subsection (1) the following organisations continue to exist and are deemed to be water boards established in terms of this Act:
 - (a) Any water board established in terms of the Water Act, 1956 (Act 54 of 1956);
 - (b) the Rand Water Board established under the Rand Water Board Incorporation Ordinance, 1903 (Ordinance 32 of 1903 (Transvaal)), as

- consolidated in the Rand Water Board Statutes (Private) Act, 1950 (Act 17 of 1950); and
- (c) the North-West Water Supply Authority established by the North-West Water Supply Authority Act, 1988 (Act 39 of 1988 (Bophuthatswana)).
 - (3) The governance, name and service areas of those water boards remain as defined in the legislation in terms of which they were established, until the Minister determines otherwise by notice in the *Gazette*.
 - (4) All existing rights and obligations of those water boards remain in force after the commencement of this Act.
 - (5) Notwithstanding subsection (1) the provisions of the Rand Water Board Statutes (Private) Act, 1950, the Water Act, 1956, and the North-West Water Supply Authority Act, 1988 (Bophuthatswana), requiring a water board to obtain the approval of the Minister in order to perform any functions, remain in force until two months after the first policy statement and business plan has been prepared and submitted to the Minister by the water board concerned.
 - (6) Anything done before the commencement of this Act by an organisation contemplated in subsection (2) and any regulation made or condition set under or in terms of any law repealed by subsection (1) remains valid and is deemed to have been done, made or set under or in terms of the corresponding provision of this Act if:
 - (a) it is capable of being done, made or set under or in terms of this Act; and
 - (b) it is not in conflict with the main objects of this Act as set out in section 2.

85. Short title

This Act is called the Water Services Act, 1997.

Schedule 1: WATER BOARDS

1. Terms of office of board members

- (1) A member of a water board is appointed for a period of office determined by the Minister, which may not exceed four years.
- (2) A member of a water board may be reappointed. Reappointment is limited to three consecutive terms of office.

2. Disqualification of board members

No person may hold office as a member of a water board:

- (a) if he or she is an unrehabilitated insolvent; or
- (b) if he or she has been convicted of any offence involving dishonesty or has been sentenced to imprisonment without the option of a fine. A disqualification under this subitem ends three years after the sentence has been served.

3. Procedure for nomination and appointment of board members

- (1) The Minister may require a water board to constitute a selection panel to recommend persons for appointment as members of a water board.
- (2) If the Minister has done so the chief executive of a water board must publish a notice calling for nominations in two media of his or her choice, generally accessed within the water board's service area.
- (3) A notice must set out, in general terms, at least:
 - (a) the service area of the water board;
 - (b) the activities of the water board;
 - (c) the time commitments reasonably expected from water board members;

- (d) the term of office for which the appointments are considered;
- (e) the criteria for disqualification as a member;
- (f) the requirements with which a nomination must comply;
- (g) the closing date for nominations; and
- (h) the address to which nominations must be delivered.
- (4) A copy of the notice must be sent to at least:
 - (a) every Province within which the whole or any portion of its service area is situated;
 - (b) every organisation representing municipalities having jurisdiction in the service area;
 - (c) every other person having a substantial interest in the matter, whom the chief executive of the water board considers ought to be consulted;
 - (d) every water services authority having jurisdiction in the service area.
- (5) Every nomination of a person for appointment to a water board must be signed by a proposer and a seconder, none of whom may be the nominee, and must contain the nominee's signed acceptance. No person may nominate or second more than one person.
- (6) A water board must timeously constitute a selection panel, having regard to race and gender, to make recommendations from nominations received, to the Minister for appointment.
- (7) The selection panel must consist of:
 - (a) the chief executive of the board or his or her representative;
 - (b) a person representing every relevant Province, to be nominated by the Province concerned;
 - (c) a person representing the Minister, to be nominated by the Minister;
 - (d) a person of repute and good standing, residing within the service area, to be nominated by the water board.
- (8) The selection panel:
 - (a) must consider all nominations timeously received and sufficiently completed;
 - (b) may prepare a shortlist of nominees;
 - (c) may interview all short listed nominees; and
 - (d) must, through the chief executive of the water board, make recommendations to the Minister on the appointment of members of the water board.
- (9) In recommending nominees for appointment the selection panel must consider:
 - (a) the criteria set out in section 35 of the Act;
 - (b) the reputation and integrity of the nominees; and
 - (c) any conflict of interests which the nominees may have.
- (10) The selection panel:
 - (a) must, where there are sufficient suitable candidates, recommend more nominees than the number of members which the Minister may wish to appoint;
 - (b) must motivate each recommendation made; and
 - (c) may arrange recommendations in order of preference.
- (11) If the chairperson of a water board has to be appointed, the selection panel must, if there are sufficient suitable candidates:
 - (a) recommend at least three persons for the position;
 - (b) motivate each recommendation; and
 - (c) arrange the recommendations in order of preference.
- (12) The Minister must, before appointing a person to be a member of a water board, consider any recommendations made by a selection panel.
- (13) All costs:
 - (a) relating to the publication of notices; and
 - (b) incurred by the selection panel,

are for the account of the water board concerned.

4. Termination of office of board members

- (1) A member of a water board ceases to hold office:
 - (a) from the effective date of his or her resignation;
 - (b) if he or she has been absent from more than two consecutive meetings without leave of the chairperson. Leave may be granted retrospectively, if the absence of a member was due to unforeseen circumstances;
 - (c) if he or she has become disqualified in terms of item 2 of this schedule;
 - (d) if he or she has been declared to be of unsound mind by a competent authority; or
 - (e) if his or her appointment has been terminated in terms of section 35(5) of the Act.
- (2) A member who is not the chairperson, must notify the chairperson in writing of his or her resignation.
- (3) A member who is the chairperson, must notify the Minister in writing of his or her resignation.

2.2.2.3.3 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, cooperative governance, public participation and matters related to protected areas.

(Refer to page 87 for this Act)

2.2.2.3.4 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity - the South African Biodiversity Institute.

(Refer to page 119 for this Act)

2.2.2.4 Agriculture

Agriculture is another key contributor to the national economy. This sector was traditionally divided into a well-developed commercial sector on the one hand and a mostly subsistence-oriented sector on the other hand, especially in rural areas. Agricultural activities range from intensive crop production and

mixed farming in high rainfall areas to cattle ranching in the bushveld and sheep farming in more arid regions. Although 80% of the country's land resources are used in relation to agriculture, only about 13% of country's surface area can be used for crop production. It is further estimated that approximately 1,3 million hectares are under irrigation which in turn results in additional impacts on our already scarce water resources and its availability.

Agriculture contributes in the region of 2,6% to the gross domestic product (GDP) of South Africa and almost 9% of formal employment. However, the agro-industrial sector is estimated to comprise 15% of GDP. In terms of markets, South Africa from an agricultural perspective is self-sufficient (food secure) and also contributes to the export markets. Despite the recent global economic recession, South Africa's net trade export of agricultural products remains positive and the country's exports increased by 46,4 % from 2007/08 to 2008/09. Normally, South Africa export groups are raw sugar, fresh grapes, citrus, nectarines, wine and deciduous fruit. Other exports include avocados, plums, maize, black tea, groundnuts, meat, pineapples, tobacco, wool and cotton.

To promote the production activities of the agricultural sector, Government has categorised farmers (during 2009/10) into subsistence, smallholder and commercial farmers. Furthermore, formal intervention is geared at assisting subsistence and smallholder activities having due regard to traditionally disadvantage communities.

Agriculture can adversely impact on the natural environment and natural resources through range of aspects such as the impacts associated with fertilizers and agricultural remedies; potential erosion; and water resources utilisation.

In terms of legislative norms applicable to agriculture, the primary statute is the Conservation of Agricultural Resources Act, Act 43 of 1983. However, the following legislation is relevant to agriculture: Performing Animals Protection Act, (Act 24 of 1935); Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act 36 of 1947); Animals Protection Act (Act 71 of 1962); Fencing Act (Act No. 31 of 1963); Plant Breeder's Right Act (Act 15 of 1976); Plant Improvement Act (Act 53 of 1976); Veterinary and Para-veterinary Professions Act (Act 19 of 1982); Perishable Products Export Control Act (Act 9 of 1983); Agricultural Pests Act (Act 36 of 1983); Animal Disease Act (Act 35 of 1984); Liquor Products Act (Act 60 of 1989); Agricultural Research Act (Act 86 of 1990); Agricultural Products Standards Act (Act 119 of 1990); Agricultural Produce Agents Act (Act No. 12 of 1992); South African Abattoir Corporation Act (Act 17 of 2005); Groot Constantia Trust Act (Act 58 of 1993); Societies for the Prevention of Cruelty to Animals Act (Act 169 of 1993); Marketing of Agricultural Products Act (Act 47 of 1996); Agriculture Laws Extension Act (Act 87 of 1996); Genetically Modified Organisms Act (Act 15 of 1997); Animal Improvement Act (Act 62 of 1998); Agricultural Laws Rationalisation Act (Act No. 72 of 1998); Onderstepoort Biological Products Incorporation Act (Act No. 19 of 1999); Meat Safety Act (Act 40 of 2000); Agricultural Debt Management Act (Act 45 of 2001); Animal Identification Act (Act 6 of 2002); Land and Agricultural Development Bank Act (Act 15 of 2002); KwaZulu Cane Growers' Association Act Repeal Act (Act No. 24 of 2002); Subdivision of Agricultural Land Act Repeal Act (Act 64 of 1998); and the Animal Health Act (Act No. 7 of 2002).

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
 2. Kidd *Environmental Law* (2008)
 3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
 4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
 5. Glazewski *Environmental Law in South Africa* (2005)
 6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
 7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
 8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)
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2.2.2.4.1 Conservation of Agricultural Resources Act

Description: The Act provides for the regulation of control over the utilisation of the natural agricultural resources of the Republic in order to promote the conservation of soil water sources and vegetation (including wetlands) and aims to combat and control weeds as well as the elimination of invader plant species.

2.2.2.4.2 Genetically Modified Organisms Act

Description: The Act introduces a regulatory framework for measures to promote the responsible development, production, use and the application of genetically modified organisms. The Act also attempts to ensure that all activities involving the use of genetically modified organisms (including importation, production, release and distribution) are carried out in such a way that it limits possible harmful consequences to the environment and gives attention to the prevention of accidents and the effective management of waste. The Act further establishes common measures for the evaluation and reduction of potential risks arising out of activities involving the use of genetically modified organisms. The Genetically Modified Organisms Act of 1997 lays down the necessary requirements and criteria for risk assessment; establishes a Council for Genetically Modified Organisms and ensures that genetically modified organisms are appropriate and do not present a hazard to the environment. The Act additionally establishes appropriate procedures for the notification of specific activities involving the use of genetically modified organisms.

2.2.2.4.3 Agricultural Laws Rationalisation Act

Description: The Act provides for the rationalisation of certain laws relating to agricultural affairs.

2.2.2.4.4 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, cooperative governance, public participation and matters related to protected areas.

(Refer to page 87 for this Act)

2.2.2.4.5 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity - South African Biodiversity Institute.

(Refer to page 119 for this Act)

2.2.2.5 Animals

Prior to the enactment of the 1993 Constitution, nature conservation vested primarily in the Provincial authorities. Provincial ordinances provided *inter alia* for the management of provincial reserves and the regulation and protection of wildlife within those reserves. The ordinances further provided for the regulation of game and restrictions on hunting and interference with game.

This position was largely maintained in the 1996 Constitution, with nature conservation, excluding conservation dealing with national parks, national botanical gardens and marine resources, being defined as a functional area of concurrent national and provincial competence. The main functional areas described in the Constitution that pertain to animals and wildlife are described as concurrent national and provincial legislative competencies.

Apart from the provincial ordinances, statutes at national level regulating wildlife and animals include the Animals Protection Act 71 of 1962, the Game Theft Act 105 of 1991, the Agricultural Pests Act 36 of 1983, the Sea Birds and

Seals Protection Act 46 of 1973, the Protected Areas Act 57 of 2003 and the Biodiversity Act 10 of 2004. South Africa is furthermore a party to a number of international conventions designed to protect animals and wildlife.

2.2.2.5.1 Animals Protection Act

Description: The Act consolidates and amends the laws relating to the prevention of cruelty to animals.

2.2.2.5.2 Sea Birds And Seals Protection Act

Description: The Act was promulgated to regulate the control over certain islands and rocks. The Act further regulates the protection and control of the capture and killing of sea birds and seals and the disposal of their products.

2.2.2.5.3 Societies for the Prevention of Cruelty to Animals Act

Description: The Act provides for the control of societies for the prevention of cruelty to animals and for matters connected therewith.

2.2.2.5.4 Animal Improvement Act

Description: This Act introduces regulations for the breeding, identification and utilisation of genetically superior animals in order to improve the production and performance of animals in the interest of the Republic.

2.2.2.5.5 Animal Identification Act

Description: The Act consolidates the law relating to the identification of animals and provides for incidental matters.

2.2.2.5.6 Animal Health Act

Description: The Act provides for measures to promote and control animal health and diseases as well as assigns executive authority with regard to

certain provisions of this Act to provinces. The Act further regulates the importation and exportation of animals and establishes animal health schemes.

2.2.2.5.7 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, cooperative governance, public participation and matters related to protected areas.

(Refer to page 87 for this Act)

2.2.2.5.8 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity - South African Biodiversity Institute.

(Refer to page 119 for this Act)

2.2.2.6 Fisheries

The South African coastline extends approximately 3000 km from the Orange river bordering Namibia to Ponta do Ouro in the southern tip of Mozambique. The South African coastline has an abundance of marine living resources which are currently being utilised by commercial and subsistence fishery activities.

Resource utilisation include trawl fishery, longline fishery, line fishery, pelagic fishery, Rock lobster fisheries, abalone fisheries, beach-seine and gillnet fisheries, mariculture, recreational molluscs and crustaceans, mammals, subsistence fisheries, bait fishery, seaweeds, and non consumptive resources.

This valuable resource is not infinite and continuously being placed under greater stress as a result of the country's high population growth, commercial needs and/or demands, and conflicts over access rights. In addition to these threats, illegal fishing (commercial and non-commercial) further poses an immediate threat to the sustainability of this resource. Resource over utilisation seems inevitable and both policy and legislation need to ensure

integrated resource management in this regard. Fisheries management must certainly attempt to maintain biological functioning of ecosystems and ensure that the resource in question is sustainable over the long-term.

There has, however, been considerable progressive changes in relation to marine resource management over the past decade. The most noteworthy was the Marine Living Resources Act (Act 18 of 1998) that was promulgated in 1998. The Act promotes equitable access to resources, resource sustainability and socio-economic stability. South Africa's marine living resources are considered to be a national asset which requires management from a national level. Furthermore, significant restructuring has taken place within the marine and coastal management agency which should enhance the implementation of the Act and the creation of effective management policies.

Other related legislation: Maritime Zone Act, Act 15 of 1994; the Sea Birds and Seals Protection Act, Act 46 of 1973; and the Health Act, Act 63 of 1977.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.2.6.1 Marine Living Resources Act

Description: This Act introduces regulating measures for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and access to exploitation, utilisation and protection of certain marine living resources. In this regard the Act provides that the control over marine living resources be exercised in a fair and equitable manner, to the benefit of all the citizens.

Marine Living Resources Act 18 of 1998

As last amended by the Marine Living Resources Amendment Act 68 of 2000.

1. Definitions

In this Act, unless the context indicates otherwise:

'*aircraft*' means any craft capable of self-sustained movement through the atmosphere and includes a hovercraft;

'*allowable commercial catch*' means that part of the total allowable catch available annually for commercial fishing rights in terms of section 14;

'*aquatic plant*' means any kind of plant, algae or other plant organism found in the sea and in or on the seashore;

'*commercial fishing*' means fishing for any of the species which have been determined by the Minister in terms of section 14 to be subject to the allowable commercial catch or total applied effort, or parts of both;

'*Constitution*' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'*Council*' means the Fisheries Transformation Council established in terms of section 29;

'*court*' means a competent court of law;

'*Department*' means the Department of Environmental Affairs and Tourism;

'*Director-General*' means the Director-General of the Department;

'*driftnet*' means a gillnet or other net or a combination of nets, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water, irrespective of whether it is used or intended to be used while attached to any point of land or the seabed or to any vessel;

'*driftnet fishing activities*' means fishing with the use of a driftnet and includes any related activities, including transporting, transshipping and processing any driftnet catch, and the provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

'*exclusive economic zone*' means the exclusive economic zone as defined in section 7 of the Maritime Zones Act, 1994 (Act 15 of 1994);

'*fish*' means the marine living resources of the sea and the seashore, including any aquatic plant or animal whether piscine or not, and any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile and marine mammal, and includes their eggs, larvae and all juvenile stages, but does not include sea birds and seals;

'*fish aggregating device*' means an artificially made or partially artificially made floating, submerged or semi-submerged device, whether anchored or not, intended to aggregate fish, including any natural floating object on which a device has been placed to facilitate its location;

'*fisheries management area*' means a fisheries management area declared in terms of section 15(1);

'*fishery*' means one or more stock or stocks of fish or any fishing operations based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics;

'*fishery control officer*' means any person appointed as a fishery control officer in terms of section 9;

'*fishing*' means:

- (a) searching for, catching, taking or harvesting fish or an attempt to any such activity;
- (b) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;

- (c) placing, searching for or recovering any fish aggregating device or associated gear, including radio beacons;
- (d) any operation in support or in preparation of any activity described in this definition; or
- (e) the use of an aircraft in relation to any activity described in this definition;

'fishing harbour' means a declared fishing harbour contemplated in section 27(1);

'fishing vessel' means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities, and includes all gear, equipment, stores, cargo and fuel on board the vessel;

'fish processing establishment' means any vehicle, vessel, premises or place where any substance or article is produced from fish by any method, including the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving of fish, or where fish are canned, packed, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale in or outside the territory of the Republic;

'fish product' means any product, whether in a processed form or not, wholly or partially derived from fish;

'foreign fishing vessel' means any fishing vessel other than a local fishing vessel;

'foreign fishing vessel licence' means a licence issued in terms of section 39(2);

'Forum' means the Consultative Advisory Forum for Marine Living Resources established under section 5;

'Fund' means the Marine Living Resources Fund referred to in section 10(1);

'gear' means, in relation to fishing, any equipment, implement or other object that can be used in fishing, including any net, rope, line, float, trap, hook, winch, aircraft, boat or craft carried on board a vessel, aircraft or other craft;

'high seas' means the waters beyond South African waters, but does not include waters subject to the particular jurisdiction of another state;

'high seas fishing vessel' means a vessel in respect of which a high seas fishing vessel licence has been issued in terms of section 41(1);

'high seas fishing vessel licence' means a licence issued in terms of section 41(1);

'internal waters' means the internal waters as defined in section 3 of the Maritime Zones Act, 1994;

'international conservation and management measures' means measures to conserve or manage one or more species of marine living resources contained in international conventions, treaties or agreements, or that are adopted or applied in accordance with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea, whether by global, regional or subregional fishery organisations and which measures are binding on the Republic in terms of international law;

'local fishing vessel' means any fishing vessel registered in the Republic which is:

- (a) wholly owned and controlled by one or more South African persons;
- (b) wholly owned by the State;
- (c) wholly owned and controlled by any body corporate, society or other association of persons incorporated or established under the laws of the Republic and in which the majority of the shares and the voting rights are held and controlled by South African persons; or
- (d) wholly owned by a body corporate designated as an authorised body corporate by the Minister;

'local fishing vessel licence' means a licence issued in terms of section 23(1);

'*mariculture*' means the culture or husbandry of fish in sea water;

'*master*' means, in relation to a vessel, aircraft or other craft, the person having lawful command or charge, or for the time being in charge, of the vessel, aircraft or other craft, as the case may be, including a person who has principal responsibility for fishing on board, but does not include a pilot aboard a fishing vessel solely for the purpose of providing navigational assistance;

'*Minister*' means the Minister responsible for the Department;

'*nautical mile*' means the international nautical mile of 1 852 metres;

'*net*' means a fabric of rope, cord, twine or other material knotted or woven into meshes by which fish can be taken;

'*observation device*' means any device or machine placed on a fishing vessel in terms of this Act as a condition of its licence which transmits, whether in conjunction with other machines elsewhere or not, information or data concerning the position and fishing activities of the vessel;

'*observer*' means any person authorised in writing by the Director-General in terms of section 50 to perform scientific, compliance, monitoring and other similar observation duties on board a fishing vessel in accordance with this Act;

'*organ of state*' means an organ of state as defined in section 239 of the Constitution;

'*owner*' means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his or her own behalf or on behalf of another, including a person who is the owner jointly with one or more other persons and the manager, director, secretary, or other similar officer or any person purporting to act in such a capacity, of any body corporate or company which is an owner;

'*permit*' means a permit contemplated in section 13;

'*person*' includes a trust;

'*prescribe*' means to prescribe by regulation;

'*recreational fishing*' means, any fishing done for leisure or sport and not for sale, barter, earnings or gain;

'*regulation*' means a regulation made and includes a notice issued under this Act;

'*related activities*' include:

- (a) storing, buying, selling, transshipping, processing or transporting of fish or any fish product taken from South African waters up to the time it is first landed or in the course of high seas fishing;
- (b) on-shore storing, buying, selling or processing of fish or any fish product from the time it is first landed;
- (c) refuelling or supplying fishing vessels, selling or supplying fishing equipment or performing any other act in support of fishing;
- (d) exporting and importing fish or any fish product; or
- (e) engaging in the business of providing agency, consultancy or other similar services for and in relation to fishing or a related activity;

'*right of access*' means a right of access to fish granted in terms of this Act;

'*seashore*' means the sea-shore as defined in section 1 of the Sea-shore Act, 1935 (Act 21 of 1935);

'*sedentary species*' means organisms which, at the harvestable stage, either are immobile on or under the seabed, or are unable to move except in constant physical contact with the seabed or the subsoil;

'*South African person*' means:

- (a) a South African citizen in terms of the South African Citizenship Act, 1995 (Act 88 of 1995);

- (b) a company registered in terms of the Companies Act, 1973 (Act 61 of 1973), of which the majority of shareholders, as prescribed by the Minister, are South African persons;
 - (c) a close corporation in terms of the Close Corporations Act, 1984 (Act 69 of 1984), of which the majority of members are South African persons; or
 - (d) a trust in which:
 - (i) the majority of trustees having the controlling power at any given time are South African citizens; or
 - (ii) a majority of the beneficial interests are held by South African citizens;
- 'South African waters'* means the seashore, internal waters, territorial waters, the exclusive economic zone, and in relation to the sedentary species as defined in Article 77 of the United Nations Convention on the Law of the Sea, the continental shelf as defined in section 7 of the Maritime Zones Act, 1994, and such waters include tidal lagoons and tidal rivers in which a rise and fall of the water level takes place as a result of the tides;
- 'subsistence fisher'* means a natural person who regularly catches fish for personal consumption or for the consumption of his or her dependants, including one who engages from time to time in the local sale or barter of excess catch, but does not include a person who engages on a substantial scale in the sale of fish on a commercial basis;
- 'territorial waters'* means the territorial waters as defined in section 4 of the Maritime Zones Act, 1994;
- 'this Act'* includes any regulation or notice made or issued under this Act;
- 'total allowable catch'* means the maximum quantity of fish of individual species or groups of species made available annually, or during such other period of time as may be prescribed, for combined recreational, subsistence, commercial and foreign fishing in terms of section 14;
- 'total applied effort'* means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish individual species or groups of species;
- 'tranship'* means transferring fish or gear from one vessel to another;
- 'trap'* means an enclosure, not being a net, that may be used to take fish;
- 'United Nations Convention on the Law of the Sea'* means the United Nations Convention on the Law of the Sea, 1982, adopted at Montego Bay on 10 December 1982;
- 'vessel'* includes any canoe, lighter, floating platform, decked boat, carrier vessel, vessel equipped with an inboard or outboard motor or any other craft, whether a surface craft or submarine;
- 'year'* means any period extending from a day in one year to a day preceding the day corresponding numerically to that day and month in the following year, both days inclusive.

CHAPTER 1: Introductory Provisions

2. Objectives and principles

The Minister and any organ of state shall in exercising any power under this Act, have regard to the following objectives and principles:

- (a) The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;
- (b) the need to conserve marine living resources for both present and future generations;

- (c) the need to apply precautionary approaches in respect of the management and development of marine living resources;
- (d) the need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government;
- (e) the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;
- (f) the need to preserve marine biodiversity;
- (g) the need to minimise marine pollution;
- (h) the need to achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act;
- (i) any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law; and
- (j) the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.

3. Application of Act

- (1) Unless the context indicates otherwise, this Act shall apply:
 - (a) to all persons, whether or not South African persons, and to all fishing vessels and aircraft, including foreign fishing vessels and aircraft, on, in or in the airspace above South African waters;
 - (b) to fishing activities carried out by means of local fishing vessels or South African aircraft in, on, or in the airspace above waters outside South African waters, including waters under the particular jurisdiction of another state; and
 - (c) to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948), and any reference in this Act to the Republic shall include a reference to those Islands.
- (2) This Act, including any applicable regulation, shall have extraterritorial application.
- (3) This Act shall not apply in respect of fish found in water which does not at any time form part of the sea.

4. Conflict with other acts

If any conflict relating to marine living resources dealt with in this Act arises between this Act and the provisions of any other law, save the Constitution or any Act expressly amending this Act, the provisions of this Act shall prevail.

CHAPTER 2: Administration

5. Establishment of Forum

The Minister shall establish a body called the Consultative Advisory Forum for Marine Living Resources.

6. Functions of Forum

The Forum shall advise the Minister on any matter:

- (a) referred to it by him or her, and in particular:
 - (i) the management and development of the fishing industry, including issues relating to the total allowable catch;
 - (ii) marine living resources management and related legislation;
 - (iii) the establishment and amendment of operational management procedures, including management plans;

- (iv) recommendations and directives on areas of research, including multi-disciplinary research; and
- (v) the allocation of money from the Fund; and
- (b) in respect of the objectives and principles referred to in section 2 that in the opinion of the Forum should be brought to the attention of the Minister.

7. Composition of Forum

- (1) The forum shall consist of at least five members, including a chairperson, appointed by the Minister for the period determined by him or her, but not exceeding three years at a time.
- (2) The Minister shall ensure that the Forum be broadly representative and multidisciplinary, with members qualified to make a substantial contribution towards the proper functioning of the Forum.
- (3) Before the members of the Forum are appointed, the Minister shall invite nominations by interested parties by notice in the *Gazette*: Provided that the Minister shall not be bound by any such nomination.
- (4) A member of the Forum shall vacate his or her office if he or she:
 - (a) becomes insolvent;
 - (b) becomes of unsound mind;
 - (c) is convicted of an offence and is sentenced to imprisonment without the option of a fine;
 - (d) is absent from three consecutive meetings of the Forum without leave of the chairperson;
 - (e) resigns by written notice to the Minister; or
 - (f) is removed from office by the Minister if there are sufficient reasons in the opinion of the Minister for doing so.
- (5) The Director-General may pay to a member of the Forum who is not in the full-time employment of an organ of state, from money appropriated by Parliament for that purpose, the allowances which the Minister may determine in general or in a specific case, in consultation with the Minister of Finance.
- (6) The Minister may prescribe the necessary matters relating to meetings of the Forum.

8. Industrial bodies and interest groups

- (1) The Minister may, by notice in the *Gazette*, recognise any industrial body or interest group in a branch of the fishing industry which, in the opinion of the Minister, is representative of the specific body or group.
- (2) The Forum shall give consideration to information submitted to it by industrial bodies and interest groups recognised in terms of subsection (1).

9. Fishery control officers and honorary marine conservation officers

- (1) The Minister may, subject to the laws governing the public service, designate posts or ranks in any organ of state of which the incumbents shall be fishery control officers.
- (2) The Minister may by written notice to any other person that he or she deems fit to be an honorary marine conservation officer, appoint that person, and in doing so may specify the powers to be exercised by such a person in terms of this Act.
- (3) A fishery control officer and an honorary marine conservation officer shall be furnished by the Director-General with the prescribed identity card.

10. Marine Living Resources Fund

- (1) The Sea Fishery Fund referred to in section 27 of the Sea Fishery Act, 1988 (Act 12 of 1988), shall continue to exist under the name the Marine Living Resources Fund, notwithstanding the repeal of the said Act by section 84.
- (2) Into the Fund there shall be paid, notwithstanding the provisions of any other Act, but subject to section 22:
 - (a) money paid in respect of fines, penalties and interest for any offence committed in terms of this Act, including any proceeds from the sale of any vessel, vehicle, aircraft, gear or fish forfeited or seized in terms of this Act;
 - (b) all interest and fees collected in terms of this Act;
 - (c) money appropriated by Parliament for the realisation of the objects of the Fund;
 - (d) interest on investments;
 - (e) donations, with the approval of the Minister in consultation with the Minister of Finance;
 - (f) money which, with the approval of the Minister in consultation with the Minister of Finance, may accrue to the Fund from any other source; and
 - (g) any levy on fish, fish products, aquatic plants or other marine resources, imposed and collected in terms of this Act, the Sea Fishery Act, 1988, or any other law.
- (3) The Fund shall be administered by the Director-General in consultation with the Minister, in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister with the concurrence of the Minister of Finance in respect of every financial year, which shall end on 31 March, and no expenditure payable from the Fund may be incurred except in accordance with such estimate of expenditure.
- (4) The Director-General shall be the accounting officer charged with the responsibility of accounting for money received and expenditure incurred by the Fund.
- (5) The Director-General shall invest money in the fund not required for immediate use with the Public Investment Commissioners.
- (6) Any unexpended balance in the Fund at the end of a financial year shall be carried forward as a credit in the Fund to the next financial year.
- (7) The Auditor-General shall annually audit the books and accounts of the Fund.

11. Appropriation of Fund

The Fund shall provide for the administration of the provisions of this Act, including any activity aimed at reaching the objectives referred to in section 2.

12. Register

- (1) The Director-General shall keep a register of all rights of access, other rights, permits and licences granted or issued in terms of this Act.
- (2) The Minister may prescribe:
 - (a) the format of the register contemplated in subsection (1); and
 - (b) any registration system that he or she deems necessary.
- (3) The register contemplated in subsection (1) shall be available for inspection by the public at the prescribed places and times.

13. Permits

- (1) No person shall exercise any right granted in terms of section 18 or perform any other activity in terms of this Act unless a permit has been issued by the Minister to such person to exercise that right or perform that activity.
- (2) Any permit contemplated in subsection (1) shall:

- (a) be issued for a specified period not exceeding one year;
 - (b) be issued subject to the conditions determined by the Minister in the permit; and
 - (c) be issued against the payment of any fees determined by the Minister in terms of section 25(1).
- (3) The holder of a permit shall at all times have that permit available for inspection at the location where the right or activity in respect of which the permit has been issued, is exercised.
- (4) A permit to exercise an existing right in terms of this Act may be refused if the conditions of a previously issued permit had not been adhered to.

CHAPTER 3: Management of Marine Living Resources

Part 1: Fisheries Planning

14. Determination of allowable catches and applied effort

- (1) The Minister shall determine the total allowable catch, the total applied effort, or a combination thereof.
- (2) The Minister shall determine the portions of the total allowable catch, the total applied effort, or a combination thereof, to be allocated in any year to subsistence, recreational, local commercial and foreign fishing, respectively.
- (3) In the execution of his or her powers in terms of this section, the Minister may determine that the total allowable catch, or the total applied effort, or a combination thereof, shall apply:
 - (a) in a particular area, or in respect of particular species or a group of species of fish; and
 - (b) in respect of the use of particular gear, fishing methods or types of fishing vessels.
- (4) If the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass of the increase shall be available for allocation by the Minister.
- (5) The provisions of this section shall not be construed to mean that the Minister is prohibited from determining that:
 - (a) the total allowable catch;
 - (b) a portion of the total allowable catch contemplated in subsection (2); or
 - (c) an allocation in terms of subsection (4), shall be nil.

15. Fisheries management areas

- (1) The Minister may by notice in the *Gazette* declare any area of the South African waters to be a fisheries management area for the management of the species described in the notice.
- (2) The Minister may in respect of each fisheries management area approve a plan for the conservation, management and development of the fisheries.
- (3) The Minister shall, during the preparation of any plan contemplated in subsection (2), consult with the Forum and other organs of state affected by the plan.

16. Emergency measures

- (1) If an emergency occurs that endangers or may endanger stocks of fish or aquatic life, or any species or class of fish or aquatic life in any fishery or part of a fishery, the Minister may:
 - (a) suspend all or any of the fishing in that fishery or any specified part of it;
 - (b) restrict the number of fishing vessels fishing in that fishery; or
 - (c) restrict the mass of fish which may be taken from that fishery.

(2) The particulars of any measures taken in terms of this section shall be made known by notice in the *Gazette* and in any other appropriate manner.

17. Priority fishing areas

If the Minister is of the opinion that special measures are necessary to ensure that authorised fishing within any area of the South African waters is not impeded or otherwise interfered with, he or she may, after consultation with the affected parties, by notice in the *Gazette*:

- (a) declare such an area to be a priority fishing area for the purposes stated in the notice; and
- (b) prohibit any activity determined in the notice.

Part 2: Local Fishing

18. Granting of rights

(1) No person shall undertake commercial fishing or subsistence fishing, engage in mariculture or operate a fish processing establishment unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.

(2) An application for any right referred to in subsection (1) shall be submitted to the Minister in the manner that the Minister may determine.

(3) The Minister may require an environmental impact assessment report to be submitted by the applicant.

(4) Unless otherwise determined by the Minister in relation to the holders of existing rights, only South African persons shall acquire or hold rights in terms of this section.

(5) In granting any right referred to in subsection (1), the Minister shall, in order to achieve the objectives contemplated in section 2, have particular regard to the need to permit new entrants, particularly those from historically disadvantaged sectors of society.

(6) All rights granted in terms of this section shall be valid for the period determined by the Minister, which period shall not exceed 15 years, whereafter it shall automatically terminate and revert back to the State to be reallocated in terms of the provisions of this Act relating to the allocation of such rights.

(6A)(a) If the Minister has granted a right contemplated in subsection (6) to a person for a period not exceeding three years, the Minister may once only, at the expiration of such period, extend the period of validity of the right for a further period not exceeding two years on such terms and conditions as he or she may impose.

(b) The Minister may extend the period of validity of the right in whole or in part, but must have regard to any change in the total allowable catch, the total applied effort determined in terms of section 14 or to both such change and effort.

(7) The Minister may determine sustainable conservation and management measures, including the use of a particular type of vessel or gear, or area of fishing, to which a right may be subject.

19. Subsistence fishing

(1) The Minister may, in order to achieve the objectives contemplated in section 9(2) of the Constitution, by notice in the *Gazette*:

- (a) establish areas or zones where subsistence fishers may fish; and
- (b) after consultation with the Forum, declare:
 - (i) a specified community to be a fishing community, from which inhabitants may be declared to be subsistence fishers; or
 - (ii) any other person to be a subsistence fisher; or

- (iii) any other fishing or related activity or the exercise of any other right in that area or zone to be prohibited.
- (2) No subsistence fishing permit shall be transferable except with the approval of and subject to the conditions determined by the Minister.

20. Recreational fishing

- (1) No person shall sell, barter or trade any fish caught through recreational fishing.
- (2) No recreational fishing permit shall be transferable.

Part 3: Commercial Fishing

21. Commercial fishing

- (1) Subject to the provisions of this Act, a commercial fishing right may be leased, divided or otherwise transferred.
- (2) An application to transfer a commercial fishing right or a part thereof shall be submitted to the Minister in the manner that the Minister may determine, and subject to the provisions of this Act and any applicable regulation, the Minister may, in writing, approve the transfer of the right or a part thereof.
- (3) The Minister may, after consultation with the Forum, make regulations regarding:
 - (a) the formula by which a commercial fishing right as a portion of the allowable commercial catch, the total applied effort, or a combination thereof, shall be determined;
 - (b) guidelines or criteria concerning the transfer of any right of access, including determining limits on the transfer of rights between holders of such rights on a temporary basis;
 - (c) the maximum or minimum portion of the allowable commercial catch, the total applied effort, or a combination thereof, which may be allocated or transferred to, or acquired or otherwise held by, any person;
 - (d) reallocation of any right of access, having regard to any significant alteration in the long-term revenue derived from the resource being exploited or in the long-term availability of the resource;
 - (e) the determination of rights to, or disposition of, by-catches in relation to any right;
 - (f) the monitoring and control of the use of rights of access;
 - (g) subject to the provisions of the Labour Relations Act, 1995 (Act 66 of 1995), the employment of South African persons on board fishing vessels that are used for the utilisation of any right of access;
 - (h) the utilisation of South African fish processing establishments in the exercise of a right of access; and
 - (i) the other measures that may be necessary or desirable to achieve the effective implementation of a scheme for rights of access.

22. Leasing of rights

- (1) As from a date fixed by the Minister in the *Gazette*, the rights contemplated in section 18 shall, subject to section 31, be leased by the State.
- (2) The Minister may prescribe the method of allocation and payment in respect of leases contemplated in subsection (1), including criteria for the granting of the rights contemplated in section 18.
- (3) The method of allocation and payment contemplated in subsection (2), which may include tendering and fixed price leasing, may vary between branches of the fishing industry.

(4) With the concurrence of the Minister of Finance, a determined portion of the money paid in respect of a right leased by the State shall be paid into the Fund and the remainder shall be paid into the National Revenue Fund.

Part 4: General Local Matters

23. Local fishing vessel licence

(1) No person shall use a fishing vessel or any other vessel to exercise any right of access unless a local fishing vessel licence has been issued to such person.

(2) An application for a local fishing vessel licence shall be submitted to the Minister in the manner that the Minister may determine.

24. Reduction of rights

The Minister may in respect of any fishery, determine, after consultation with the Forum, that the portions of the total allowable catch, the total applied effort, or a combination thereof, allocated in any year to subsistence, local commercial and foreign fishing, and rights granted in respect thereof, shall be reduced.

25. Fees

(1) All rights, permits and licences in terms of this Act shall be granted or issued against the payment of the fees determined by the Minister in consultation with the Minister of Finance.

(2) An application for any right, permit or licence in terms of this Act shall be accompanied by an application fee determined by the Minister in consultation with the Minister of Finance.

26. Recovery of interest and fees

The Director-General may recover the amount of any interest or fee which is due and payable in terms of this Act in a competent court of law.

27. Fishing harbours

(1) Subject to subsection (2), the Minister may by notice in the *Gazette* declare a harbour or a defined portion of a harbour or a defined area of the sea and the seashore, to be a fishing harbour.

(2) If the Minister desires to declare a commercial harbour or a portion of such harbour to be a fishing harbour, he or she shall obtain the prior approval of the Minister of Transport.

(3) The Minister may, in consultation with the Minister of Finance, determine the fees payable in respect of the use of a fishing harbour or the facilities available in such a harbour.

28. Cancellation and suspension of rights, licences and permits

(1) If a holder of any right, licence or permit in terms of this Act:

- (a) has furnished information in the application for that right, licence or permit, or has submitted any other information required in terms of this Act, which is not true or complete;
- (b) contravenes or fails to comply with a condition imposed in the right, licence or permit;
- (c) contravenes or fails to comply with a provision of this Act;
- (d) is convicted of an offence in terms of this Act; or
- (e) fails to effectively utilise that right, licence or permit,

The Director-General may by written notice delivered to such holder, or sent by registered post to the said holder's last known address, request the holder to show cause in writing, within a period of 21 days from the date of the

notice, why the right, licence or permit should not be revoked, suspended, cancelled, altered or reduced, as the case may be.

(2) The Director-General shall after expiry of the period referred to in subsection (1) refer the matter, together with any reason furnished by the holder in question, to the Minister for the Minister's decision.

(3) When a matter is referred to the Minister in terms of subsection (2), the Minister may:

- (a) revoke the right, licence or permit;
- (b) suspend the right, licence or permit for a period determined by the Minister;
- (c) cancel the right, licence or permit from a date determined by the Minister;
- (d) alter the terms or conditions of the right, licence or permit; or
- (e) decide not to revoke, suspend, cancel, alter or reduce the right, licence or permit.

(4) Notwithstanding the provisions of subsections (1), (2) and (3), the Minister may, whenever he or she is of the opinion that it is in the interests of the promotion, protection or utilisation on a sustainable basis of a particular marine living resource, at any time by written notice to the holder of a right, licence or permit, revoke, suspend, cancel or reduce that right, licence or permit.

Part 5: Fisheries Transformation Council

29. Establishment of Fisheries Transformation Council

The Minister shall establish a body by notice in the *Gazette*, which shall be called the Fisheries Transformation Council.

30. Main object of Council

The main object of the Council shall be to facilitate the achievement of fair and equitable access to the rights referred to in section 18.

31. Allocation of rights to and by Council

(1) The Minister may, notwithstanding the provisions of this Act, allocate rights to the Council.

(2) The Council shall lease rights, according to criteria determined by the Minister, to persons from historically disadvantaged sectors of society and to small and medium size enterprises.

32. Powers of Council

The Council may, subject to restrictions determined by the Minister:

- (a) lease commercial fishing rights;
- (b) determine the price to be paid by lessees of rights;
- (c) determine the conditions applicable to leases granted in terms of this section, which conditions shall govern the circumstances under which the lease may be revoked, cancelled, suspended or altered; and
- (d) assist in the development and capacity building of persons from historically disadvantaged sectors of society and small and medium size enterprises.

33. Management and control

For the purposes of management and control of the Council, the Minister may:

- (a) issue criteria, guidelines and instructions for the operation of the Council; and
- (b) determine that the affairs of the Council shall be managed and controlled according to a business plan approved by him or her.

34. Composition of Council

- (1) The Council shall consist of at least five members, including a chairperson, appointed by the Minister for the period determined by him or her, but not exceeding three years at a time.
- (2) The Minister shall ensure that the Council be broadly representative and multidisciplinary, with members qualified to make a substantial contribution towards the proper functioning of the Council.
- (3) Before the members of the Council are appointed, the Minister shall invite nominations by interested parties by notice in the *Gazette*: Provided that the Minister shall not be bound by any such nomination.
- (4) No person who has a direct interest in any manner whatsoever in commercial fishing or mariculture shall be appointed in terms of this section.
- (5) A member of the Council shall vacate his or her office if he or she:
 - (a) becomes insolvent;
 - (b) becomes of unsound mind;
 - (c) is convicted of an offence and is sentenced to imprisonment without the option of a fine;
 - (d) is absent from three consecutive meetings of the Council without leave of the chairperson;
 - (e) resigns by written notice to the Minister; or
 - (f) is removed from office by the Minister if there are sufficient reasons in the opinion of the Minister for doing so.
- (6) The Director-General may pay to a member of the Council who is not in the full-time employment of an organ of state, from money appropriated by Parliament for that purpose, the allowances and remuneration which the Minister may determine in general or in a specific case, in consultation with the Minister of Finance.
- (7) The Minister may prescribe the necessary matters relating to meetings of the Council.

35. Staff

The employees required for the proper performance of the Council's functions, shall be appointed subject to the laws governing the public service.

36. Reporting

- (1) The Council shall annually not later than the first day of March, submit to the Minister a report on all its activities during the previous year.
- (2) The report referred to in subsection (1) shall be laid upon the Table in Parliament within 14 days after it was submitted to the Minister, if Parliament is then in session, or if Parliament is not then in session, within 14 days of the commencement of the next ensuing session.

37. Abolishment of Council

The Minister may by notice in the *Gazette*, after consultation with the Forum, abolish the Council.

Part 6: Foreign Fishing**38. International agreements**

- (1) No international agreement entered into by the national government of the Republic concerning access to fish in South African waters shall exceed the total resources or the total mass of fish allowed to the appropriate category of foreign fishing vessels in terms of any applicable determination of the total allowable catch or applicable fishery plan.
- (2) Any international agreement entered into by the national government of the Republic concerning access to fish in South African waters shall include

a provision establishing the responsibility of the foreign state or an association to take necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the legislation relating to fishing in South African waters.

39. Foreign fishing vessel licences

(1) No foreign fishing vessel shall be used for fishing or related activities in South African waters unless a foreign fishing vessel licence has been issued to such vessel.

(2) Subject to the provisions of this Act, the Minister may issue a foreign fishing vessel licence in the prescribed format authorising a foreign fishing vessel to be used in South African waters, or any part thereof, for the fishing or related activities that may be determined in the licence.

(3) Subject to subsection (4), no foreign fishing vessel licence shall be issued to any foreign fishing vessel unless there is in force with the government of the flag state of the vessel or with an association of which the owner or charterer is a member, a fishery agreement to which the national government of the Republic is a party.

(4) Notwithstanding the absence of a fishery agreement contemplated in subsection (3), the Minister may issue a licence in respect of a foreign fishing vessel where the applicant provides sufficient financial and other guarantees relating to his or her fulfilment of all obligations arising in terms of this Act, as well as other conditions regarding insurance related to pollution and rescue, and the Minister is satisfied that those guarantees are adequate for that purpose.

(5) If a fishing vessel is used in contravention of subsection (1) or of any condition of a foreign fishing vessel licence, the master, owner and charterer of that fishing vessel shall each be guilty of an offence.

Part 7: High Seas Fishing

40. Prohibition of high seas fishing

No person shall undertake fishing or related activities on the high seas by means of a fishing vessel registered in the Republic unless a high seas fishing vessel licence has been issued in respect of such a fishing vessel.

41. High seas licences

(1) The Minister may issue a high seas fishing licence in respect of a local fishing vessel, subject to the conditions that he or she considers appropriate.

(2) A high seas fishing licence shall be valid for a period not exceeding one year.

(3) A high seas fishing licence shall only be issued in respect of a local fishing vessel.

(4) A high seas fishing licence shall terminate:

- (a) on expiration of the period for which it was valid;
- (b) should the vessel cease to be registered in the Republic; or
- (c) should the master, owner or charterer of the high seas fishing vessel be convicted of an offence in terms of section 39(5).

42. Implementation of international conservation and management measures

(1) The Minister may provide appropriate information in terms of international conservation and management measures to an international organisation of which the Republic is a member, or to states parties to such international conservation and management measures.

(2) The Minister may exchange information, including evidentiary material, with other states that are parties to international conservation and management measures to enable the Republic and such other states to better implement the objects of such international conservation and management measures.

(3) If the Director-General has reason to suspect that a foreign fishing vessel was involved in a contravention of an international conservation or management measure, he or she may:

- (a) provide to the appropriate authorities of the flag state of the foreign fishing vessel concerned, such information, including evidentiary material, relating to that contravention; and
- (b) when such foreign fishing vessel is voluntarily in a port of the Republic, promptly notify the appropriate authorities of the flag state of the vessel accordingly.

(4) The Minister may from time to time publish by notice in the *Gazette* particulars of any international conservation and management measures or international agreement concerning marine living resources.

CHAPTER 4: Marine Protected Areas

43. Marine protected areas

(1) The Minister may, by notice published in the *Gazette*, declare an area to be a marine protected area:

- (a) for the protection of fauna and flora or a particular species of fauna or flora and the physical features on which they depend;
- (b) to facilitate fishery management by protecting spawning stock, allowing stock recovery, enhancing stock abundance in adjacent areas, and providing pristine communities for research; or
- (c) to diminish any conflict that may arise from competing uses in that area.

(2) No person shall in any marine protected area, without permission in terms of subsection (3):

- (a) fish or attempt to fish;
- (b) take or destroy any fauna and flora other than fish;
- (c) dredge, extract sand or gravel, discharge or deposit waste or any other polluting matter, or in any way disturb, alter or destroy the natural environment;
- (d) construct or erect any building or other structure on or over any land or water within such a marine protected area; or
- (e) carry on any activity which may adversely impact on the ecosystems of that area.

(3) The Minister may, after consultation with the Forum, give permission in writing that any activity prohibited in terms of this section may be undertaken, where such activity is required for the proper management of the marine protected area.

CHAPTER 5: Prohibited Activities and Stowage of Gear

44. Prohibited fishing methods

(1) No person shall:

- (a) use, permit to be used, or attempt to use any explosive, fire-arm, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or of in any way rendering fish to be caught more easily;
- (b) carry or have in his or her possession or control any explosive, fire-arm, poison or other noxious substance for any of the purposes referred to in paragraph (a); or

- (c) engage in a fishing or related activity by a method or in a manner prohibited by the Minister by notice in the *Gazette*.
- (2) No person shall land, sell, receive or possess any fish taken by any means in contravention of this Act.

45. Possession of prohibited gear

No person shall use, possess or have control of:

- (a) any net or trap, the mesh size of which does not conform to the prescribed minimum mesh size;
- (b) any gear which does not conform to the standards that may be prescribed for that type of gear; or
- (c) any gear which is prohibited in terms of this Act.

46. Interference with gear

No person shall:

- (a) remove, haul, empty, cast adrift or otherwise interfere with any fishing net, line, pot, trap, gear, tackle, or other equipment belonging to any other person without the consent of that person;
- (b) place any object in the water, or promote or undertake any activity in a manner so as to obstruct a fishing operation being carried out by another person;
- (c) destroy, damage, displace or move or alter the position of any fishing net, line, pot, trap, gear, tackle or other fishing equipment, or any buoy, float or other marker attached to it; or
- (d) remove fish from any fishing net, line, pot, trap, gear, tackle or other fishing equipment belonging to any other person without the consent of that person.

47. Driftnet fishing

Except on the authority of a permit issued by the Minister:

- (a) no vessel shall be used for or to assist in any driftnet fishing activities;
- (b) no person shall engage or assist in any driftnet fishing activities; and
- (c) no person on board a local fishing vessel or a foreign fishing vessel in respect of which a foreign fishing vessel licence has been issued, shall be in possession of a driftnet or part thereof.

48. Fish aggregating devices

(1) An application to place a fish aggregating device in South African waters shall be submitted to the Minister in the manner that the Minister may determine.

(2) A permit to place a fish aggregating device shall not confer any right to fish.

(3) The Minister may by notice in the *Gazette*:

- (a) declare any fish aggregating device to be a designated fish aggregating device for the purposes of this section; and
- (b) determine who may fish within a radius of one nautical mile of a designated fish aggregating device or a class of designated fish aggregating devices.

(4) Subject to subsection (3), no person shall fish within a radius of one nautical mile from a designated fish aggregating device without the permission of the Minister and unless in accordance with the conditions that he or she may determine.

(5) Permission to use a fish aggregating device does not affect any obligation to observe applicable conservation or management measures, unless the Minister determines in writing that a particular measure does not apply in respect of fish caught within one nautical mile of that device.

49. Stowage of gear

- (1) Gear on board any foreign fishing vessel for which a foreign fishing vessel licence has not been issued shall be stowed in the prescribed manner while the vessel is within South African waters.
- (2) A foreign fishing vessel that is licensed in terms of section 39(2) to fish by means of a particular type of gear in any specific area of the South African waters:
 - (a) shall stow any other gear on board the vessel in the prescribed manner while the vessel is within that area; and
 - (b) shall stow all gear on board the vessel in the prescribed manner while the vessel is within any other area of the South African waters where it is not licensed to fish.

CHAPTER 6: Law Enforcement**50. Observers**

- (1) The Director-General may designate a person in writing to act as an observer on vessels issued with fishing licences in terms of this Act and shall furnish such an observer with the prescribed identity card.
- (2) An observer may be designated in accordance with the terms of an agreement contemplated in section 38.
- (3) Any person designated in accordance with subsection (2) who is not a citizen of the Republic shall, while in South African waters, be subject to the provisions of this Act for the purposes of carrying out his or her duties and enforcing his or her rights.
- (4) An observer shall exercise the scientific, compliance, monitoring and other functions determined by the Minister.
- (5) Any person on board any vessel issued with a licence or permit shall permit any observer to board and remain on such vessel for the purposes of performing his or her functions.

51. Powers of fishery control officers

- (1) For the purposes of enforcing this Act any fishery control officer may with a warrant enter and search any vessel, vehicle, aircraft or premises or seize any property.
- (2) For the purposes of enforcing this Act any fishery control officer may without a warrant:
 - (a) order any foreign fishing vessel in South African waters, and any local fishing vessel in or beyond such waters to stop;
 - (b) require the master of a vessel to stop fishing and take the gear of the vessel back on board;
 - (c) require the master of a vessel to facilitate the boarding of a vessel by all appropriate means;
 - (d) go on board a vessel and take with him or her such other persons as he or she may require for assistance in the execution of his or her powers;
 - (e) muster the crew of a vessel;
 - (f) require to be produced, examine and make copies of a certificate of registry, licence, permit, log book, official documents, record of fish caught and any other document required in terms of this Act or relating to a vessel and to the crew or any member thereof or to any person on board the vessel which is in their respective possession or control on board the vessel;
 - (g) require the master to appear and give an explanation concerning the vessel, the crew, any person on board the vessel and any document referred to in paragraph (f);

- (h) make any examination or enquiry which he or she may consider necessary to ascertain whether any provision of this Act has been contravened;
 - (i) make an entry dated and signed by him or her in any vessel's log book;
 - (j) where he or she has reasonable grounds to believe that an offence in terms of this Act has been or is being committed, take or require the master to take the vessel to any place, port or harbour in the territory of the Republic for the purpose of carrying out any search, examination or enquiry;
 - (k) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Act or for the compliance by the vessel, master or any crew member with any condition of a licence;
 - (l) at all reasonable times enter and inspect any fish processing establishment or any other place where fish or fish products are kept or stored; and
 - (m) take samples of any fish found in any vessel, vehicle, aircraft or on any premises searched in terms of this section.
- (3) A fishery control officer may, without a warrant:
- (a) enter and search any vessel, vehicle, aircraft or premises if he or she has reasonable grounds to believe that an offence has been or is being committed or that fish illegally fished or substances or devices for use contrary to section 44 or 45 are being stowed, if:
 - (i) the person in control of the vessel, vehicle, aircraft or premises consents to such entry or search; or
 - (ii) the fishery control officer has reasonable grounds to believe that a warrant will be issued, if he or she were to apply for such warrant, and the delay caused by the obtaining of such a warrant would defeat the object of the entry or search;
 - (b) stop, enter and search any vessel, vehicle or aircraft which he or she reasonably suspects is being used or is involved in the commission of an offence in terms of this Act;
 - (c) seize:
 - (i) any property on board any vessel, vehicle or aircraft or on any premises if:
 - (aa) the person in control of the vessel, vehicle, aircraft or premises consents to such seizure; or
 - (bb) the fishery control officer has reasonable grounds to believe that a warrant will be issued, if he or she were to apply for such warrant, and the delay caused by the obtaining of such a warrant would defeat the object of the seizure;
 - (ii) any vessel, including its gear, equipment, stores and cargo, and any vehicle or aircraft of which he or she has reasonable grounds to believe that it has been or is being used in the commission of an offence in terms of this Act or in respect of which he or she suspects such offence to have been committed or which he or she knows or has reasonable grounds to suspect that it has been seized or forfeited in terms of any provision of this Act;
 - (iii) any fish or fish product which he or she has reasonable grounds to suspect to have been taken or produced in the commission of such offence or which are possessed in contravention of this Act;
 - (iv) any substance or device which he or she has reasonable grounds to suspect to have been used or to be possessed or controlled in contravention of section 44 or 45;
 - (v) any log book, chart or other document required to be maintained in terms of this Act or in terms of any licence, in respect of which he or

she has reasonable grounds to believe that it shows or tends to show, with or without other evidence, the commission of an offence in terms of this Act; or

- (vi) anything which he or she has reasonable grounds to believe might be used as evidence in any proceedings in terms of this Act; or
- (d) arrest any person whom he or she has reasonable grounds to suspect to have committed an offence in terms of this Act.
- (4) In exercising the powers referred to in this section a fishery control officer may, where necessary, use only the minimum force which is reasonable in the circumstances, with due regard to human dignity and privacy.
- (5) A fishery control officer shall in the exercise of his or her powers in terms of this Act, be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

52. Powers of fishery control officers beyond South African waters

A fishery control officer may without a warrant following hot pursuit in accordance with international law as reflected in article 111 of the United Nations Convention on the Law of the Sea:

- (a) stop, board and search outside South African waters, any foreign fishing vessel which he or she has reasonable grounds to believe has been used in the commission of an offence in terms of this Act in South African waters and bring such vessel and all persons and things on board to any place, port or harbour in the territory of the Republic; and
- (b) exercise beyond South African waters all the powers conferred on a fishery control officer in terms of this Act.

53. Seizure of vessels

- (1) Where any vessel is seized in terms of section 51, the master and crew thereof shall take the vessel to such place, port or harbour in the territory of the Republic as the fishery control officer shall require and the vessel may be detained pending the outcome of any proceedings in terms of this Act until it is released on payment or lodging of security in terms of section 62.
- (2) If a master fails or refuses to take a vessel contemplated in subsection (1) to the designated place, port or harbour, a fishery control officer may take charge of the vessel for the purpose of taking it to the designated place, port or harbour.

54. Seizure of vehicles or aircraft

- (1) Where any vehicle or aircraft is seized in terms of section 51, the driver or pilot thereof shall take the vehicle or aircraft to such place in the territory of the Republic as a fishery control officer shall designate as being the nearest or most convenient place for the holding of such vehicle or aircraft and the vehicle or aircraft may be detained pending the outcome of any proceedings in terms of this Act until it is released on payment or lodging of security in terms of section 62.
- (2) If a driver or pilot fails or refuses to take a vehicle or aircraft contemplated in subsection (1) to the designated place, a fishery control officer may take charge of the vehicle or aircraft for the purpose of bringing it to the designated place.
- (3) A court with jurisdiction over a vessel seized in terms of section 51, shall have jurisdiction over any vehicle or aircraft seized in connection with the same offence in terms of this section notwithstanding the whereabouts of the said vehicle or aircraft.

55. Immobilisation of vessels, vehicles or aircraft

- (1) Having regard to the safety of a vessel, vehicle or aircraft seized, taken or detained, which is in the custody of the State in terms of this Act, a fishery control officer may take steps to immobilise it and may remove any part thereof.
- (2) Any part removed as contemplated in subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft immediately upon its release from custody.

56. Co-operation with officials

- (1) Whenever a fishing control officer or an honorary marine conservation officer exercises any power or performs any duty in terms of this Act, he or she shall at the request of any person affected thereby, produce the identity card contemplated in section 9(3) to such person for inspection.
- (2) The master and each member of the crew of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with any lawful instruction given or request made by a fishery control officer and shall facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any gear, equipment, register, document, fish and fish product.
- (3) The master and each member of the crew of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall take all measures to ensure the safety of a fishery control officer in the performance of his or her duties.
- (4) The holder of a permit for and all persons employed at any fish processing establishment, shall immediately comply with any instruction or request given by a fishery control officer, facilitate his or her safe entry and inspection of the fish processing establishment, records, documents, fish and fish products and take all measures necessary to ensure the safety of a fishery control officer in the performance of his or her duties.
- (5) No person shall:
 - (a) assault, obstruct, resist, delay, refuse the boarding of, intimidate or fail to take all reasonable measures to ensure the safety of, or otherwise interfere with a fishery control officer or observer in the performance of his or her duties;
 - (b) incite or encourage any other person to assault, resist or obstruct any fishery control officer while exercising or performing his or her powers or duties, or any other person lawfully acting under the orders of the fishery control officer in his or her aid;
 - (c) use threatening language or behave in a threatening or insulting manner or use abusive language or insulting gestures towards any fishery control officer or observer while exercising or performing his or her powers or duties, or towards any other person lawfully acting under the orders of a fishery control officer in his or her aid;
 - (d) fail to comply with the lawful requirements of any fishery control officer or observer;
 - (e) furnish to any fishery control officer any particulars which are false or misleading;
 - (f) impersonate or falsely represent himself or herself as a fishery control officer; or
 - (g) falsely represent himself or herself as a person lawfully acting under a fishery control officer's orders or in his or her aid.

57. Duty to report

A holder of a right, license or permit granted or issued in terms of this Act shall report to the Minister any contravention of the provisions of this Act by any other person.

CHAPTER 7: Judicial Matters**58. Offences and penalties**

- (1) Any person who, subject to the provisions of subsections (2) or (3):
 - (a) undertakes fishing or related activities in contravention of:
 - (i) a provision of section 13;
 - (ii) the conditions of any right of access, other right, licence or permit granted or issued in terms of part 1, 2 or 3 of chapter 3; or
 - (iii) an authorisation to undertake fishing or related activities in terms of part 6 or 7 of chapter 3, but excluding section 39(5); or
 - (b) contravenes any other provision of this Act,
 shall be guilty of an offence and liable on conviction to a fine not exceeding two million rand, or to imprisonment for a period not exceeding five years.
- (2) Any person who contravenes:
 - (a) a provision of an international conservation and management measure inside or outside South African waters, or otherwise fails to comply with any provision of part 7 of chapter 3, by means of a vessel registered in the Republic; or
 - (b) the conditions imposed in a high seas fishing permit or high seas fishing vessel licence,
 shall be guilty of an offence and liable on conviction to a fine not exceeding three million rand.
- (3) Any person who contravenes a provision of section 39(5), 45, 47, 48 or 49 shall be guilty of an offence and liable on conviction to a fine not exceeding five million rand.
- (4) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

59. Limitation of liability

- (1) The State, the Minister, any person in the employment of an organ of state or any person appointed to perform any function in terms of this Act shall not be liable by virtue of anything done in good faith under a provision of this Act.
- (2) The State, the Minister or any persons contemplated in subsection (1) shall not be liable, except in the case of any intentional act or omission on the part of any such person, to any person who, except in the performance of any function in terms of this Act or any other law:
 - (a) makes use of any vessel, vehicle or aircraft which is the property or under control of the State;
 - (b) is present in any fishing harbour; or
 - (c) leaves any vessel or any other property in a fishing harbour or makes use of the facilities of a fishing harbour,
 or to the spouse or any dependant of any such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to any property caused by or arising out of or in any manner connected with the use of any vessel, vehicle or aircraft referred to in paragraph (a), the presence referred to in paragraph (b) or the presence of any property or the use of any facilities referred to in paragraph (c).

60. Destruction of evidence

(1) No person who, being on board any vessel being pursued, about to be boarded or notified that it will be boarded by a fishery control officer shall throw overboard or destroy any fish, fish product, gear, explosive, fire-arm, poison, noxious substance, chart, log book, document or other thing to avoid the seizure thereof or the detection of any contravention of this Act.

(2) Subsection (1) shall as far as applicable also apply to vehicles, aircraft, fish processing plants and other premises.

61. Payment for information leading to conviction

The Minister may from money appropriated by Parliament for that purpose and in consultation with the Minister of Finance, pay to any person, excluding a person in the employment of the State or an organ of state who has furnished any information or material of proof which leads to a conviction by a court, a remuneration in cash which, in the opinion of the Minister, is reasonable and fair in the circumstances.

62. Security for release of vessel, vehicle or aircraft

(1) If a fishing vessel, vehicle or aircraft is taken, seized or detained in terms of this Act and judicial proceedings are instituted in respect of an offence for which the vessel has been detained, the master, owner, charterer or agent of the owner or the charterer of the vessel, vehicle or aircraft may at any time apply to the court which will hear the matter, for the release of the vessel, vehicle or aircraft on the provision of security in terms of this section.

(2) On hearing the application the court shall:

(a) determine the amount of security to be deposited with the court by adding to the value of the vessel, vehicle or aircraft:

(i) the maximum fine for the offence or offences alleged; and

(ii) costs and expenses incurred or reasonably foreseen to be incurred by the State, and recoverable in terms of this Act;

(iii) and order the release of the vessel subject to the lodging of a guarantee or depositing of the security as determined; or

(b) where it is satisfied that there are special and exceptional circumstances to justify it doing so, order the release of the vessel, vehicle or aircraft subject to the payment of security which is less than the amount contemplated in paragraph (a).

(3) The furnishing of security shall, subject to subsection (4), be subject to the conditions that the court determine.

(4) Any security granted in terms of subsection (2) shall be subject to the condition that, if:

(a) the accused is found not guilty of the charge; or

(b) the accused, on being convicted of the charge, pays in full within 14 days, or such time as the court may determine, after he or she is convicted, the amount of the fine imposed by the court and the amount of all costs and expenses due by him or her to the State in terms of subsection (2),

the security shall be of no effect and any amount that has been deposited, shall forthwith be returned to the accused.

(5) Any security granted in terms of subsection (2) shall be recoverable in full in any court as a debt due to the State jointly and severally by the person or persons by whom the security has been given unless the person or persons prove the due performance of the conditions on which the security was given.

(6) The Minister may order the release of any vessel, vehicle, aircraft or gear, equipment or fish seized in terms of this Act.

63. Disposal of perishables

- (1) If any fish or other thing of a perishable nature is seized in terms of section 51 the Minister may, notwithstanding any other provision of this Act:
- (a) return the fish or other thing to the person from whom it was seized on receiving adequate security equivalent to the value of the fish or thing; or
 - (b) cause the sale of the fish or other thing at a price which is reasonable in the circumstances and, if court proceedings are instituted, pay the proceeds of the sale into a suspense account of the Department pending a court order in respect of the forfeiture of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized: Provided that, if, after making all reasonable efforts, the Minister is unable to sell the fish or other thing, or where such fish or other things are unfit for sale, he or she may dispose thereof in such other manner as he or she deems fit, including by destruction.
- (2) If any live fish has been seized in terms of section 51, it may be released or destroyed at the discretion of the seizing fishery control officer where he or she for any sufficient reason considers such act desirable.

64. Treatment of things detained or seized

- (1) If any vessel, vehicle, aircraft or other thing has been detained or seized in terms of section 51, and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within 90 days of the detention or seizure, the Minister may apply to the court for it to be forfeited to the State and the court shall make such order as it shall deem fit.
- (2) If the lawful owner of a vessel, vehicle, aircraft or thing seized or detained in terms of section 51 cannot be traced within 90 days of such seizure it shall be forfeited to the State and be disposed of as the Director-General in his or her discretion shall consider fit.
- (3) If a vessel, vehicle, aircraft or thing has been seized or detained in terms of section 51 and the court does not order the forfeiture of it, any proceeds realised from its disposal shall be returned to the owner thereof or the person having the possession, care or control of it at the time of such detention or seizure.
- (4) If the owner of a vessel, vehicle, aircraft or thing or the person having the possession, care or control of it at the time of its seizure or detention is convicted of an offence in terms of this Act and a fine is imposed, it may be detained until all fines, orders for costs and penalties imposed in terms of this Act have been paid.
- (5) If any payment contemplated in subsection (4) is not made within such time as the court may determine, the vessel, vehicle, aircraft or thing may be sold in satisfaction and the proceeds shall be dealt with in accordance with section 65.
- (6) Any vessel, vehicle, aircraft or other thing ordered to be forfeited in terms of this Act may, if no appeal has been lodged at the expiry of the time limited for appeal in a court, be disposed of in the manner that the Minister may determine.

65. Application of security

Any security or net proceeds of sale held in respect of any vessel, vehicle, aircraft or other thing shall be applied as follows and in that order:

- (a) the discharge of any forfeiture ordered in terms of section 68;
- (b) the payment of all fines or a contribution towards such a fine, for offences in terms of this Act or penalties imposed in terms of this Act,

- arising out of the use of or in connection with the vessel, vehicle, aircraft or other thing;
- (c) the discharge of all orders for costs in proceedings in terms of this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other thing; and
 - (d) return as provided for in section 64.

66. Liability for loss, damage or deterioration of things in custody

The State shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other thing while in the custody of the State in terms of this Act.

67. Removal from custody

- (1) Any person who knows or can reasonably be expected to know that a vessel, vehicle, aircraft or other thing is held in the custody of the State in terms of this Act and who removes such vessel, vehicle, aircraft or thing, shall be guilty of an offence.
- (2) If any vessel, vehicle, aircraft or other thing held or forfeited in terms of this Act has been unlawfully removed from the custody of the State it is liable to seizure in accordance with international law.

68. Forfeiture orders by court

- (1) If any person is convicted of an offence in terms of this Act, the court may, in addition to any other penalty, order that any fishing vessel, together with its gear, equipment, any fish caught unlawfully or the proceeds of sale of such fish or any perishables, and any vehicle or aircraft used or involved in the commission of that offence be forfeited to the State.
- (2) If any vessel, vehicle, aircraft or other thing seized in terms of this Act, or any security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed in terms of this Act, it shall be made available to the registered owner or his or her nominee or, in the absence of such persons, a person who appears to be entitled to it.
- (3) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the security.
- (4) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, the court may order any person convicted of an offence in connection therewith and the owner of the vessel, vehicle, aircraft or other thing concerned, whether or not he or she is an accused, to pay the difference between the amount lodged in respect of security and the aggregate value of the forfeited property.

69. Disposal of forfeited things and discharge of forfeiture orders

- (1) Any vessel, including its gear, cargo, stores and fuel, and any vehicle or aircraft, gear, net or other equipment, explosive, fire-arm or poison ordered to be forfeited in terms of this Act shall be disposed of in such manner as the Minister may determine.
- (2) The owner or any other person with real security in any property forfeited in terms of section 68, may apply to court for the release of the property in question or for the realisation of his or her security therein, as the case may be.
- (3) The court may release the property contemplated in subsection (2) or order the realisation of the security therein, if the applicant proves that he or she was in no way implicated in the commission of the offence, and that he or she could not have prevented it.

70. Jurisdiction of courts

(1) Any act or omission in contravention of any of the provisions of this Act which is committed:

- (a) by any person within South African waters;
- (b) outside South African waters by any citizen of the Republic or any person ordinarily resident in the Republic; or
- (c) by any person on board any local fishing vessel;

shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic.

(2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.

(3) Notwithstanding anything to the contrary in any other act, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

71. Documentary evidence

(1) The Minister may issue a certificate stating that:

- (a) a specified vessel was or was not a local fishing vessel or a foreign fishing vessel on a specified date;
- (b) a specified vessel or person was or was not on a specified date the holder of any specified licence, permit, authorisation or certificate of registration;
- (c) an appended document is a true copy of the licence, authorisation or certificate of registration for a specified vessel or person and that specified conditions were those of a licence, permit, authorisation or certificate of registration issued in respect of a specified vessel or person;
- (d) a particular location or area of water was on a specified date within South African waters, or within an area of South African waters subject to specified conditions;
- (e) an appended chart shows the boundaries on a specified date of South African waters, internal waters, territorial waters, the exclusive economic zone or any area within such waters or zones which is subject to specified conditions;
- (f) a call sign, name or number is that of a particular vessel or has been allotted under any system of naming or numbering of vessels to a particular vessel; or
- (g) a particular position or catch report was given in respect of a specified vessel.

(2) Any certificate issued in terms of this section shall be:

- (a) signed by the person who made it; and
- (b) headed 'Certificate: section 71 Marine Living Resources Act, 1998'.

(3) In the absence of evidence to the contrary, a document purporting to be a certificate issued in terms of this section shall be deemed to be such a certificate and to have been duly given.

(4) In any proceedings for any offence in terms of section 44, a certificate as to the cause and manner of death or injury of any fish, signed by the Director-General, shall, in the absence of the evidence to the contrary, be sufficient evidence as to the matters stated in that certificate.

72. Validity of certificates

(1) Subject to this section, in any proceedings in terms of this Act, a certificate issued in terms of section 71 shall be admissible in evidence and shall be *prima facie* evidence of the facts averred in it.

(2) A court may, of its own accord or on application by any party to proceedings, require that the person who issued the certificate attend and give oral evidence at the hearing.

(3) Any omission or mistake in any certificate issued in terms of section 71 shall not render it inadmissible in evidence unless the court considers such omission or mistake to be material to any issue in the proceedings concerned, or the court is of the opinion that the defendant or accused is unduly prejudiced thereby.

73. Certificate as to location of vessel

(1) A certificate given by a fishery control officer or observer shall be *prima facie* evidence in any proceedings in terms of this Act, of the place or area in which a vessel has been at a particular date and time or during a particular period of time.

(2) A fishery control officer shall in any certificate issued in terms of subsection (1) state the following:

- (a) his or her name, address, official position, place of appointment and provision in terms of which he or she is appointed;
 - (b) the name and, if known, call sign of the fishing vessel concerned;
 - (c) the date and time or period of time the vessel was in a place or area;
 - (d) the place or area in which it is alleged the vessel was located;
 - (e) the position fixing instruments used to fix the place or area referred to in paragraph (d) and their accuracy within their specified limits;
 - (f) that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position and that they appeared to be working correctly; and
 - (g) if a position fixing instrument which is not a designated machine or is not generally recognised as reliably accurate is used, that he or she checked the instrument as soon as possible after the time concerned against such an instrument.
- (3) Section 71 shall, with the necessary changes, apply to a certificate issued in terms of this section.

74. Designated machines

(1) The Minister may by notice published in the *Gazette* designate any machine or instrument or class of machines or instruments as a designated machine.

(2) The readings of a designated machine shall be admissible as evidence of the facts that they aver if:

- (a) the readings were made by a person who has received training in the operation of designated machines; and
- (b) the machine was checked for correct working a reasonable time before and after the readings it is sought to adduce in evidence were made and the machine appeared to be working correctly.

(3) If a designated machine has been checked for correct working and read by a person trained in the operation thereof, it shall, in the absence of evidence to the contrary, be presumed to give accurate readings within the manufacturer's specified limits.

(4) The readings of designated machines may be made from a printout or as observed from a visual display unit.

(5) Any machine contemplated in subsection (1) must be capable either wholly or partially in itself of producing the readings concerned and not merely be a receiver of information or data.

75. Photographic evidence

- (1) If a photograph is taken of any fishing or related activity and the date and time on and position from which the photograph is taken are simultaneously superimposed upon the photograph, it shall be *prima facie* evidence that the photograph was taken on the date, at the time and in the position so appearing.
- (2) The provisions of subsection (1) shall apply only when:
 - (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
 - (b) the instruments which provide the date, time and position are generally recognised as being accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.
- (3) Any fishery control officer or observer who takes a photograph contemplated in subsection (1) may issue a certificate appending the photograph stating the following:
 - (a) His or her name, address, official position, place of appointment and provision in terms of which he or she is appointed;
 - (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
 - (c) the brand and model names of the camera, watch, clock or other instruments supplying the date and time, including the position fixing instrument, and that he or she checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b), and that they all appeared to be working correctly;
 - (d) the matters set out in subsection (2)(a);
 - (e) the accuracy of the fixing instrument if used within specified limits;
 - (f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.
- (4) Section 71 shall, with the necessary changes, apply to a certificate issued in terms of this section.

76. Observation devices

- (1) The Minister may, by notice published in the *Gazette*, designate any device or machine or class of device or machine as an observation device.
- (2) The information or data concerning the vessel's position and fishing activities referred to in subsection (3) may be fed or captured manually into the observation device or automatically from machines aboard the vessel or ascertained by the use of the observation device's transmissions in conjunction with other machines.
- (3) All information or data obtained or ascertained by the use of an observation device, shall be *prima facie* evidence that such information:
 - (a) came from the vessel so identified;
 - (b) was accurately relayed or transferred; and
 - (c) was given by the master, owner and charterer of the fishing vessel, and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.
- (4) Subsection (3) applies irrespective of whether or not the information was stored before or after any transmission or transfer.
- (5) Any fishery control officer or observer may issue a certificate stating the following:
 - (a) His or her name, address, official position, place of appointment and provision in terms of which he or she is appointed;

- (b) that he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an observation device;
 - (c) the date and time the information was obtained or ascertained from the observation device and the details thereof;
 - (d) the name and call sign of the vessel on which the observation device is or was located as known to him or her or as ascertained from any official register, record or other document; and
 - (e) that there appeared to be no malfunction in the observation device, its transmissions or other machines used in obtaining or ascertaining the information.
- (6) Section 71 shall, with the necessary changes, apply to a certificate issued in terms of this section.
- (7) No person shall destroy, damage, render inoperative or otherwise interfere with an observation device or machine aboard a vessel, vehicle or aircraft which automatically feeds or inputs information or data into an observation device.
- (8) No person shall intentionally feed or capture information or data into an observation device which is not officially required in terms of this Act, or is false or inaccurate.

CHAPTER 8: General Provisions

77. Power to make regulations

- (1) The Minister may make regulations regarding:
 - (a) any matter required or permitted to be prescribed in terms of this Act; and
 - (b) generally all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.
- (2) Without prejudice to the generality of the provisions of subsection (1), the Minister may make regulations:
 - (a) prescribing fines greater in amount than those already specified in any provision of this Act:
 - (i) if necessary as a result of inflation or a rise in the consumer price index; or
 - (ii) to be in accordance with international law;
 - (b) providing for the forfeiture of any vessel, vehicle, aircraft or thing used in the commission of an offence in terms of this Act;
 - (c) providing for the forfeiture of any fish caught in contravention of any provision of this Act;
 - (d) providing for the imposition of an additional fine to an amount representing the value in whole or in part of any vessel, vehicle, aircraft, gear, equipment or fish in the place of forfeiture of such vessel, vehicle, aircraft, gear, equipment or fish;
 - (e) prescribing fisheries management and conservation measures, including mesh sizes, gear standards, minimum species sizes, closed seasons, closed areas, prohibited methods of fishing or gear and schemes for limiting entry into all or any specified fisheries;
 - (f) to regulate the catching and utilisation of fish taken incidentally when fishing for a species for which a licence or permit has been issued;
 - (g) regarding licences or authorisation in respect of any vessel or class or category of vessels to be used for fishing, related activities or any other purpose pursuant to this Act, including application procedures and forms, and the format and requirements for the issuing of licences or permits, grounds for denial, terms and conditions;

- (h) prescribing different classes of and formats for licences or permits, including application procedures and forms, and the area or fishing method or type of gear in respect of which each class of licence or permit shall be valid;
- (i) prescribing the operation of, and conditions and procedures to be observed by any fishing vessel while in South African waters, having due regard to the provisions of the United Nations Convention on the Law of the Sea;
- (j) prescribing the operation of, and conditions and procedures to be observed by, any vessel which enters South African waters for any purpose, including transiting the South African fisheries waters, in terms of this Act;
- (k) regulating:
 - (i) the navigation of foreign fishing vessels through South African waters, having due regard to the provisions of the United Nations Convention on the Law of the Sea; and
 - (ii) the manner in which gear is to be stowed aboard such vessels;
- (l) regarding the catching, loading, landing, handling, processing, transshipping, transporting, possession and disposal of fish;
- (m) regarding the import, export, trade in, distribution and marketing of fish and fish products;
- (n) prescribing the manner in which any gear shall be stowed;
- (o) providing for the implementation of any agreement or arrangement entered into under section 38 or 42;
- (p) regarding the appointment, powers and duties of fishery control officers, honorary marine conservation officers and observers;
- (q) prescribing the duties and procedures to be followed by the master and crew of any vessel in respect of fishery control officers and observers;
- (r) prescribing the licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and setting times and the minimum distances from such devices any vessel may fish around such devices;
- (s) regulating or prohibiting the use of any diving apparatus, spear guns or other similar devices for fishing or related activities;
- (t) establishing standards and measures for the safety of local fishers and local fishing vessels;
- (u) requiring the provision of statistical and other information related to fisheries, including fishing log books, and the format in which the information shall be recorded;
- (v) regulating and controlling the operation of fish processing establishments, including quality control measures and inspection of such establishments;
- (w) regarding the prevention of marine pollution;
- (x) regulating or prohibiting, either generally or in any specified fisheries:
 - (i) the management and protection of marine protected areas;
 - (ii) the taking of coral;
 - (iii) the setting of fish traps, nets, fish pens or seine nets;
 - (iv) the taking of fish for aquarium purposes; or
 - (v) the taking of turtles;
- (y) establishing measures for the protection of specified species;
- (z) governing the administration of fishing harbours and any other matter incidental thereto;
- (aa) relating to the circumstances in which fish which have been caught shall be returned or not returned to the sea or shall be released or not released;

- (bb) relating to the dumping or discharging of anything which is or may be injurious to fish, or which may disturb or change the ecological balance in any area of the sea;
- (cc) to ensure the orderly development and control of mariculture in the Republic; and
- (dd) to ensure the orderly development of high seas fishing by South African persons and vessels.

78. Assignment to provinces

The Minister may assign the administration of any provision of this Act to the executive authority of a province.

79. Delegation of powers

- (1) The Minister may:
 - (a) upon the conditions that he or she deems fit, delegate any or all the powers conferred upon him or her in terms of this Act, save a power to make regulations, to the Director-General or an officer of the Department nominated by the Director-General; or
 - (b) by notice in the *Gazette*, delegate any power conferred upon him or her in terms of this Act, excluding the power to make regulations, to an authority in the local sphere of government.
- (2) The Director-General may delegate any power conferred upon him or her in terms of this Act to an officer in the Department upon the conditions that he or she deems fit.
- (3) No delegation of any power shall prevent the exercise of such power by the Minister or the Director-General.

80. Appeal to Minister

- (1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated in terms of this Act or section 238 of the Constitution.
- (2) An appeal under subsection (1) must be noted and shall be dealt with in the manner and in accordance with the procedure prescribed by the Minister.
- (3) The Minister shall consider any matter submitted to him or her on appeal, after giving every person with an interest in the matter an opportunity to state his or her case.

81. Exemptions

- (1) If in the opinion of the Minister there are sound reasons for doing so, he or she may, subject to the conditions that he or she may determine, in writing exempt any person or group of persons or organ of state from a provision of this Act.
- (2) An exemption granted in terms of subsection (1) may at any time be cancelled or amended by the Minister.

82. Inquiries

- (1) The Minister may order an inquiry into any matter forming the subject matter of this Act.
- (2) For the purposes of an inquiry contemplated in subsection (1), the Minister may appoint one or more persons, including a chairperson, as a committee to conduct the inquiry.
- (3) A committee contemplated in subsection (2) may:
 - (a) order any person who in its opinion may be able to give information of material importance concerning the subject of the inquiry, or who is believed to have in his or her possession or custody or control, any register, book, document or thing which may have a bearing on that

- subject, to appear before the committee with such register, book, document or thing;
- (b) call upon, and administer an oath to, or accept an affirmation from any person present at the inquiry, whether he or she has been or could have been ordered in terms of paragraph (a);
 - (c) interrogate or require any person who has been called upon in terms of paragraph (b) to produce a register, book, document or thing referred to in paragraph (a).
- (4) An order for the attendance before a committee shall be in the form determined by that committee, and shall be signed by the chairperson.
- (5) The law relating to privilege as applicable to a person to give evidence or produce a register, book, document or thing before a court of law, shall be applicable in respect of the interrogation of, or production of a register, book, document or thing by, a person referred to in subsection (3).

83. Scientific investigations and practical experiments

The Minister may, notwithstanding the provisions of this Act, permit any scientific investigation or practical experiment.

84. Repeal of laws, and savings

- (1) The laws mentioned in schedule 1 are hereby repealed to the extent indicated in the third column thereof.
- (2) A registration of, or any licence in respect of, a fishing boat, factory or implement and any right, permit or permission for the performance of any Act in connection with fish or fish products under any provision of a law referred to in subsection (1) shall be deemed to be an appropriate registration, licence, permit, right or permission in terms of the corresponding provision of this Act (if any), respectively, for the unexpired portion of the period for which it would have been valid had this Act not been passed.
- (3) Notwithstanding the provisions of subsection (2), the Minister may by notice in the *Gazette* terminate a right of exploitation granted in terms of a provision of a law referred to in subsection (1).
- (4) An area set aside as a marine reserve under a provision of a law referred to in subsection (1), shall be deemed to have been declared a marine protected area in terms of this Act.

85. Transitional measures

Notwithstanding the provisions of section 84, the Minister shall for a period of six months after the commencement of this Act, exercise the powers of all institutions established by or under any Act repealed by that section, including the Sea Fishery Advisory Committee and Quota Board established by the Sea Fishery Act, 1988 (Act 12 of 1988).

86. Short title and commencement

This Act shall be called the Marine Living Resources Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

2.2.2.6.2 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, cooperative governance, public participation and matters related to protected areas.

(Refer to page 87 for this Act)

2.2.2.6.3 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity - South African Biodiversity Institute.

(Refer to page 119 for this Act)

2.2.2.7 Land

During the 1990's government developed a number of important policy documents pertaining to the reform of land. The most important was the White Paper on South African Land Policy, published in 1997. The White Paper incorporates various constitutional and statutory provisions such as the Restitution of Land Rights Act 22 of 1994, and sets out a framework of various principles on land, including guidance principles on environmental issues and tenure reform. Land reform is essential to the future development of South Africa and efficient land reform policies must be integrated into a legislative framework dealing with land and land reform.

More recently provision has been made for the protection of coastal land which has previously been regulated by the Sea-Shore Act of 1935. Whilst, in some parts of the country development has been allowed right up to the high-water mark, due to the traditional concept of the 'Admiralty Reserve' in terms of which government protected coastal areas for its own purpose, this has not happened country wide. The new National Environmental Management: Integrated Coastal Management Act 24 of 2008 now attempts to regulate coastal land by improving coastal public access, protecting sensitive eco-systems and securing the natural functioning of dynamic coastal processes. At the time of publication of this edition of the Compendium this Act has not yet been promulgated.

2.2.2.7.1 Environment Conservation Act

Description: The Act provides for the effective protection and controlled utilisation of the environment.
(Refer to page 283 for this Act)

2.2.2.7.2 Environment Conservation Act Extension Act

Description: The Act extends the application of the Environment Conservation Act of 1989 to those areas of the Republic which constituted national territories of certain former states and self-governing entities.

2.2.2.7.3 Environmental Laws Rationalisation Act

Description: The Act aims to rationalise certain Acts of Parliament which are administered by the Department of Environmental Affairs and Tourism, by amending those Acts and by extending the application thereof to certain areas which at present form part of the national territory of the Republic but where other laws apply.

2.2.2.7.4 National Environmental Management Act

Description: The National Environmental Management Act (NEMA) provides for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that promote co-operative governance and procedures for co-ordinating environmental functions exercised by organs of state. The Act further regulates the prohibition and restriction or control of activities which are likely to have a detrimental effect on the environment. It introduces a duty of care and strict liability for environmental legislation.
(Refer to page 32 for this Act)

2.2.2.7.5 National Environmental Management: Integrated Coastal Management Act

Description: This Act establishes a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable. It also

defines rights and duties in relation to coastal areas and determines the responsibilities of organs of state in relation to coastal areas. It furthermore prohibits incineration at sea, controls dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment. Finally the Act gives effect to South Africa's international obligations in relation to coastal matters.
(Refer to page 228 for this Act)

2.2.2.7.6 National Environmental Management: Protected Areas Act

Description: The Protected Areas Act provides for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, cooperative governance, public participation and matters related to protected areas.
(Refer to page 87 for this Act)

2.2.2.7.7 National Environmental Management: Biodiversity Act

Description: The Biodiversity Act provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of species and ecosystems in need of protection, sustainable use of indigenous biological resources, equity in bio-prospecting, and the establishment of a regulatory body on biodiversity – the South African Biodiversity Institute.
(Refer to page 119 for this Act)

2.2.3 Pollution

As a result of the constitutional entrenchment of the right to a healthy environment, government is placed under a constitutional obligation to have the environment protected ‘... through reasonable legislative and other measure(s) that ... prevent pollution ...’.¹ Prior to the enactment of the 1996 Constitution, the common law principles were applied to ensure integrated pollution control (IPC). The concept of integrated pollution control is based upon the understanding that the environment (generally) and ecosystems (specifically) function as an integrated whole. A framework designed to protect and utilise IPC effectively requires a legal and administrative system which acknowledges this interdependence. The White Paper on Integrated Pollution and Waste Management for South Africa describes integrated pollution and waste management as a ‘holistic and integrated system and process of management aimed at pollution prevention and minimisation at source, managing the impact of pollution and waste on the receiving environment and remediating damaged environments’.² In essence IPC requires that all forms of pollution and its control should be subject to the underlying principle of uniformity and consistency.

Pollution laws can be classified into the three elements air, land and water. Apart from the common law and statutes, a number of branches of the law must be considered in the application of legal principles concerning pollution. These include, *inter alia* the criminal law, the law of delict and the law of neighbours. In this *Compendium*, pollution has been subdivided into land pollution, atmospheric pollution, noise pollution, pollution of fresh water, marine pollution, pollution from land-based activities and waste management. Although the basic principles of the law on pollution remain the same, each individual category has been provided for as the legislator deemed fit.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in ‘Constitutional Law of South Africa’ edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

¹ Section 24(b)(i) Act 108 of 1996.

² White Paper on Integrated Pollution p10.

2.2.3.1 Land Pollution

This section focuses on legislation enacted to prevent land pollution. Approximately 90% of the total waste generated in South Africa is disposed of on land. It is government's responsibility to protect the natural environment from pollution. To give effect to this constitutionally entrenched right, Parliament promulgated the National Environmental Management Act 107 of 1998. This Act provides the basis for, *inter alia*, the regulation of land pollution. New legislation now specifically deals with the issue of waste management and the regulations of waste, i.e. the National Environmental Management Waste Act. In addition, the legislative framework covering land pollution includes numerous other acts, including the Environment Conservation Act 73 of 1989 and the Hazardous Substances Act 15 of 1973.

It should be noted that, although legislative and administrative reform initiatives have taken place over the last decade, a clear need exists for a central co-ordinating authority to give effect to the implementation of land pollution management strategies and pollution control laws. Only through a co-operative and co-ordinated legislative framework can sufficient land pollution and waste management strategies achieve their goals.

2.2.3.1.1 National Environmental Management Act

Description: The National Environmental Management Act (NEMA) provides for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that promote co-operative governance and procedures for co-ordinating environmental functions exercised by organs of state. The Act further regulates the prohibition and restriction or control of activities which are likely to have a detrimental effect on the environment. It introduces a duty of care and strict liability for environmental legislation.

(Refer to page 32 for this Act)

2.2.3.1.2 National Environmental Management: Waste Act

Description: This Act regulates waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. It also provides for institutional arrangements and planning matters; national norms and standards for regulating the management of waste; and specific waste management measures. It provides for the licencing and control of waste management activities, the remediation of contaminated land a national waste information system. It also deals with the issue of compliance and enforcement.

(Refer to page 183 for this Act)

2.2.3.1.3 National Environmental Management: Integrated Coastal Management Act

Description: This Act establishes a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable. It also defines rights and duties in relation to coastal areas and determines the responsibilities of organs of state in relation to coastal areas. It furthermore prohibits incineration at sea, controls dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment. Finally the Act gives effect to South Africa's international obligations in relation to coastal matters.
(Refer to page 228 for this Act)

2.2.3.1.4 Hazardous Substances Act

Description: This Act was promulgated to provide for the control of substances which may cause injury, ill-health or death by reason of their toxic, corrosive, irritant, strongly sensitising or flammable nature. The Hazardous Substances Act also provides for matters concerning the division of such substances or products into groups in relation to the degree of danger, the prohibition and control of the importation, manufacture, sale, use, operation, application and disposal of such substances.

2.2.3.1.5 Foodstuffs, Cosmetic And Disinfectant Act

Description: The Act provides for the control of the sale, manufacture and importation of foodstuffs, cosmetics and disinfectants.

2.2.3.1.6 Mineral And Petroleum Resources Development Act

Description: The Mineral and Petroleum Resources Development Act of 2002 guarantees equitable access to, and sustainable development of, the nation's mineral and petroleum resources and provides for environmental protection and rehabilitation in cases of mine-closure.

Mineral and Petroleum Resources Development Act 28 of 2002

As last amended by the Mineral and Petroleum Resources Development Amendment Act 49 of 2008.

Preamble

Recognising that minerals and petroleum are non-renewable natural resources;

Acknowledging that South Africa's mineral and petroleum resources belong to the nation and that the State is the custodian thereof;

Affirming the State's obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral and petroleum resources and to promote economic and social development;

Recognising the need to promote local and rural development and the social upliftment of communities affected by mining;

Reaffirming the State's commitment to reform to bring about equitable access to South Africa's mineral and petroleum resources;

Being committed to eradicating all forms of discriminatory practices in the mineral and petroleum industries;

Considering the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination;

Reaffirming the State's commitment to guaranteeing security of tenure in respect of prospecting and mining operations; and

Emphasising the need to create an internationally competitive and efficient administrative and regulatory regime,

CHAPTER 1: Definitions

1. Definitions

In this Act, unless the context indicates otherwise:

'*beneficiation*', in relation to any mineral resource, means the following:

- (a) primary stage, which includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;
- (b) secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product;
- (c) tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and
- (d) final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed or manufactured and value added products or articles.

'*block*' means any area of land or sea, including the sea bed, identified as a block by co-ordinates on a map prepared by the designated agency and situated wholly or partly in the Republic or its exclusive economic zone and includes any part of such block;

'*Board*' means the Minerals and Mining Development Board established by section 57;

'*broad based economic empowerment*' means a social or economic strategy, plan, principle, approach or act which is aimed at:

- (a) redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the

minerals and petroleum industry, related industries and in the value chain of such industries; and

- (b) transforming such industries so as to assist in, provide for, initiate or facilitate:
 - (i) the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations;
 - (ii) the participation in or control of management of such operations;
 - (iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons;
 - (iv) the involvement of or participation in the procurement chains of operations;
 - (v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;
 - (vi) the socio-economic development of communities immediately hosting, affected by supplying labour to the operations; and
 - (vii) the socio-economic development of all historically disadvantaged South Africans from the proceeds or activities of such operations;

'*Chief Inspector*' means the Chief Inspector of Mines appointed in terms of section 48(1) of the Mine Health and Safety Act, 1996 (Act 29 of 1996);

'*community*' means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by mining on land occupied by such members or part of the '*community*';

'*contractual royalties*' means any royalties or payment agreed to between parties in a mining or production operation;

'*Council for Geoscience*' means the Council established by the Geoscience Act, 1993 (Act 100 of 1993);

'*day*' means a calendar day excluding a Saturday, Sunday or public holiday and when any particular number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day;

'*Department*' means the Department of Minerals and Energy;

'*designated agency*' means the organ, agency or company designated in terms of section 70;

'*development programme*' means the development programme approved under the terms and conditions of the production right;

'*Director-General*' means the Director-General of the Department;

'*effective date*' means the date on which the relevant permit is issued or the relevant right is executed;

'*employee*' means any person who works for the holder of a reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right and production right, and who is entitled to receive any remuneration, and includes any employee working at or in a mine, including any person working for an independent contractor;

'*environment*' means the environment as defined in the National Environmental Management Act, 1998 (Act 107 of 1998);

'*environmental authorisation*' has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998 (Act 107 of 1998);

'*exclusionary act*' means any act or practice which impedes or prevents any person from entering into or actively participating in the mineral and petroleum industry, or entering into or actively participating in any market

connected with the mineral and petroleum industries, or from making progress within such industry or market;

'*exploration area*' means the area comprising the block or blocks depicted in an exploration or production right;

'*exploration operation*' means the re-processing of existing seismic data, acquisition and processing of new seismic data or any other related activity to define a trap to be tested by drilling, logging and testing, including extended well testing, of a well with the intention of locating a discovery;

'*exploration right*' means the right granted in terms of section 80;

'*exploration work programme*' means the approved exploration work programme indicating the petroleum operations to be conducted on the exploration area during the validity of the exploration right, including the details regarding the exploration activities, phases, equipment to be used and estimated expenditures for the different exploration activities and phases;

'*historically disadvantaged person*' means:

- (a) any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;
- (b) any association, a majority of whose members are persons contemplated in paragraph (a);
- (c) a juristic person, other than an association, which:
 - (i) is managed and controlled by a person contemplated in paragraph (a) and that the persons collectively or as a group own and control a majority of the issued share capital or members' interest and are able to control a majority of the members' vote; or
 - (ii) is a subsidiary, as defined in section 1(e) of the Companies Act, 1973, as a juristic person who is a historically disadvantaged person by virtue of the provisions of paragraph (c)(i).

'*holder*', in relation to a prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit, means the person to whom such right or permit has been granted or such person's successor in title;

'*land*' includes the surface of the land and the sea, where appropriate;

'*mine*', means, when:

- (a) used as a noun:
 - (i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole, whether being worked or not, made for the purpose of searching for or winning a mineral;
- (b) used as a verb, in the mining of any mineral, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto, in, on or under the relevant mining area;

'*mineral*' means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes:

- (a) water, other than water taken from land or sea for the extraction of any mineral from such water;
- (b) petroleum; or
- (c) peat;

'*mining area*':

- (a) in relation to a mining right or a mining permit, means the area on which the extraction of any mineral has been authorised and for which that right or permit is granted;

- (b) in relation to any environmental, health, social and labour matter and any residual, latent or other impact thereto, including:
 - (i) any land or surface adjacent or non-adjacent to the area as contemplated in subsection (i) but upon which related or incidental operations are being undertaken;
 - (ii) any surface of land on which such road, railway line, powerline, pipe line, cableway or conveyor belt is located, under the control of the holder of such a mining right or a mining permit and which such holder is entitled to use in connection with the operations performed or to be performed under such right or permit; and
 - (iii) all buildings, structures, machinery, residue stockpiles, or objects situated on or in the area as contemplated in subsections (ii)(a) and (ii)(b).

'mining operation' means any operation relating to the Act of mining and matters directly incidental thereto;

'mining permit' means a permit issued in terms of section 27(6);

'mining right' means a right to mine granted in terms of section 23(1);

'Mining Titles Office' Mineral and Petroleum Titles Registration Office contemplated in section 2 of the Mining Titles Registration Act, 1967 (Act 16 of 1967);

'mining work programme' means the planned mining work programme to be followed in order to mine a mineral resource optimally;

'Minister' means the Minister of Minerals and Energy;

'National Environmental Management Act, 1998' means the National Environmental Management Act, 1998 (Act 107 of 1998);

'officer' means any officer of the Department appointed under the Public Service Act, 1994 (Proclamation 103 of 1994);

'owner', in relation to:

(a) land:

- (i) means the person in whose name the land is registered; or
- (ii) if it is land owned by the State, means the State together with the occupant thereof; or

(b) the sea, means the State;

'owner of works' has the meaning contemplated in paragraph (b) of the definition of 'owner' in section 102 of the Mine Health and Safety Act, 1996 (Act 29 of 1996);

'petroleum' means any liquid, solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any such liquid or solid hydrocarbon or combustible gas, which gas has in any manner been returned to such natural condition, but does not include coal, bituminous shale or other stratified deposits from which oil can be obtained by destructive distillation or gas arising from a marsh or other surface deposit;

'petroleum reservoir' means a geological formation containing petroleum;

'prescribed' means prescribed by regulation;

'processing', in relation to any mineral, means the winning, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;

'production area' means any area which is subject to a production right;

'production operation' means any operation, activity or matter that relates to the exploration, appraisal, development and production of petroleum;

'production right' means a right granted in terms of section 84;

'prospecting' means intentionally searching for any mineral by means of any method:

- (a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water; or

(b) in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or

(c) in the sea or other water on land;

'*prospecting area*' means the area of land which is the subject of any prospecting right;

'*prospecting operations*' mean any activity carried on in connection with prospecting;

'*prospecting right*' means the right to prospect granted in terms of section 17(1);

'*prospecting work programme*' means the planned prospecting work programme to be followed in order to establish the occurrence of any mineral resource in the prospecting area during the period applied for;

'*reconnaissance operation*' means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photo geological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation other than acquisition and processing of new seismic data;

'*reconnaissance permit*' means a permit issued in terms of section 75(1);

'*record*' means recorded information regardless of form or medium;

'*regulation*' means any regulation made under section 107;

'*Regional Manager*' means the officer designated by the Director-General in terms of section 8 as regional manager for a specified region;

'*Regional Mining Development and Environmental Committee*' means a Regional Mining Development and Environmental Committee established in terms of section 64(1);

'*residue deposit*' means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right, production right or an old order right;

'*residue stockpile*' means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of, by the holder of a mining right, mining permit, production right or an old order right;

'*retention area*' means the area of land which comprises the subject of a retention permit;

'*retention permit*' means a permit issued in terms of section 32;

'*Registrar*' means the registrar of deeds as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

'*State royalties*' means any royalty payable to the State in terms of an Act of Parliament;

'*sustainable development*' means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that mineral and petroleum resources development serves present and future generations;

'*technical co-operation permit*' means the technical co-operation permit issued in terms of section 77(1);

'*the sea*' means the water of the sea, as well as the bed of the sea and the subsoil thereof below the low-water mark as defined in the Seashore Act, 1935 (Act 21 of 1935), and within:

(a) the territorial waters as contemplated in section 4 of the Maritime Zones Act, 1994 (Act 15 of 1994), of the Republic, including the water and the bed of any tidal river and of any tidal lagoon;

(b) the exclusive economic zone as contemplated in section 7 of the Maritime Zones Act, 1994 (Act 15 of 1994); and

- (c) the continental shelf as contemplated in section 8 of the Maritime Zones Act, 1994 (Act 15 of 1994);

'this Act' includes the regulations and any term or condition to which any permit, permission, licence right, consent, exemption, approval, notice, closure certificate, environmental management plan, environmental management programme or directive issued, given, granted or approved in terms of this Act, is subject;

'topsoil' means the layer of soil covering the earth which:

- (a) provides a suitable environment for the germination of seed;
- (b) allows the penetration of water;
- (c) is a source of micro-organisms, plant nutrients and in some cases seed; and
- (d) is not of a depth of more than 0,5 metres or such other depth as the Minister may prescribe for a specific prospecting or exploration area or a mining area.

CHAPTER 2: Fundamental Principles

2. Objects of Act

The objects of this Act are to:

- (a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the Republic;
- (b) give effect to the principle of the State's custodianship of the nation's mineral and petroleum resources;
- (c) promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;
- (d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;
- (e) promote economic growth and mineral and petroleum resources development in the Republic, particularly development of downstream industries through provision of feedstock, and development of mining and petroleum inputs industries;
- (f) promote employment and advance the social and economic welfare of all South Africans;
- (g) provide for security of tenure in respect of prospecting, exploration, mining and production operations;
- (h) give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
- (i) ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

3. Custodianship of nation's mineral and petroleum resources

- (1) Mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.
- (2) As the custodian of the nation's mineral and petroleum resources, the State, acting through the Minister, may:
 - (a) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining

- right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right and production right; and
- (b) in consultation with the Minister of Finance, prescribe and levy, any fee payable in terms of this Act.
 - (3) The Minister must ensure the sustainable development of South Africa's mineral and petroleum resources within a framework of national environmental policy, norms and standards while promoting economic and social development.
 - (4) The State royalty must be determined and levied by the Minister of Finance in terms of an Act of Parliament.

4. Interpretation of Act

- (1) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the objects of this Act must be preferred over any other interpretation which is inconsistent with such objects.
- (2) In-so-far as the common law is inconsistent with this Act, this Act prevails.

5. Legal nature of prospecting right, mining right, exploration right or production right, and rights of holders thereof

- (1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967, (Act 16 of 1967), is a limited real right in respect of the mineral or petroleum and the land to which such right relates.
- (2) The holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.
- (3) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may:
 - (a) enter the land to which such right relates together with his or her employees, and bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose of prospecting, mining, exploration or production, as the case may be;
 - (b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;
 - (c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;
 - (cA) subject to section 59B of the Diamonds Act, 1986 (Act 56 of 1986), (in the case of diamond) remove and dispose of any diamond found during the course of mining operations;
 - (d) subject to the National Water Act, 1998 (Act 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and
 - (e) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act.

5A. Prohibition relating to illegal act

No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral

or petroleum or commence with any work incidental thereto on any area without:

- (a) an environmental authorisation;
- (b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and
- (c) giving the landowner or lawful occupier of the land in question at least 21 days written notice.

6. Principles of administrative justice

- (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), any administrative process conducted or decision taken in terms of this Act must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness.
- (2) Any decision contemplated in subsection (1) must be in writing and accompanied by written reasons for such decision.

CHAPTER 3: Administration

7. Division of Republic, territorial waters, continental shelf and exclusive economic zone into regions

For the purposes of this Act the Minister must, by notice in the *Gazette*, divide the Republic, the sea as defined in section 1 of the Sea-shore Act, 1935 (Act 21 of 1935), and the exclusive economic zone and continental shelf referred to in sections 7 and 8 respectively, of the Maritime Zones Act, 1994 (Act 15 of 1994), into regions.

8. Designation and functions of officer

The Director-General must, subject to the laws governing the public service, designate an officer in the service of the Department as regional manager for each region contemplated in section 7 who must perform the functions delegated or assigned to him or her in terms of this Act or any other law.

CHAPTER 4: Mineral and Environmental Regulation

9. Order of processing of applications

- (1) If a Regional Manager receives more than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land, applications received on:
 - (a) the same day must be regarded as having been received at the same time and must be dealt with in accordance with subsection (2);
 - (b) different days must be dealt with in order of receipt.
- (2) When the Minister considers applications received on the same day he or she must give preference to applications from historically disadvantaged persons.

10. Consultation with interested and affected parties

- (1) Within 14 days after accepting an application lodged in terms of section 16, 22 or 27, the Regional Manager must in the prescribed manner:
 - (a) make known that an application for a prospecting right, mining right or mining permit has been accepted in respect of the land in question; and
 - (b) call upon interested and affected persons to submit their comments regarding the application within 30 days from the date of the notice.

(2) If a person objects to the granting of a prospecting right, mining right or mining permit, the Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon.

11. Transferability and encumbrance of prospecting rights and mining rights

(1) A prospecting right or mining right or an interest in any such right, or any interest in a close corporation or unlisted company or any controlling interest in a listed company (which corporations or companies hold a prospecting right or mining right or an interest in any such right), may not be ceded, transferred, let, sublet, assigned alienated or otherwise disposed of without prior written of the Minister.

(2) The consent referred to in subsection (1) must be granted if the cessionary, transferee, lessee, sub lessee, assignee or the person to whom the right will be alienated or disposed of:

- (a) is capable of carrying out and complying with the obligations and the terms and conditions of the right in question; and
- (b) satisfies the requirements contemplated in section 17 or 23, as the case may be.

(3) The consent contemplated in subsection (1) is not required in respect of the encumbrance by mortgage contemplated in subsection (1) of right or interest as security to obtain a loan or guarantee for the purpose of funding or financing a prospecting or mining project by:

- (a) any bank, as defined in the Banks Act, 1990 (Act 94 of 1990); or
- (b) any other financial institution approved for that purpose by the Registrar of Banks referred to in the Banks Act, 1990 (Act 94 of 1990), on request by the Minister,

if the bank or financial institution in question undertakes in writing that any sale in execution or any other disposal pursuant to the foreclosure of the mortgage will be subject to the consent in terms of subsection (1).

(4) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this section must be lodged for the registration at the Mineral and Petroleum Titles Registration Office within 60 days of the relevant transaction.

(5) Any cession, transfer, letting, subletting, assignment, alienation or disposal of prospecting or mining right or an interest in a corporation or company made in contravention of subsection 1 is void.

12. Assistance to historically disadvantaged persons

(1) The Minister may facilitate assistance to any historically disadvantaged person to conduct prospecting or mining operations.

(2) The assistance referred to in subsection (1) may be provided subject to such terms and conditions as the Minister may determine.

(3) Before facilitating the assistance contemplated in subsection (1), the Minister must take into account all relevant factors, including:

- (a) the need to promote equitable access to the nation's mineral resources;
- (b) the financial position of the applicant;
- (c) the need to transform the ownership structure of the minerals and mining industry; and
- (d) the extent to which the proposed prospecting or mining project meets the objects referred to in section 2(c), (d), (e), (f) and (i).

(4) When considering the assistance referred to in subsection (1), the Minister may request any relevant organ of State to assist the applicant concerned in the development of his or her prospecting or mining project.

13. Application for reconnaissance permission

- (1) Any person who wishes to apply to the Minister for a reconnaissance permission must lodge the application:
 - (a) at the office of the Regional Manager in whose region the land is situated;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (2) The Regional Manager must accept an application for a reconnaissance permission if:
 - (a) the requirements contemplated in subsection (1) are met; and
 - (b) no person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.
- (3) If the application does not comply with the requirements of this section, the Regional Manager must reject the application and notify the applicant in writing within 14 days of the receipt of the application with written reasons for such decision.

14. Issuing and duration of reconnaissance permission

- (1) Subject to subsections (1) and (2), the Minister must issue the reconnaissance permission if:
 - (a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operations in accordance with the reconnaissance work programme;
 - (b) the estimated expenditure is compatible with the proposed reconnaissance operation and duration of the reconnaissance work programme; and
 - (c) the applicant is not in contravention of any relevant provision of this Act.
- (2) The Minister must refuse to issue a reconnaissance permission if the applicant does not meet all the requirements referred to in subsection (1).
- (3) If the Minister refuses to grant a reconnaissance permission, the Minister must, within 30 days of the decision, notify the applicant in writing with reasons for such decision.
- (4) The reconnaissance permission is valid for one year and is not renewable.
- (5) A reconnaissance permission may not be transferred, ceded, let, sublet, alienated, disposed of or encumbered by mortgage.

15. Rights and obligations of holder of reconnaissance permission

- (1) A reconnaissance permission entitles the holder, after giving written notice to the landowner or the lawful occupier of the land at least 14 days before the day such holder will enter the land to which such permission relates, to enter the land concerned for the purposes of conducting reconnaissance operations.
- (2) A reconnaissance permission does not entitle the holder to:
 - (a) conduct any prospecting or mining operations for any mineral in or on the land in question; or
 - (b) any exclusive right to apply for or be granted a prospecting right, mining right or mining permit in respect of the land to which such reconnaissance permission relates.

16. Application for prospecting right

- (1) Any person who wishes to apply to the Minister for a prospecting right must simultaneously apply for an environmental authorisation and must lodge the application:

- (a) at the office of the Regional Manager in whose region the land is situated;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.
- (2) The Regional Manager must accept an application for a prospecting right if:
 - (a) the requirements contemplated in subsection (1) are met;
 - (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land; and
 - (c) no prior application for a prospecting right, mining right, mining permit or retention permit has been accepted for the same mineral on the same land and which remains to be granted or refused.
- (3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing of that fact within 14 days of the receipt of the application.
- (4) If the Regional Manager accepts the application, the Regional Manager must within 14 days from the date of acceptance, notify the applicant in writing:
 - (a) to submit relevant environmental reports required in terms of chapter 5 of the National Environmental Management Act, 1998 within 60 days of the date of notice; and
 - (b) to consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports;
- (5) Upon receipt of the information referred to in subsection (4)(a) and (b), the Regional Manager must forward the application to the Minister for consideration.

17. Granting and duration of prospecting right

- (1) The Minister must within 30 days of receipt of the application from the Regional Manager, grant a prospecting right if:
 - (a) the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the prospecting work programme;
 - (b) the estimated expenditure is compatible with the proposed prospecting operation and duration of the prospecting work programme;
 - (c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation is issued;
 - (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996);
 - (e) the applicant is not in contravention of any relevant provision of this Act; and
 - (f) in respect of prescribed minerals the applicant has given effect to the objects referred to in section 2(d).
- (2) The Minister must, within 30 days of receipt of the application from the Regional Manager, refuse to grant a prospecting right if:
 - (a) the application does not meet all the requirements referred to in subsection (1);
 - (b) the granting of such right will result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources.
- (3) If the Minister refuses to grant a prospecting right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision with reasons.

(4) The Minister may, having regard to the type of mineral concerned and the extent of the proposed prospecting project, request the applicant to give effect to the object referred to in section 2(d).

(4A) If the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.

(5) A prospecting right granted in terms of subsection (1) comes into effect on the effective date.

(6) A prospecting right is subject to this Act, any other relevant law and the terms and conditions stipulated in the right and is valid for the period specified in the right, which period may not exceed five years.

18. Application for renewal of prospecting right

(1) Any holder of a prospecting right who wishes to apply to the Minister for the renewal of a prospecting right must lodge the application:

(a) at the office of the Regional Manager in whose region the land is situated;

(b) in the prescribed manner; and

(c) together with the prescribed non-refundable application fee.

(2) An application for renewal of a prospecting right must:

(a) state the reasons and period for which the renewal is required;

(b) be accompanied by a detailed report reflecting the prospecting results, the interpretation thereof and the prospecting expenditure incurred;

(c) be accompanied by a report reflecting the extent of compliance with the conditions of the environmental authorisation; and

(d) include a detailed prospecting work programme for the renewal period.

(e) a certificate issued by the Council for Geoscience that all prospecting information as prescribed has been submitted.

(3) The Minister must grant the renewal of a prospecting right if the application complies with subsections (1) and (2) and the holder of the prospecting right has complied with the:

(a) terms and conditions of the prospecting right and is not in contravention of any relevant provision of this Act;

(b) prospecting work programme; and

(c) compliance with the conditions of the environmental authorisation.

(4) A prospecting right may be renewed once for a period not exceeding three years.

(5) A prospecting right in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as such application has been granted or refused.

19. Rights and obligations of holder of prospecting right

(1) In addition to the rights referred to in section 5, the holder of a prospecting right has:

(a) subject to section 18, the exclusive right to apply for and be granted a renewal of the prospecting right in respect of the mineral and prospecting area in question;

(b) subject to subsection (2), the exclusive right to apply for and be granted a mining right in respect of the mineral and prospecting area in question; and

(c) subject to the permission referred to in section 20, the exclusive right to remove and dispose of any mineral to which such right relates and which is found during the course of prospecting.

(2) The holder of a prospecting right must:

- (a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within 60 days after the right has become effective;
- (b) commence with prospecting activities within 120 days from the date on which the prospecting right becomes effective in terms of section 17(5) or such an extended period as the Minister may authorise;
- (c) continuously and actively conduct prospecting operations in accordance with the prospecting work programme;
- (d) comply with the conditions of the environmental authorisation;
- (e) comply with the requirements of the approved environmental management programme;
- (f) pay the prescribed prospecting fees to the State; and
- (g) subject to section 20 and in terms of any relevant law, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations.
- (h) submit progress reports and data of prospecting operations to the Regional Manager within 30 days from the date of submission thereof to the Council for Geoscience.

20. Permission to remove and dispose of minerals

- (1) Subject to subsection (2), the holder of a prospecting right may only remove and dispose for his or her own account any mineral found by such holder in the course of prospecting operations conducted pursuant to such prospecting right in such quantities as may be required to conduct tests on it or to identify or analyse it.
- (2) The holder of a prospecting right must obtain the Minister's written permission to remove and dispose for such holder's own account of diamonds and bulk samples of any other minerals found by such holder in the course of prospecting operations.

21. Information and data in respect of reconnaissance and prospecting

- (1) The holder of a prospecting right or reconnaissance permission must:
 - (a) keep proper records, at the registered office or place of business of the holder, of reconnaissance or prospecting operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and
 - (b) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the Regional Manager regarding the prospecting operations.
- (1A) The Regional Manager must, submit progress reports and data contemplated in subsection (1)(b) within 30 days from the date of receipt thereof to the Council for Geoscience.
- (1B) The Council for Geoscience must advise the Minister on all prospecting information as contemplated in this section.
- (2) No person may dispose of or destroy any record, borehole core data or core-log data contemplated in subsection (1)(a) except in accordance with written directions of the relevant Regional Manager in consultation with the Council for Geoscience.

22. Application for mining right

- (1) Any person who wishes to apply to the Minister for a mining right must simultaneously apply for an environmental authorisation and must lodge the application:
 - (a) at the office of the Regional Manager in whose region the land is situated;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.

- (2) The Regional Manager must, within 14 days of receipt of the application, accept an application for a mining right if:
- (a) the requirements contemplated in subsection (1) are met;
 - (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land; and
 - (c) no prior application for a prospecting right, mining right or mining permit or retention permit, has been accepted for the same mineral and land and which remains to be granted or refused.
- (3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing within 14 days of the receipt of the application.
- (4) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing:
- (a) to submit the relevant environmental reports, as required in terms of chapter 5 of the National Environmental Management Act, 1998, within 180 days from the date of the notice; and
 - (b) to consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports.
- (5) The Regional Manager must, within 14 days of receipt of the environmental reports and results of the consultation contemplated in subsection (4) and section 40, forward the application to the Minister for consideration.

23. Granting and duration of mining right

- (1) Subject to subsection (4), the Minister must grant a mining right if:
- (a) the mineral can be mined optimally in accordance with the mining work programme;
 - (b) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;
 - (c) the financing plan is compatible with the intended mining operation and the duration thereof;
 - (d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation is issued;
 - (e) the applicant has provided for the prescribed social and labour plan;
 - (f) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996);
 - (g) the applicant is not in contravention of any provision of this Act; and
 - (h) the granting of such right will further the objects referred to in section 2(d) and (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.
- (2) The Minister may, having regard to the nature of the mineral in question, take into consideration the provisions of section 26.
- (2A) If the application relates to the land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.
- (3) The Minister must, within 60 days of receipt of the application from the Regional Manager, refuse to grant a mining right if the application does not meet the requirements referred to in subsection (1).
- (4) If the Minister refuses to grant a mining right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons.

(5) A mining right granted in terms of subsection (1) comes into effect on the effective date.

(6) A mining right is subject to this Act, any relevant law, the terms and conditions stated in the right and the prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed 30 years.

24. Application for renewal of mining right

(1) Any holder of a mining right who wishes to apply to the Minister for the renewal of a mining right must lodge the application:

- (a) at the office of the Regional Manager in whose region the land is situated;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) An application for renewal of a mining right must:

- (a) state the reasons and the period for which the renewal is required;
- (b) be accompanied by a report reflecting the extent of compliance with the conditions of the environmental authorisation; and
- (c) include a detailed mining work programme for the renewal period.

(3) The Minister must grant the renewal of a mining right if the application complies with subsections (1) and (2) and the holder of the mining right has complied with the:

- (a) terms and conditions of the mining right and is not in contravention of any relevant provision of this Act or any other law;
- (b) the mining work programme; and
- (c) conditions of the environmental authorisation.

(4) A mining right may be renewed for further periods, each of which may not exceed 30 years at a time.

(5) A mining right in respect of which an application for renewal has been lodged shall despite its expiry date remain in force until such time as such application has been granted or refused.

25. Rights and obligations of holder of mining right

(1) In addition to the rights referred to in section 5, the holder of a mining right has, subject to section 24, the exclusive right to apply for and be granted a renewal of the mining right in respect of the mineral and mining area in question.

(2) The holder of a mining right must:

- (a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within 60 days and the right has become effective.
- (b) commence with mining operations within one year from the date on which the mining right becomes effective in terms of section 23(5) or such extended period as the Minister may authorise;
- (c) actively conduct mining in accordance with the mining work programme;
- (d) comply with the relevant provisions of this Act, any other relevant law and the terms and conditions of the mining right;
- (e) comply with the conditions of the environmental authorisation;
- (f) comply with the requirements of the prescribed social and labour plan;
- (g) in terms of any relevant law, pay the State royalties; and
- (h) submit the prescribed annual report, detailing the extent of the holder's compliance with the provisions of section 2(d) and (f), the charter contemplated in section 100 and the social and labour plan.

26. Mineral beneficiation

- (1) The Minister may initiate or promote the beneficiation of minerals in the Republic.
- (2) If the Minister, acting on advice of the Board and after consultation with the Minister of Trade and Industry, finds that a particular mineral can be beneficiated economically in the Republic, the Minister may promote such beneficiation subject to such terms and conditions as the Minister may determine.
- (2A) In promoting beneficiation, the Minister may prescribe the levels required for beneficiation.
- (3) Any person who intends to beneficiate any mineral mined in the Republic outside the Republic may only do so after written notice and in consultation with the Minister.

27. Application for, issuing and duration of mining permit

- (1) A mining permit may only be issued if:
 - (a) the mineral in question can be mined optimally within a period of two years; and
 - (b) the mining area in question does not exceed 5,0 hectares in extent.
- (2) Any person who wishes to apply to the Minister for a mining permit must simultaneously apply for an environmental authorisation and must lodge the application:
 - (a) at the office of the Regional Manager in whose region the land is situated;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (3) The Regional Manager must accept an application for a mining permit if:
 - (a) the requirements contemplated in subsection (2) are met;
 - (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.
 - (c) the granting of a permit will not result in the applicant being granted more than one mining permit on the same or adjacent land.
- (4) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing within 14 days of the receipt of the application.
- (5) If the Regional Manager accepts the application, the Regional Manager must within 14 days of the receipt of the application, notify the applicant in writing, to:
 - (a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports; and
 - (b) submit the relevant environmental reports as required in terms of the National Environmental Management Act, 1998, within 60 days from the date of the notice;
- (6) The Minister must, within 60 days of receipt of the application from the Regional Manager, issue a mining permit if:
 - (a) the requirements contemplated in subsection (1) are satisfied;
 - (b) the environmental authorisation is issued; and
 - (c) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996).
- (7) The holder of a mining permit:
 - (a) may enter the land to which such permit relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface or underground infrastructure which may be required for purposes of mining;

- (b) subject to the National Water Act, 1998 (Act 36 of 1998), may use water from any natural spring, lake, river or stream situated on, or flowing through, such land or from any excavation previously made and used for prospecting or mining purposes, as the case may be, or sink a well or borehole required for use relating to prospecting or mining, as the case may be, on such land;
 - (c) in terms of any relevant law, must pay the State royalties;
 - (d) may mine, for his or her own account on or under that mining area for the mineral for which such permit relates; and
 - (e) must submit the mining permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.
- (8) A mining permit:
- (a) is valid for the period specified in the permit, which may not exceed a period of two years, and may be renewed for three periods each of which may not exceed one year;
 - (b) may not be transferred, ceded, let, sublet, alienated or disposed of, in any way whatsoever, but may be encumbered or mortgaged only for the purpose of funding or financing of the mining project in question with the Minister's consent.

28. Information and data in respect of mining or processing of minerals

- (1) The holder of a mining right or mining permit must, at its registered office or place of business of such holder, keep proper records of mining activities and proper financial records in connection with the mining activities.
- (2) The holder of a mining right or mining permit, or the manager of any mineral processing plant operating separately from a mine, must submit to the Director-General:
 - (a) prescribed monthly returns with accurate and correct information and data; and
 - (b) an audited annual financial report or financial statements reflecting the balance sheet and profit and loss account;
 - (c) an annual report detailing the extent of the holder's compliance with the provisions of section 2(d) and (f), the charter contemplated in section 100 and the social and labour plan.

29. Minister's power to direct submission of specified information or data

The Minister may, in order to achieve the objects of this Act and to fulfil any of the functions in terms of this Act, direct in writing that specified information or data be submitted by:

- (a) an applicant for a prospecting right, mining right, retention permit or mining permit, as the case may be;
- (b) any holder of a prospecting right, mining right, retention permit or mining permit; or
- (c) any owner or lawful occupier of land which is the subject of a prospecting right, mining right, retention permit or mining permit, or which is the subject of an application for such a right or permit or of a prospecting or mining operation.

30. Disclosure of information

- (1) Subject to subsection (2), any information or data submitted in terms of section 21, 28 or 29 may be disclosed to any person:
 - (a) in order to achieve any object referred to in section 2(c), (d) or (e);

- (b) in order to give effect to the right of access to information contemplated in section 32 of the Constitution;
 - (c) if such information or data is already publicly available; or
 - (d) if the relevant right, permit or permission has lapsed or been cancelled, or the area to which such right or permission relates has been abandoned or relinquished.
- (2) No information or data may be disclosed to any person if it contains information or data supplied in confidence by the supplier of the information or data.
- (3) Any person submitting information or data in terms of section 28 or 29 must inform the Regional Manager concerned and indicate which information and data must be treated as confidential and may not be disclosed.
- (4) Neither the State nor any of its employees:
- (a) is liable for the bona fide or inadvertent release of information or data submitted in terms of this Act; and
 - (b) guarantees the accuracy or completeness of any such information or data or interpretation thereof.
- (5) Any data, information or reports lodged with the Council for Geoscience in terms of section 21 must be kept confidential until such time as the right, permit or permission has lapsed or is cancelled, or terminated, or the area to which such right, permit or permission relates has been abandoned or relinquished.

31. Application for retention permit

- (1) Any holder of a prospecting right who wishes to apply to the Minister for a retention permit must:
- (a) lodge the application at the office of the Regional Manager in whose region the land is situated;
 - (b) lodge the application in the prescribed manner;
 - (c) lodge the application together with the prescribed non-refundable application fee;
 - (d) in the application state the reasons and period for which the retention permit is requested, and
 - (e) submit a report reflecting the extent of compliance with the section 32(1).
- (2) The Regional Manager must accept an application for a retention permit, if:
- (a) the requirements contemplated in subsection (1) are met; and
 - (b) the applicant is the holder of the prospecting right in question.

32. Issuing and duration of retention permit

- (1) The Minister may issue a retention permit if the holder of the prospecting right has:
- (a) prospected on the land to which the application relates;
 - (b) completed the prospecting activities and a feasibility study;
 - (c) established the existence of a mineral reserve which has mining potential;
 - (d) studied the market and found that the mining of the mineral in question would be uneconomical due to prevailing market conditions; and
 - (e) complied with the relevant provisions of this Act, any other relevant law and the terms and conditions stipulated in the prospecting right.
- (2) A retention permit issued under subsection (1) suspends the terms and conditions of the prospecting right held in respect of the land to which the retention permit relates and if the prospecting period has not expired, the duration of the prospecting right in question runs concurrently with that of the retention permit.

(3) Despite subsection (2), the conditions of the environmental authorisation issued in respect of the prospecting right remains in force as if the prospecting right had not lapsed.

(4) A retention permit is valid for the period specified in the permit, which period may not exceed three years.

33. Refusal of application for retention permit

The Minister may refuse to issue a retention permit if, after having regard to the information submitted under section 32(1) and research conducted by the Board at the request of the Minister, it is established that:

- (a) the mineral to which the application relates can be mined profitably;
- (b) the applicant has not completed the prospecting operations and feasibility study in relation thereto; or
- (c) the issuing of such permit will result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources.

34. Application for renewal of retention permit

(1) An application for the renewal of a retention permit must be lodged in the same manner as an application for a retention permit contemplated in section 31(1) and must include:

- (a) an updated report of the circumstances which prevailed at the time of issuing of the retention permit; and
- (b) the period and reasons for the renewal being sought.

(2) A retention permit may only be renewed if:

- (a) the holder has complied with the relevant provisions of this Act, any other relevant law and the terms and conditions of the retention permit; and
 - (b) the market conditions contemplated in section 32(1)(d) still prevail.
- (3) A retention permit may be renewed once for a period not exceeding two years.

35. Rights and obligations of holder of retention permit

(1) Subject to subsection (2), the holder of a retention permit has the exclusive right to be granted a mining right in respect of the retention area and mineral in question.

(2) The holder of a retention permit must:

- (a) give effect to the conditions of the environmental authorisation and pay the prescribed retention fees; and
- (b) submit a six monthly progress report to the Regional Manager indicating:
 - (i) the prevailing market conditions, the effect thereof and the need to hold such retention permit in respect of the mineral and land in question; and
 - (ii) efforts undertaken by such holder to ensure that mining operations commence before the expiry period referred to in section 32(4) or 34(3), as the case may be.
- (c) submit the retention permit for recording in the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.

36. Retention permit not transferable

A retention permit may not be transferred, ceded, let, sub-let, alienated, disposed of, mortgaged or encumbered in any way whatsoever.

37. Environmental management principles

(1) The principles set out in section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998):

- (a) apply to all prospecting and mining operations, as the case may be, and any matter or activity relating to such operation; and
- (b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.

(2) Any prospecting or mining operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.

38. ...**38A. Environmental authorisations**

(1) The Minister is the responsible authority for implementing environmental provisions in terms of the National Environmental Management Act, 1998 (Act 107 of 1998) as it relates to prospecting, mining, exploration, production or activities incidental thereto on a prospecting, mining, exploration or production area.

(2) An environmental authorisation issued by the Minister shall be a condition prior to the issuing of a permit or the granting of a right in terms of this Act.

38B. Approved environmental management programmes and environmental management plans

(1) An environmental management plan or environmental management programme approved in terms of this Act before and at the time of the coming into effect of the National Environmental Management Act, 1998, shall be deemed to have been approved and an environmental authorisation been issued in terms of the National Environmental Management Act, 1998.

(2) Notwithstanding subsection (1), the Minister 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 is likely to result in unacceptable pollution, ecological 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 must issue an environmental authorisation if he or she is satisfied that the deficiencies in the environmental management plan or environmental management programme in subsection (2) have been addressed and that the requirements in chapter 5 of the National Environmental Management Act, 1998, have been met.

39. ...**40. ...****41. ...****42. ...****43. Issuing of a closure certificate**

(1) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance to the conditions of the environmental authorisation and

the management and sustainable closure thereof, until the Minister has issued a closure certificate in terms of this Act to the holder or owner concerned.

(2) On the written application in the prescribed manner by the holder of a prospecting right, mining right, retention permit, mining permit or previous holder of an old order right or previous owner of works that has ceased to exist, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management report and any prescribed closure plan to a person with such qualifications as may be prescribed.

(3) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, must apply for a closure certificate upon:

- (a) the lapsing, abandonment or cancellation of the right or permit in question;
- (b) cessation of the prospecting or mining operation;
- (c) the relinquishment of any portion of the prospecting of the land to which a right, permit or permission relate; or
- (d) completion of the prescribed closing plan to which a right, permit or permission relate.

(4) An application for a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (3) and must be accompanied by the required information, programmes, plans and reports prescribed in terms of this Act and the National Environmental Management Act, 1998.

(5) No closure certificate may be issued unless the Chief Inspector and each government department charged with the administration of any law which relates to any matter affecting the environment have confirmed in writing that the provisions pertaining to health and safety and management pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed.

(5A) Confirmation from the Chief Inspector and each government department contemplated in subsection (5) must be received within 60 days from the date on which the Minister informs such Chief Inspector or government department, in writing, to do so.

(6) When the Minister issues a certificate he or she must return such portion of the financial provision contemplated in section 41 the National Environmental Management Act, 1998, as the Minister may deem appropriate, to the holder of the prospecting right, mining right, retention permit or mining permit, previous holder of an old order right or previous owner of works or the person contemplated in subsection (2), but may retain any portion of such financial provision for latent and residual safety, health or environmental impact which may become known in the future.

(7) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such procedures and such requirements on mine closure as may be prescribed.

(8) Procedures and requirements on mine closure as it relates to the compliance of the conditions of an environmental authorisation, are prescribed in terms of the National Environmental Management Act, 1998.

(9) The Minister, in consultation with the Minister of Environmental Affairs and Tourism, may identify areas by notice in the *Gazette*, where mines are

interconnected or their safety, health, social or environmental impacts are integrated which results in a cumulative impact.

(10) The Minister may, in consultation with the Minister of Environmental Affairs and Tourism, publish by notice in the *Gazette*, strategies to facilitate mine closure where mines are interconnected, have an integrated impact or pose a cumulative impact.

(11) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, operating or who has operated within an area identified in subsection (9), must amend their programmes, plans or environmental authorisations accordingly or submit a closure plan, subject to the approval of the Minister, which is aligned with the closure strategies contemplated in subsection (10).

(12) In relation to mines with an interconnected or integrated health, safety, social or environmental impact, the Minister may, in consultation with the Minister of Environmental Affairs and Tourism, determine the apportionment of liability for mine closure as prescribed.

(13) No closure certificate may be issued unless:

- (a) the Council for Geoscience has confirmed in writing that complete and correct prospecting reports in terms of section 21(1) have been submitted to the Council for Geoscience;
- (b) the complete and correct records, borehole core data or core-log data that the Council of Geoscience may deem relevant, have been lodged with the Council for Geoscience; or
- (c) in the case of the holder a permit or right in terms of this Act, the complete and correct surface and the relevant underground geological plans have been lodged with the Council for Geoscience.

44. Removal of buildings, structures and other objects

(1) When a prospecting right, mining right, retention permit or mining permit lapses, is cancelled or is abandoned or when any prospecting or mining operation ceases the holder of any such right or permit may not demolish or remove any building structure or object:

- (a) which may not be demolished or removed in terms of any other law;
 - (b) which has been identified in writing by the Minister for purposes of this section; or
 - (c) which is to be retained in terms of an agreement between the holder and the owner or occupier of the land, which agreement has been approved by the Minister in writing.
- (2) The provision of subsection (1) does not apply to mining equipment, which may be removed lawfully.

45. Minister's power to recover costs in event of urgent remedial measures

(1) If any prospecting, mining, reconnaissance, exploration or production operations or activities incidental thereto cause or results in ecological degradation, pollution or environmental damage, or is in contravention of the conditions of the environmental authorisation, or which may be harmful to health, safety or well-being of anyone and requires urgent remedial measures, the Minister, in consultation with the Minister of Environmental Affairs and Tourism, may direct the holder of the relevant right or permit in terms of this Act or the holder of an environmental authorisation in terms of National Environmental Management Act, 1998, to:

- (a) investigate, evaluate, assess and report on the impact of any pollution or ecological degradation or any contravention of the conditions of the environmental authorisation;
 - (b) take such measures as may be specified in such directive in terms of this Act or the National Environmental Management Act, 1998; and
 - (c) complete such measures before a date specified in the directive.
- (2)(a) If the holder fails to comply with the directive, the Minister may take such measures as may be necessary to protect the health and well-being of any affected person or to remedy ecological degradation and to stop pollution of the environment.
- (b) Before the Minister implements any measure, he or she must afford the holder an opportunity to make representations to him or her.
 - (c) In order to implement the measures contemplated in paragraph (a), the Minister may by way of an *ex parte* application apply to a High Court for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures.
 - (d) In addition to the application in terms of paragraph (c), the Minister may use funds appropriated for that purpose by Parliament to fully implement such measures.
 - (e) The Minister may recover an amount equal to the funds necessary to fully implement the measures from the holder concerned.

46. Minister's power to remedy environmental damage in certain instances

- (1) If the Minister directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment, to address any contravention in the environmental authorisation or to rehabilitate dangerous health or safety occurrences but establishes that the holder of a reconnaissance permission, prospecting right, mining right, retention permit or mining permit, the holder of an old order right or the previous owner of works, as the case may be or his or her successor in title is deceased or cannot be traced or in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister in consultation with the Minister of Environmental Affairs and Tourism, may instruct the Regional Manager concerned to take the necessary measures to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous health and social occurrences or to make an area safe.
- (2) The measures contemplated in subsection (1) must be funded from financial provision made by the holder of the relevant right, permit, the previous holder of an old order right or the previous owner of works in terms of the National Environmental Management Act, 1998, where appropriate, or if there is no such provision or if it is inadequate, from money appropriated by Parliament for the purpose.
- (3)(a) Upon completion of the measures contemplated in subsection (1), the Regional Manager must apply to the registrar concerned that the title deed of the land in question be endorsed to the effect that such land had been remedied.
- (b) The registrar concerned must, on receipt of an application contemplated in paragraph (a), make such endorsements as he or she may deem necessary so as to give effect to provisions of that paragraph, and no office fee or other charge is payable to the registrar in respect of such endorsement.

47. Minister's power to suspend or cancel rights, permits or permissions

- (1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right,

mining permit, retention permit or holders of old order rights or previous owner of works, if the holder or owner thereof:

- (a) is conducting any reconnaissance, prospecting or mining operation in contravention of this Act;
 - (b) breaches any material term or condition of such right, permit or permission;
 - (c) is contravening any condition in the environmental authorisation;
 - (d) has submitted inaccurate, false, fraudulent, incorrect or misleading information for the purposes of the application or in connection with any matter required to be submitted under this Act;
 - (e) has conducted the transactions mentioned in section 11(1) before obtaining the necessary prior written approval of the Minister.
- (2) Before acting under subsection (1), the minister must:
- (a) give written notice to the holder indicating the intention to suspend or cancel the right;
 - (b) set out the reasons why he or she is considering suspending or cancelling the right;
 - (c) afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and
 - (d) notify the mortgagee, if any, of the prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit.
- (3) The Minister must direct the holder to take specified measures to remedy any contravention, breach or failure.
- (4) If the holder does not comply with the direction given under subsection (3), the Minister may Act under subsection (1) against the holder after having:
- (a) given the holder a reasonable opportunity to make representations; and
 - (b) considered any such representations.
- (5) The Minister may by written notice to the holder lift a suspension if the holder:
- (a) complies with a directive contemplated in subsection (3); or
 - (b) furnishes compelling reasons for the lifting of the suspension.

48. Restriction or prohibition of prospecting and mining on certain land

(1) Subject to section 48 of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003), and subsection (2), no reconnaissance permission, prospecting right, mining right may be granted or mining permit be issued in respect of:

- (a) land comprising a residential area;
- (b) any public road, railway or cemetery;
- (c) any land being used for public or government purposes or reserved in terms of any other law; or
- (d) areas identified by the Minister by notice in the *Gazette* in terms of section 49.

(2) A reconnaissance permission, prospecting right, mining right or mining permit may be issued in respect of the land contemplated in subsection (1) if the Minister is satisfied that:

- (a) having regard to the sustainable development of the mineral resources involved and the national interest, it is desirable to issue it;
- (b) the reconnaissance, prospecting or mining will take place within the framework of national environmental management policies, norms and standards; and
- (c) the granting of such rights or permits will not detrimentally affect the interests of any holder of a prospecting right or mining right.

49. Minister's power to prohibit or restrict prospecting or mining

(1) Subject to subsection (2), the Minister may after inviting representations from relevant stakeholders, from time to time by notice in the *Gazette*, having regard to the national interest, the strategic nature of the mineral in question and the need to promote the sustainable development of the nation's mineral resources:

- (a) prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine; or
 - (b) restrict the granting of any reconnaissance permission, reconnaissance permit, prospecting right, mining right or mining permit in respect of a specific mineral or mining permit in respect of a specific mineral or minerals or class of minerals identified by the Minister for such period and on such terms and conditions as the Minister may determine.
- (2) A notice contemplated in subsection (1) does not affect prospecting or mining in, on or under land which, on the date of the notice, is the subject of a reconnaissance permission, prospecting right, a mining right, a retention permit or a mining permit.
- (3) The Minister may from time to time by notice in the *Gazette*:
- (a) lift a prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict no longer exist; or
 - (b) amend the period, term or condition applicable to any prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict have changed.
- (4) Subject to subsection (2)(b), the Minister may by notice in the *Gazette* invite applications for a prospecting right, mining right or mining permit in respect of any mineral or land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such right or permit may be granted.

50. Minister may investigate occurrence, nature and extent of mineral resources

- (1) The Minister may cause an investigation to be conducted on any land to establish if any mineral or geological formation occurs in, on or under such land and, if so, to establish the nature and extent thereof.
- (2)(a) The Minister must compensate the owner of the land in question if any loss or damage is caused during an investigation contemplated in subsection (1).
- (b) The Minister and the owner of the land may agree upon the compensation to be paid.
- (c) If no agreement is reached, the amount of compensation must be fixed by arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965), or by a competent court.
- (3) No investigation may be conducted under subsection (1) unless:
 - (a) the Minister has published a notice in the *Gazette*:
 - (i) indicating an intention to conduct the investigation;
 - (ii) inviting written comments on the proposed investigation, specifying an address to which and the date before which comments must be submitted; and
 - (iii) calling on the owner, occupier or person in control of such land to furnish the Minister with his or her particulars, if such owner, occupier or person is not known to the Minister;
 - (b) the Minister has considered any comments received; and
 - (c) a period of 30 days has lapsed after the Minister published the notice.

- (4)(a) No person may for the purposes of an investigation contemplated in subsection (1) enter upon land unless the owner, occupier or person in control of such land has been notified in writing of the intention to enter and to conduct the investigation.
- (b) If the owner, occupier or person in control of the land in question cannot be traced, a copy of the notice contemplated in paragraph (a) must be affixed at a prominent place on the land before the investigation may be conducted.
- (5) Any investigation in terms of this section must be conducted in a manner which limits or prevents any detrimental effect to the land and the environment.

51. Optimal mining of mineral resources

- (1) Subject to subsection (2), the Board may recommend to the Minister to direct the holder of a mining right to take corrective measures if the Board establishes that the minerals are not being mined optimally in accordance with the mining work programme or that a continuation of such practice will detrimentally affect the objects referred to in section 2(f).
- (2) Before making the recommendation, the Board must consider whether the technical and financial resources of the holder of the mining right in question and the prevailing market conditions justify such recommendation.
- (3)(a) If the Minister agrees with the recommendation, he or she must, within 30 days from date of receipt of the recommendation of the Board, in writing notify the holder that he or she must take such corrective measures as may be set out in the notice and must remedy the position within the period mentioned in the notice.
- (b) The Minister must afford the holder the opportunity to make representations in relation to the Board's findings within 60 days from the date of the notice and must point out that non-compliance with the notice might result in suspension or cancellation of the mining right.
- (4) The Minister may, on the recommendation of the Board, suspend or cancel a mining right if:
 - (a) the holder of that mining right fails to comply with a notice contemplated in subsection (3); or
 - (b) having regard to any representations by the holder, the Minister is convinced that any act or omission by the holder justifies the suspension or cancellation of the right.
- (5) The Minister may, on the recommendation of the Board, lift the suspension of a mining right if the holder in question:
 - (a) complies with the notice contemplated in subsection (3); or
 - (b) furnishes compelling reasons for the lifting of the suspension.

52. Notice of profitability and curtailment of mining operations affecting employment

- (1) The holder of a mining right must, after consultation with any registered trade union or affected employees or their nominated representatives where there is no such trade union, notify the Minister in the prescribed manner:
 - (a) where prevailing economic conditions cause the profit to revenue ratio of the relevant mine to be less than six per cent on average for a continuous period of 12 months; or
 - (b) if any mining operation is to be scaled down or to cease with the possible effect that 10 per cent or more of the labour force or more than 500 employees, whichever is the lesser, are likely to be retrenched in any 12-month period.
- (2) The Board must, after consultation with the relevant holder, investigate:

- (a) the circumstances referred to in subsection (1); and
 - (b) the socio-economic and labour implications thereof and make recommendations to the Minister.
- (3)(a) The Minister may, on the recommendation of the Board and after consultation with the Minister of Labour and any registered trade union or affected persons or their nominated representatives where there is no such trade union, direct in writing that the holder of the mining right in question take such corrective measures subject to such terms and conditions as the Minister may determine.
- (b) The holder of the mining right must comply with the directive and confirm in writing that the corrective measures have been taken.
 - (c) If the directives contemplated in paragraph (a) are not complied with, the Minister may provide assistance to or apply to a court for judicial management of the mining operation.
- (4) The holder of a mining right remains responsible for the implementation of the processes provided for in the Labour Relations Act, 1995 (Act 66 of 1995), pertaining to the management of downscaling and retrenchment, until the Minister has issued a closure certificate to the holder concerned.

53. Use of land surface rights contrary to objects of Act

- (1) Subject to subsection (2), any person who intends to use the surface of any land in any way which may be contrary to any object of this Act or which is likely to impede any such object must apply to the Minister for approval in the prescribed manner.
- (2) Subsection (1) does not apply to:
- (a) farming or any use incidental thereto; or
 - (b) the use of any land which lies within an approved town-planning scheme which has applied for and obtained approval in terms of subsection (1); or
 - (c) any other use which the Minister may determine by notice in the *Gazette*.
- (3) Despite subsection (1), the Minister may cause an investigation to be conducted if it is alleged that a person intends to use the surface of any land in any way that could result in the mining of mineral resources being detrimentally affected.
- (4) When an investigation is conducted in terms of subsection (3), the Regional Manager must:
- (a) by written notice served on the person concerned, notify the person of the allegation and of the Minister's intention to issue a directive to take corrective measures;
 - (b) set out the measures to be taken in order to rectify the matter; and
 - (c) offer that person the opportunity to respond within 30 days.
- (5) After considering the results of the investigation contemplated in subsection (3), and any representations contemplated in subsection (4)(c), the Minister may direct the person concerned to take the necessary corrective measures within a period specified in the directive.

54. Compensation payable under certain circumstances

- (1) The holder of a reconnaissance permission, prospecting right, mining right or mining permit must notify the relevant Regional Manager if that holder is prevented from commencing or conducting any reconnaissance, prospecting or mining operations because the owner or the lawful occupier of the land in question:
- (a) refuses to allow such holder to enter the land;
 - (b) places unreasonable demands in return for access to the land; or
 - (c) cannot be found in order to apply for access.

- (2) The Regional Manager must, within 14 days from the date of the notice referred to in subsection (1):
 - (a) call upon the owner or lawful occupier of the land to make representations regarding the issues raised by the holder of the reconnaissance permission, prospecting right, mining right or mining permit;
 - (b) inform that owner or occupier of the rights of the holder of a right, permit or permission in terms of this Act;
 - (c) set out the provisions of this Act which such owner or occupier is contravening; and
 - (d) inform that owner or occupier of the steps which may be taken, should he or she persist in contravening the provisions.
- (3) If the Regional Manager, after having considered the issues raised by the holder under subsection (1) and any written representations by the owner or the lawful occupier of the land, concludes that the owner or occupier has suffered or is likely to suffer loss or damage as a result of the reconnaissance, prospecting or mining operations, he or she must request the parties concerned to endeavour to reach an agreement for the payment of compensation for such loss or damage.
- (4) If the parties fail to reach an agreement, compensation must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act 42 of 1965), or by a competent court.
- (5) If the Regional Manager, having considered the issues raised by the holder under subsection (1) and any representations by the owner or occupier of land and any written recommendation by the Regional Mining Development and Environmental Committee, concludes that any further negotiation may detrimentally affect the objects of this Act referred to in section 2(c), (d), (f) or (g), the Regional Manager may recommend to the Minister that such land be expropriated in terms of section 55.
- (6) If the Regional Manager determines that the failure of the parties to reach an agreement or to resolve the dispute is due to the fault of the holder of the reconnaissance permission, prospecting right, mining right or mining permit, the Regional Manager may in writing prohibit such holder from commencing or continuing with prospecting or mining operations on the land in question until such time as the dispute has been resolved by arbitration or by a competent court.
- (7) The owner or lawful occupier of land on which reconnaissance, prospecting or mining operations will be conducted must notify the relevant Regional Manager if that owner or occupier has suffered or is likely to suffer any loss or damage as a result of the prospecting or mining operation, in which case this section applies with the changes required by the context.

55. Minister's power to expropriate property for purpose of prospecting or mining

- (1) If it is necessary for the achievement of the objects referred to in section 2(d), (e), (f), (g) and (h) the Minister may, in accordance with section 25(2) and (3) of the Constitution, expropriate any land or any right therein and pay compensation in respect thereof.
- (2)(a) Sections 6, 7 and 9(1) of the Expropriation Act, 1975 (Act 63 of 1975), apply to any expropriation in terms of this Act.
- (b) Any reference in the sections referred to in paragraph (a) to 'the Minister' must be construed as being a reference to the Minister defined in this Act.

56. Lapsing of right, permit and permission

Any right, permit or permission granted or issued in terms of this Act shall lapse, whenever:

- (a) it expires;
- (b) the holder thereof is deceased and there are no successors in title;
- (c) a company or close corporation is deregistered in terms of the relevant acts and no application has been made or was made to the Minister for the consent in terms of section 11 or such permission has been refused;
- (d) save for cases referred to in section 11(3), the holder is liquidated or sequestered;
- (e) it is cancelled in terms of section 47; or
- (f) it is abandoned.

CHAPTER 5: Minerals and Petroleum Board**57. Establishment of Minerals and Petroleum Board**

The Minerals and Petroleum Board is hereby established.

58. Functions of Board

- (1) The Board:
 - (a) must advise the Minister on:
 - (i) any matter which must be referred to the Board by or under this Act;
 - (ii) the sustainable development of the nation's mineral and petroleum resources;
 - (iii) the transformation and downscaling of the minerals and petroleum industries; and
 - (iv) objections referred to the Minister by the Board;
 - (b) must, in consultation with the Mining Qualifications Authority, ensure the promotion of human resource development in the minerals and mining industry; and
 - (c) may:
 - (i) report to the Minister on any matter relating to the application of this Act; and
 - (ii) enquire into and report to the Minister on any matter concerning the objects of this Act.
- (2) The Board must give priority to matters referred to it by the Minister.

59. Composition of Board

- (1) The Board consists of no fewer than 17 and no more than 20 members, and must reflect the gender and racial composition in the Republic.
- (2) The Minister must appoint as members of the Board:
 - (a) a Chairperson;
 - (b) the Chief Inspector;
 - (c) three persons representing any relevant State department;
 - (d) three persons representing organised labour;
 - (e) three persons representing organised business;
 - (f) at least one person representing any relevant non-governmental organisation;
 - (g) two persons representing relevant community-based organisations;
 - (h) at least two other persons with appropriate experience, expertise or skill to enhance the Board's capability of performing its functions more effectively; and
 - (i) at least one person from a designated agency.
- (3) The members of the Board must elect a deputy chairperson from amongst their members at their first meeting.

60. Disqualification of members

- (1) No person may be appointed as member of the Board:
- (a) unless he or she is a South African citizen who resides in the Republic permanently; or
- (b) if he or she:
 - (i) is an unrehabilitated insolvent;
 - (ii) has been declared to be of unsound mind by a court of the Republic; or
 - (iii) has been convicted of an offence committed after the date of commencement of the Constitution, and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment.

61. Vacation of office

- (1) A member of the Board must vacate his or her office if he or she:
 - (a) becomes subject to any disqualification contemplated in section 60 or, in the case of an official in the service of the State, ceases to be such an official;
 - (b) has been absent from more than two consecutive meetings of the Board without the Board's leave;
 - (c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or
 - (d) is removed from office by the Minister under subsection (2).
- (2) The Minister may remove any member of the Board from office:
 - (a) on account of misconduct or inability to perform the functions of his or her office properly; or
 - (b) if the member has engaged in any activity that may undermine the integrity of the Board, which activities may include:
 - (i) participation in any investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
 - (ii) making private use of, or profiting from, any confidential information obtained as a result of performing his or her functions as a member of the Board; or
 - (iii) divulging any information referred to in paragraph (ii) to any third party, except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

62. Term of office and filling of vacancies

- (1) A member of the Board holds office for a period not exceeding three years.
- (2) The Minister may reappoint any member of the Board at the expiry of his or her term of office for another period not exceeding three years.
- (3) If a member of the Board vacates office or dies, the Minister may fill the vacancy by appointing a person in accordance with section 59(2) for the unexpired portion of the term of office of his or her predecessor.

63. Meetings of Board

- (1) The Chairperson or, in the absence of the Chairperson, the Minister must convene the first meeting of the Board.
- (2) The Minister may, if he or she deems it necessary, call a special meeting of the Board.
- (3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson presides at meetings of the Board.
- (4) If both the Chairperson and Deputy Chairperson are absent from a meeting, the attending members must nominate one of their members as acting chairperson for that meeting.

(5) The quorum for any meeting of the Board is fifty percent of the appointed members.

(6) The decision of the majority of the members of the Board present at a meeting constitutes a resolution of the Board, and in the event of an equality of votes on any matter the person presiding at the meeting in question has a casting vote.

(7) The Chairperson must submit any recommendation of the Board to the Minister within seven days after such resolution has been passed by the Board.

(8) A member of the Board must recuse himself or herself from participating in any investigation, hearing or decision concerning a matter in respect of which that member has a financial or personal interest.

64. Committees of Board

(1) The Board must establish a Regional Mining Development and Environmental Committee in such manner as may be prescribed for each region contemplated in section 7.

(2) The Board may establish such other permanent or ad hoc committee as it deems necessary to assist it in the performance of its functions, and any such committee may include members who are not members of the Board.

(3) A committee established under subsection (2) may, subject to the approval of the Board, establish ad hoc working groups to assist it in the performance of its functions, and any such working group may include persons who are not members of such committee or the Board.

(4) If a committee or working group consists of more than one member, the Board must designate a member of such committee or working group as chairperson thereof.

(5) A committee or working group of the Board is accountable to the Board.

(6) The assistance contemplated in subsections (2) and (3) does not absolve the Board from its responsibility under this Act.

65. Funding of Board

The expenses of the Board must be defrayed from money appropriated by Parliament to the Department for that purpose.

66. Remuneration of members of Board, committees and working groups

A member of the Board, a committee or working group, except a member who is a full-time employee of the State, must be appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister may determine with the concurrence of the Minister of Finance.

67. Reports of Board

In addition to any specific report which the Minister may request from the Board from time to time, the Board must before 31 March of each year submit a report to the Minister setting out the activities of the Board during the year preceding that date and must include a business plan for the ensuing year.

68. Administrative functions

The administrative functions of the Board must be performed by officers of the Department who are designated by the Director-General for that purpose.

CHAPTER 6: Petroleum Exploration and Production

69. Application of chapter

- (1) This chapter provides for the granting of exploration rights and production rights and the issuing of technical co-operation permits and reconnaissance permits.
- (2)(a) For the purposes of this chapter, sections 9, 10, 11, 12, 21, 26, 29, 30, 37, 38A, 38B, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 64 and chapter 7 and schedule II apply with the necessary changes.
- (b) Any reference in the provisions referred to in paragraph (a) to:
 - (i) minerals, must be construed as a reference to petroleum;
 - (ii) mining, must be construed as a reference to production;
 - (iii) mining area, must be construed as a reference to production area;
 - (iv) mining rights, must be construed as a reference to production rights;
 - (v) prospecting, must be construed as a reference to exploration;
 - (vi) prospecting area, must be construed as a reference to exploration area;
 - (vii) prospecting rights, must be construed as a reference to exploration rights; and
 - (viii) reconnaissance permission, must be construed as a reference to reconnaissance permit.

70. Designated agency

The Minister may designate an organ of State or a wholly owned and controlled agency or company belonging to the State to perform the functions referred to in this chapter.

71. Functions of designated agency

The designated agency must:

- (a) promote onshore and offshore exploration for and production of petroleum;
- (b) receive applications for reconnaissance permits, technical co-operation permits, exploration rights and production rights in the prescribed manner;
- (c) evaluate such applications and make recommendations to the Minister;
- (d) monitor and report regularly to the Minister in respect of compliance with such permits or rights;
- (e) receive, maintain, store, interpret, evaluate, add value to, disseminate or deal in all geological or geophysical information relating to petroleum submitted in terms of section 88;
- (f) bring to the notice of the Minister any information in relation to the exploration and production of petroleum which is likely to be of use or benefit to the State;
- (g) advise and recommend to the Minister on the need to by itself, through contractors or through any other state enterprise carry out on behalf of the State reconnaissance operations in connection with petroleum;
- (h) collect the prescribed fees and considerations in respect of reconnaissance permits, technical co-operation permits, exploration rights and production rights;
- (i) review and make recommendations to the Minister with regard to the acceptance of environmental reports and the conditions of the environmental authorisations and amendments thereto; and
- (j) perform any other function, in respect of petroleum, which the Minister may determine from time to time.

72. Funding of designated agency

- (1) The designated agency is funded by money appropriated by Parliament.

(2) The designated agency may, with the approval of the Minister provide technical and consulting services and assistance to equivalent agencies of other countries.

73. Invitation for applications

(1) The Minister may by notice in the *Gazette* invite applications for exploration and production rights in respect of any block or blocks, and may specify in such notice the period within which any application may be lodged with the designated agency and the terms and conditions subject to which such rights may be granted.

(2) The designated agency may otherwise directly receive applications for exploration and production rights in respect of such blocks, which are not subject to an invitation as contemplated in subsection (1).

74. Application for reconnaissance permit

(1) Any person who wishes to apply to the Minister for a reconnaissance permit must lodge the application:

- (a) at the office of the designated agency;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) The designated agency must, within 14 days of the receipt of the application, accept an application for a reconnaissance permit if:

- (a) the requirements contemplated in subsection (1) are met;
- (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area; and
- (c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.

(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing within 14 days of receipt of the application and provide reasons.

(4) If the designated agency accept the application, the designated agency must, within 14 days of the receipt of the application, notify the applicant in writing to:

- (a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports required in terms of chapter 5 of the National Environmental Management Act, 1998; and
- (b) submit relevant environmental reports in subsection (a), within 60 days from the date of the notice.

75. Issuing and duration of reconnaissance permit

(1) Subject to subsection (4), the Minister must issue a reconnaissance permit if:

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operation;
- (b) the estimated expenditure is compatible with the intended reconnaissance operation and duration of the reconnaissance programme;
- (c) the reconnaissance will not result in unacceptable pollution, ecological degradation or damage to the environment and that the environmental authorisation is issued;
- (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996); and
- (e) the applicant is not in contravention of any relevant provision of this Act.

- (2) The Minister must refuse to issue a reconnaissance permit if the application does not meet all the requirements contemplated in subsection (1).
- (3) If the Minister refuses to issue a reconnaissance permit, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons therefor.
- (4) A reconnaissance permit issued in terms of subsection (1) is:
 - (a) subject to prescribed terms and conditions;
 - (b) valid for a period not exceeding one year;
 - (c) not an exclusive right;
 - (d) not transferable; and
 - (e) not renewable.
- (5) The holder of the reconnaissance permit must:
 - (a) actively conduct reconnaissance operations in respect of petroleum on the relevant area in accordance with the reconnaissance programme;
 - (b) comply with the terms and conditions of the reconnaissance permit, and the relevant provisions of this Act and any other law; and
 - (c) pay the prescribed reconnaissance fee to the designated agency.

76. Application for technical co-operation permit

- (1) Any person who wishes to apply to the Minister for a technical co-operation permit must lodge the application:
 - (a) at the office of the designated agency;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (2) The designated agency must accept an application for a technical co-operation permit if:
 - (a) the requirements contemplated in subsection (1) are met;
 - (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area; and
 - (c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.
- (3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing within 14 days of receipt of the application and provide reasons.

77. Issuing and duration of technical co-operation permit

- (1) Subject to subsection (4), the Minister must issue a technical co-operation permit if:
 - (a) the applicant has access to financial resources and has the technical ability to conduct the proposed technical co-operation study;
 - (b) the estimated expenditure is compatible with the intended technical co-operation study and duration of the technical co-operation programme; and
 - (c) the applicant is not in contravention of any relevant provision of this Act.
- (2) The Minister must refuse to issue a technical co-operation permit if the application does not meet all the requirements referred to in subsection (1).
- (3) If the Minister refuses to issue a technical co-operation permit, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons therefor.
- (4) A technical co-operation permit issued in terms of subsection (1) is:
 - (a) subject to prescribed terms and conditions;
 - (b) valid for a period not exceeding one year;
 - (c) not transferable; and

- (d) not renewable.

78. Rights and obligations of holder of technical co-operation permit

- (1) The holder of a technical co-operation permit has, subject to section 79, the exclusive right to apply for and be granted an exploration right in respect of the area to which the permit relates.
- (2) The holder of a technical co-operation permit must:
 - (a) actively carry out the technical co-operation study in accordance with the technical co-operation work programme;
 - (b) comply with the terms and conditions of the technical co-operation permit, the relevant provisions of this Act and any other law; and
 - (c) submit a technical co-operation permit for recording in the Mineral and Petroleum Titles Registration Office.

79. Application for exploration right

- (1) Any person who wishes to apply to the Minister for an exploration right must lodge the application:
 - (a) at the office of the designated agency;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (2) The designated agency must, within 14 days of the receipts of the application, accept an application for an exploration right if:
 - (a) the requirements contemplated in subsection (1) are met;
 - (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over the same land and area applied for; and
 - (c) no prior application for a technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.
- (3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing within 14 days of receipt of the application and provide reasons.
- (4) If the designated agency accepts the application, the designated agency must, within 14 days of the receipt of the application, notify the applicant in writing to:
 - (a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental report as required in terms of chapter 5 of the National Environmental Management Act, 1998; and
 - (b) submit the relevant environmental reports required in terms of chapter 5 of the National Environmental Management Act, 1998, within a period of 120 days from the date of the notice.
- (5) Any technical co-operation permit in respect of which an application for an exploration right has been lodged in terms of subsection (1) shall, notwithstanding its expiry date, remain in force until such right has been granted or refused.

80. Granting and duration of exploration right

- (1) The Minister must grant an exploration right if:
 - (a) the applicant has access to financial resources and has the technical ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme;
 - (b) the estimated expenditure is compatible with the intended exploration operation and duration of the exploration work programme;
 - (c) the Minister has issued an environmental authorisation;

- (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996);
 - (e) the applicant is not in contravention of any relevant provision of this Act;
 - (f) the applicant has complied with the terms and conditions of the technical co-operation permit, if applicable; and
 - (g) the granting of such right will further the objects referred to in section 2(d) and (f).
- (2) The Minister may, having regard to the type of petroleum resource concerned and the extent of the exploration project, request that the applicant gives effect to section 2(d).
- (3) The Minister must, within 60 days of receipt of the application from the designated agency, refuse to grant an exploration right if the application does not meet all the requirements referred to in subsection (1).
- (4) If the Minister refuses to grant an exploration right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons therefor.
- (5) An exploration right is subject to prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed three years.
- (6) An exploration right granted in terms of subsection (1) comes into effect on the effective date.

81. Application for renewal of exploration right

- (1) Any holder of an exploration right who wishes to apply to the Minister for the renewal of an exploration right must lodge the application:
- (a) at the office of the designated agency;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (2) An application for renewal of an exploration right must:
- (a) state the reasons and period for which the renewal is required;
 - (b) be accompanied by a detailed report reflecting the exploration results, the interpretation thereof and the exploration expenditure incurred;
 - (c) be accompanied by a report reflecting the extent of compliance with the conditions of the environmental authorisation; and
 - (d) include a detailed exploration work programme for the renewal period.
- (3) The Minister must grant the renewal of an exploration right if the application complies with subsections (1) and (2) and the holder of the exploration right has complied with the:
- (a) terms and conditions of the exploration right is not in contravention of any relevant provision of this Act or any other law;
 - (b) exploration work programme; and
 - (c) conditions of the environmental authorisation.
- (4) An exploration right may be renewed for a maximum of three periods not exceeding two years each.
- (5) An exploration in respect of which an application for renewal has been lodged shall, notwithstanding its expiry date, remain in force until such time as such application has been granted or refused.

82. Rights and obligations of holder of exploration right

- (1) In addition to the rights referred to in section 5, the holder of an exploration right:
- (a) subject to subsection (2), has the exclusive right to apply for and be granted a production right in respect of the petroleum and the exploration area in question;

- (b) subject to section 81, has the exclusive right to apply for and be granted a renewal of an exploration right in respect of petroleum and the exploration area in question;
 - (c) has the exclusive right to remove and dispose of any petroleum samples found during the course of exploration, subject to section 20; and
 - (d) may only transfer and encumber the exploration right, subject to section 11.
- (2) The holder of an exploration right must:
- (a) lodge such right within 60 days for registration at the Mineral and Petroleum Titles Registration Office;
 - (b) continuously and actively conduct exploration operations in accordance with the approved exploration work programme;
 - (c) comply with the terms and conditions of the exploration right, the relevant provisions of this Act and any other law;
 - (d) comply with the requirements of the approved environmental management plan;
 - (e) pay the prescribed exploration fees to the designated agency; and
 - (f) commence with exploration activities within 90 days from the effective date of the exploration right or such extended period as the Minister may authorise.

83. Application for production right

- (1) Any person who wishes to apply to the Minister for a production right must lodge the application:
 - (a) at the office of the designated agency;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (2) The designated agency must, within 14 days of the receipt of the application, accept an application for an exploration right if:
 - (a) the requirements contemplated in subsection (1) are met;
 - (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area applied for; and
 - (c) no prior application for technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.
- (3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing within 14 days of the receipt of the application and provide reasons.
- (4) If the designated agency accept the application, the designated agency must, within 14 days of the receipt of the application, notify the applicant in writing to:
 - (a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports as required in terms of chapter 5 of the National Environmental Management Act, 1998; and
 - (b) submit relevant environmental reports required in terms of chapter 5 of the National Environmental Management Act, 1998, within 180 days from the date of the notice.

84. Granting and duration of production right

- (1) The Minister must grant a production right if:
 - (a) the applicant has access to financial resources and has the technical ability to conduct the proposed production operation optimally;
 - (b) the estimated expenditure is compatible with the intended production operation and duration of the production work programme;

- (c) the production will not result in unacceptable pollution, ecological degradation or damage to the environment;
 - (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996);
 - (e) the applicant is not in contravention of any relevant provision of this Act;
 - (f) the applicant has complied with the terms and conditions of the exploration right, if applicable;
 - (g) the applicant has provided financially and otherwise for a prescribed social and labour plan;
 - (h) the petroleum can be produced optimally in accordance with the production work programme;
 - (i) the granting of such right will further the object referred to in section 2(d) and (f) and in accordance with the Charter contemplated in section 100 and the prescribed social and labour plan.
- (2) The Minister must, within 60 days of receipt of the application from the designated agency, refuse to grant a production right if the application does not meet all the requirements referred to in subsection (1).
- (3) If the Minister refuses to grant a production right, the Minister must, within 30 days of the decision, notify the applicant in writing such decision and the reasons therefore.
- (4) A production right is subject to prescribed terms and conditions and is valid for the period specified in the right, which periods, each of which may not exceed 30 years.
- (5) A production right granted in terms of subsection (1) becomes effective on the effective date.

85. Application for renewal of production right

- (1) Any holder of a production right who wishes to apply to the Minister for the renewal of a production right must lodge the application:
- (a) at the office of the designated agency;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (2) An application for renewal of a production right must:
- (a) state the reasons [and] period for which the renewal is required;
 - (b) be accompanied by a detailed report reflecting the production results, the interpretation thereof and the production expenditure incurred;
 - (c) be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and
 - (d) include a detailed production work programme for the renewal period.
- (3) The Minister must grant the renewal of a production right if the application complies with subsections (1) and (2) and the holder of the production right has complied with the:
- (a) terms and conditions of the production right is not in contravention of any relevant provision of this Act or any other law;
 - (b) production work programme;
 - (c) the requirements of the prescribed social and labour plan; and
 - (d) requirements of the approved environmental management programme.
- (4) A production right may be renewed for further periods each of which shall not exceed 30 years at a time.
- (5) A production right in respect of which an application for renewal has been lodged, shall despite its expiry date, remain in force until such time as such application has been granted or refused.

86. Rights and obligations of holder of production right

(1) In addition to the rights referred to in section 5, the holder of a production right:

- (a) subject to subsection (2), has the exclusive right to apply for and be granted renewal of the production right in respect of the petroleum area in question;
- (b) has the exclusive right to remove and dispose of any petroleum found during the course of production; and
- (c) may only transfer and encumber the production right, subject to section 11.

(2) The holder of a production right must:

- (a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within 60 days after the right has become effective;
- (b) continuously and actively conduct production operations in accordance with the approved production work programme;
- (c) comply with the terms and conditions of the production right, the relevant provisions of this Act and any other law;
- (d) comply with the conditions of the environmental authorisation and the prescribed social and labour plan;
- (e) in terms of any relevant law, pay the State royalties; and
- (f) commence with production operations within one year from the date on which a production right becomes effective in terms of section 84(5) or such extended period as the Minister may authorise.

87. Development of petroleum reservoir as unit

If an exploration right or a production right has been granted over an area which geologically forms part of the same petroleum reservoir to which any other exploration or production rights exist, the holders of such rights must prepare a scheme for the development of the petroleum reservoir as a unit and must submit such scheme to the designated agency for approval by the Minister in accordance with the terms and conditions of their respective exploration or production rights.

88. Information and data

(1) The holder of any permit or right who conducts reconnaissance operations, technical co-operation studies, exploration operations or production operations must submit such information, data, reports and interpretations to the designated agency as may be prescribed.

(1A) The designated agency must submit progress reports and data contemplated in subsection (1)(b) within 30 days from the date of submission thereof to the Council for Geoscience.

(2) Subject to the Promotion of Access to Information Act, 2002 (Act 20 of 2002), all information, data, reports and interpretations thereof submitted to the designated agency must be kept confidential by the agency for a period:

- (a) not exceeding four years from date of acquisition; or
- (b) ending on the date on which the permit or rights to which such information, data, reports and interpretations thereof relate have lapsed are cancelled or terminated, or the area to which such permits or rights relate have been abandoned or relinquished.

(3) Neither the State nor any of its employees:

- (a) is liable for the bona fide or inadvertent release of information or data submitted in terms of this Act; and
- (b) guarantee the accuracy or completeness of any such information or data or interpretation thereof.

89. Financial guarantee

In addition to section 5(4), no exploration operation or production operation may commence unless the holder of the rights concerned has provided for a financial provision acceptable to the designated agency guaranteeing the availability of sufficient funds for the due fulfilment of all exploration and production work programmes by the holder.

90 Minister's power to suspend or cancel permits or rights

The Minister may cancel or suspend any reconnaissance permit, technical co-operation permit, exploration right or production right in accordance with the procedure contemplated in section 47.

CHAPTER 7: General And Miscellaneous Provisions**91. Power to enter prospecting area, mining area or retention area**

(1) The Minister may designate any member of the Board, the Regional Manager or any officer, as an authorised person, who can carry out the functions contemplated in subsection (4) and in section 92.

(2) An authorised person must be furnished with a certificate signed by the Minister stating that he or she has been authorised under subsection (1).

(3) An authorised person must, at the request of any person, exhibit the certificate referred to in subsection (2) to such a person.

(4) An authorised person may, on the authority of a warrant issued in terms of subsection (5):

- (a) in order to obtain evidence, enter any reconnaissance, prospecting, mining, exploration, production or retention area or any place where prospecting operations or mining operations are being conducted where he or she has reason to believe that any provision of this Act has been, is being or will be contravened;
- (b) direct the person in control of or any person employed at such area:
 - (i) to deliver or furnish any information, including books, records or other documents, in the possession of or under the control of that person that pertains to the investigation; and
 - (ii) to render such assistance as the authorised person requires in order to enable him or her to perform his or her functions under this Act;
- (c) inspect any book, record, statement or other document including electronic records, documents or data and make copies thereof or excerpts therefrom;
- (d) examine any appliance or other material or substance found in such area;
- (e) take samples of any material or substance and test, examine, analyse and classify such samples; and
- (f)(i) seize any material, substance, book, record, statement or other document including electronic records, documents or data which might be relevant to a prosecution under this Act and keep it in his or her custody;
- (ii) the person from whom the control of any book, record or document including electronic records or data has been taken, may, at his or her own expense and under the supervision of the authorised person make copies thereof or excerpts therefrom.

(5) A warrant referred to in subsection (4) must be issued by a magistrate who has jurisdiction in the matter and may only be issued if he or she is satisfied that there are reasonable grounds to believe that any material, substance, appliance, book, record, statement or document or electronic information, documents or data that may relate to a contravention of this

Act, is in the respective area, or in the possession of a person in the respective area against whom such a warrant is sought.

- (6)(a) If no criminal proceedings are instituted in connection with any item seized in terms of subsection (4), or if it appears that such item is not required for the purpose of evidence or of any court proceedings that item must be returned as soon as possible to the person from whom it was seized.
- (b) After the conclusion of criminal proceedings any item seized in terms of subsection (4) and which served as an exhibit in proceedings in which a person was convicted must be handed over to the authorised person to be destroyed or otherwise dealt with as ordered by the court.

92. Routine inspections

Any authorised person may without a warrant:

- (a) enter any reconnaissance, prospecting, mining production or exploration or retention area or any place where prospecting, or mining, exploration or production are being conducted in order to inspect any activity, process or operation carried out in or upon the area or place in question; and
- (b) require the holder of the right, permit or permission in question or the person in charge of such area or place or any person carrying out or in charge of the carrying out such activities, process or operations to produce any book, record, statement or other document including electronic documents, information or data relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom.

93. Orders, suspensions and instructions

- (1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with:
 - (a) any provision of this Act; or
 - (b) any term or condition of any right, permit or permission or any other law granted or issued or an environmental authorisation issued, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may:
 - (i) order the holder of the relevant right, permit or permission, or the person in charge of such area, any person carrying out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to take immediate rectifying steps; or
 - (ii) order that the reconnaissance, prospecting, exploration, mining, production or processing operations or part thereof be suspended or terminated, and give such other instructions in connection therewith as may be necessary.
- (2) The Director-General must confirm or set aside any order contemplated in subsection (1)(a) or (b).
- (3) The Director-General must notify the relevant holder or other person contemplated in subsection (1) in writing within 60 days after the order referred to in subsection (1)(a) or (b) has been set aside or confirmed, failing which such order shall lapse.

94. Prohibition of obstruction, hindering or opposing of authorised person

No person may obstruct, hinder or oppose any authorised person or any other person in the performance of his or her duties or the exercise of his or her powers and functions in terms of this Act.

95. Prohibition of occupational detriment against employee

(1) The holder of a right, permit or permission may not subject any of his or her employees to any occupational detriment on account, or partly on account, of any such employee disclosing information to the Minister, the Director-General or any authorised person:

- (a) regarding the failure by such holder to comply with any provision of this Act;
- (b) to the effect that such holder is conducting his or her prospecting or mining operation, as the case may be, in a manner which is contrary to the objects contemplated in section 2(e) and (f) and contrary to the social and labour plan; or
- (c) that any activity or operation which is being conducted by such holder does not comply with any provision of this Act, any term or condition of such right or any other law.

(2) For the purposes of this section, occupational detriment means 'occupational detriment' as defined in section 1 of the Protected Disclosures Act, 2000 (Act 26 of 2000).

96. Internal appeal process and access to courts

(1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this Act may appeal within 30 days becoming aware of such administrative decision in the prescribed manner to:

- (a) the Director-General, if it is an administrative decision by a Regional Manager or any officer to whom the power has been delegated or a duty has been assigned by or under this Act;
- (b) the Minister, if it is an administrative decision that was taken by the Director-General or the designated agency.

(2)(a) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Director-General or the Minister, as the case may be.

(b) Any subsequent application in terms of this Act must be suspended pending the finalisation of the appeal referred to in paragraph (a).

(3) No person may apply to the court for the review of an administrative decision contemplated in subsection (1) until that person has exhausted his or her remedies in terms of that subsection.

(4) Sections 6, 7(1) and 8 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), apply to any court proceedings contemplated in this section.

97. Serving of documents

(1) Save as is otherwise provided for in this Act, any notice, order, directive or other document which is required in terms of this Act to be served on or given to any person, must be regarded as having been duly served or given if:

- (a) it is delivered by hand to that person; or
- (b) it is sent by registered mail to that person's last known business, postal or residential address.

(2) Any notice, order, directive or any other document issued in terms of this Act is valid according to the terms thereof, despite any want of form or

lack of power on the part of any officer who issues or authenticates it as long as such power is subsequently validly conferred upon the officer.

98. Offences

Any person is guilty of an offence if he or she:

- (a) contravenes or fails to comply with:
 - (i) section 5(4), or 28;
 - (ii) section 92, 94 or 95;
 - (iii) section 35;
 - (iv) section 44;
 - (v) any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act;
 - (vi) any direction contemplated in section 29; or
 - (vii) any other provision of this Act;
- (b) submits inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act; or
- (c) fails to obtain approval from the Minister in terms of section 26(3).

99. Penalties

- (1) Any person convicted of an offence in terms of this Act is liable:
 - (a) in the case of an offence referred to in section 98(a)(i), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
 - (b) in the case of an offence referred to in section 98(a)(ii), to the penalty that may be imposed for perjury;
 - (c) in the case of an offence referred to in section 98(a)(iii) to a fine not exceeding R500 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment;
 - (d) in the case of an offence referred to in section 98(a)(v), to the penalty that may be imposed in a magistrate's court for a similar offence;
 - (e) in the case of an offence referred to in section 98(a)(vi) and (vii), to a fine not exceeding R10 000;
 - (f) in the case of an offence referred to in section 98(c), to a fine not exceeding R500 000 for each day that such person persists in contravention of the said provisions;
 - (g) in the case of any conviction of an offence in terms of this Act for which no penalty is expressly determined, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; and
- (2) Despite anything to the contrary in any other law, a magistrate's court may impose any penalty provided for in this Act.

100. Transformation of minerals industry

- (1) The Minister must, within five years from the date on which this Act took effect:
 - (a) and after consultation with the Minister for Housing, develop a housing and living conditions standard for the minerals industry; and
 - (b) develop a code of good practice for the minerals industry in the Republic.
- (2)(a) To ensure the attainment of the Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such

South Africans to benefit from the exploitation of the mining and mineral resources and the beneficiation of such mineral resources.

- (b) The Charter must set out, amongst others, how the objects referred to in section 2(c), (d), (e), (f) and (i) can be achieved.

101. Appointment of contractor

If the holder of a right, permit or permission appoints any person or employs a contractor to perform any work within the boundaries of the reconnaissance, mining, prospecting, exploration, production or retention area, as the case may be, such holder remains responsible for compliance with this Act.

102. Amendment of rights, permits, programmes and plans

(1) A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right, production right, prospecting work programme, exploration work programme, production work programme, mining work programme environmental management programme or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, may not be amended or varied (including by extension of the area covered by it or by the additional of minerals or a shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister.

(2) The amendment or variations referred to in subsection (1), shall not be made if the effect of such amendment or variation is to:

- (a) extend an area or portion of an area, or
- (b) add a share or shares of the mineralised body, unless the omission of such area or share was a result of the administrative error.

103. Delegation and assignment

(1) The Minister may, subject to such conditions as he or she may impose, in writing delegate any power conferred on him or her by or under this Act, except a power to make regulations or deal with any appeal in terms of section 96, and may assign any duty so imposed upon him or her to the Director-General, the Regional Manager or any officer.

(2) The Minister may, in delegating any power or assigning any duty under subsection (1), authorise the further delegation of such power and the further assignment of such duty by a delegatee or assignee.

(3) The Director-General, the Regional Manager or any other officer to whom a power has been delegated or to whom a duty has been assigned by or under this Act, may in writing delegate any such power or assign any such duty to any other officer.

(4) The Minister, Director-General, Regional Manager or officer may at any time:

- (a) withdraw a delegation or assignment made in terms of subsection (1), (2) or (3), as the case may be; and
- (b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1), (2) or (3), as the case may be: Provided that no existing rights of any person shall be affected by such withdrawal and amending of a decision.

(5) The Minister, Director-General, Regional Manager or officer is not divested of any power or exempted from any duty delegated or assigned by him or her.

104. Preferent prospecting or mining right in respect of communities

(1) Any community who wishes to obtain the preferent right to prospect or mine in respect of any mineral and land which is registered or to be registered in the name of the community concerned, must in terms of section 16 or 22 lodge such application to the Minister.

(2) The Minister must grant such preferent right if the provisions of section 17 or 23 have been complied with: Provided that:

- (a) the right shall be used to contribute towards the development and the social upliftment of the community;
- (b) the community submits a development plan, indicating the manner in which such right is going to be exercised;
- (c) the envisaged benefits of the prospecting or mining project will accrue to the community in question; and

...

(e) section 23(1)(e) and (h) is not applicable.

(3) The preferent right, granted in terms of this section is:

- (a) valid for a period not exceeding five years and can be renewed for further periods not exceeding five years; and
- (b) subject to prescribed terms and conditions.

(4) The preferent right referred to in subsection (1), shall not be granted in respect of areas, where a prospecting right, mining right, mining permit, retention permit, production right, exploration right, technical operation permit or reconnaissance permit has already been granted.

105. Landowner or lawful occupier of land cannot be traced

(1) Any person who has applied for a right, permit or permission in terms of this Act must notify the Regional Manager if the landowner or lawful occupier of the land concerned:

- (a) cannot be readily traced; or
- (b) is deceased and no successor in title can be readily traced.

(2) Notwithstanding any other law, the Regional Manager, on application in writing from such applicant and on payment of the prescribed application fee, may:

- (a) grant consent to such a person to install a notice on a visible place on the land and enter the land to which the application relates to; and
- (b) subject such a person to such other terms and conditions as the Regional Manager may determine.

106. Exemptions from certain provisions of Act

(1) The Minister, may by notice in the *Gazette*, exempt any organ of state from the provisions of sections 16, 20, 22 and 27 in respect of any activity to remove any mineral for road construction, building of dams or other purpose which may be identified in such notice.

(2) Despite subsection (1), the organ of state so exempted must submit relevant environmental reports required in terms of chapter 5 of the National Environmental Management Act, 1998, to obtain an environmental authorisation.

(3) Any landowner or lawful occupier of land who lawfully, takes sand, stone, rock, gravel or clay for farming or for effecting improvements in connection with such land or community development purposes, is exempted from the provisions of subsection (1) as long as the sand, stone, rock, gravel or clay is not sold or disposed of.

107. Regulations

(1) The Minister may, by notice in the *Gazette*, make regulations regarding:

- (a)(i) the conservation of the environment at or in the vicinity of any mine or works;
 - (ii) the management of the impact of any mining operations on the environment at or in the vicinity of any mine or works;
 - (iii) the rehabilitation of disturbances of the surface of land where such disturbances are connected to prospecting or mining operations;
 - (iv) the prevention, control and combating of pollution of the air, land, sea or other water, including ground water, where such pollution is connected to prospecting or mining operations;
 - (v) pecuniary provision by the holder of any right, permit or permission for the carrying out of an environmental management programme;
 - (vi) the establishment of accounts in connection with the carrying out of an environmental management programme and the control of such accounts by the Department;
 - (vii) the assumption by the State of responsibility or co-responsibility for obligations originating from regulations made under subparagraphs (i), (ii), (iii) and (iv) of this paragraph; and
 - (viii) the monitoring and auditing of environmental management programmes;
 - (b) the exploitation, processing, utilisation or use of or the disposal of any mineral;
 - (c) procedures in respect of appeals lodged under this Act;
 - (d) fees payable in relation to any right, permit or permission issued or granted in terms of this Act;
 - (e) fees payable in relation to any appeal contemplated in this Act;
 - (f) the form of any application which may or has to be done in terms of this Act and of any consent or document required to be submitted with such application, and the information or details which must accompany any such application;
 - (g) the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any environmental management programme, permit, licence, certificate, permission, receipt or other document which may or has to be issued, granted, approved, required or renewed in terms of this Act;
 - (h) the form of any register, record, notice, sketch plan or information which may or shall be kept, given, published or submitted in terms of or for the purposes of this Act;
 - (i) the prohibition on the disposal of any mineral or the use thereof for any specified purpose or in any specified manner or for any other purpose or in any other manner than a specified purpose or manner;
 - (j) the restriction or regulation in respect of the disposal or use of any mineral in general;
 - (k) any matter which may or must be prescribed for in terms of this Act; and
 - (l) any other matter the regulation of which may be necessary or expedient in order to achieve the objects of this Act.
- (2) No regulation relating to State revenue or expenditure may be made by the Minister except with the concurrence of the Minister of Finance.
- (3) Any regulation made under this section may provide that any person contravening such regulation or failing to comply therewith, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

108. Proof of facts

In any legal proceedings in terms of this Act any statement, entry or information in or on any book, plan, record or other document is admissible

as *prima facie* evidence of the facts in or on it by the person who made, entered, recorded or stored it.

109. Act binds State

This Act binds the State save in so far as criminal liability is concerned.

110. Repeal and amendment of laws, and transitional provisions

Subject to schedule 2, the laws mentioned in schedule 1 are hereby repealed or amended to the extent set out in the third column of schedule 1.

111. Short title and commencement

(1) This Act is called the Mineral and Petroleum Resources Development Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may so be fixed in respect of different provisions of this Act.

Schedule 1: REPEAL OR AMENDMENT OF LAWS

Section 110

...

Schedule 2: TRANSITIONAL ARRANGEMENTS

1. Definitions

In this schedule, unless the context indicates otherwise:

'holder' in relation to an old order right, means the person to whom such right was or is deemed to have been granted or by whom it is held or is deemed to be held, or such person's successor in title before this Act came into effect; 'Minerals Act' means the Minerals Act, 1991 (Act 50 of 1991);

'old order mining right' means any mining lease, mynpachten, consent to mine, permission to mine, claim licence, mining authorisation or right listed in Table 2 to this schedule in force immediately before the date on which this Act took effect and in respect of which mining operations are being conducted;

'old order prospecting right' means any prospecting lease, permission, consent, permit or licence, and the rights attached thereto, listed in Table 1 to this schedule in force immediately before the date on which this Act took effect and in respect of which prospecting is being conducted;

'old order right' means an old order mining right, old order prospecting right or unused old order right, as the case may be;

'OP26 mining lease' means any mining lease granted in terms of clause 22 of prospecting lease OP26 or the portions held under Deed of Cession 1/1996, registered in terms of the Mining Titles Registration Act, 1967 (Act 16 of 1967);

'OP26 sublease' means those parts of the OP26 mining lease which are held under Cessions 1/1999 and 1/2002 registered as such at the Mineral and Petroleum Titles Registration Office on 8 September 1999 and 30 September 2002, respectively;

'OP26 right' means prospecting lease OP26 and the portions ceded under Deed of Cession 1/1996 registered in terms of the Mining Titles Registration Act, 1967 (Act 16 of 1967) or an OP26 sublease or an OP26 mining lease;

'unused old order right' means any right, entitlement, permit or licence listed in Table 3 to this schedule in respect of which no prospecting or mining was being conducted immediately before this Act took effect.

2. Objects of schedule

The objects of this schedule are in addition to the objects contemplated in section 2 of the Act and are to:

- (a) ensure that security of tenure is protected in respect of prospecting, exploration, mining and production operations which are being undertaken;
- (b) give the holder of an old order right, and an OP26 right an opportunity to comply with this Act; and
- (c) promote equitable access to the nation's mineral and petroleum resources.

3. Pending prospecting and mining applications

(1) Any application for a prospecting permit, mining authorisation, consent to prospect, consent to mine or permission to remove and dispose of any mineral lodged, but not finalised, in terms of section 6, 8 or 9 of the Minerals Act immediately before this Act took effect must be regarded as having been lodged in terms of section 13, 22, 27, 79 or 83 of this Act, as the case may be.

(2) If any application contemplated in subitem (1) does not meet the requirements of this Act, the Regional Manager in whose region the land to which the application relates is situated must direct the applicant to submit the outstanding information within 120 days of such direction.

(3) Any environmental management programme submitted for approval in terms of section 39(1) of the Minerals Act which had not been approved when this Act took effect must be regarded as having been lodged in terms of section 39 of this Act.

(4) If the environmental management programme does not meet the requirements of this Act, the Regional Manager in whose region the land to which the environmental management programme relates is situated must direct the holder concerned to submit the outstanding information.

4. Continuation of exploration operation

(1) Any OP26 sublease in force immediately before this Act took effect continues in force subject to the terms and conditions under which it was granted until it is terminated or expires or until 30 June 2007, whichever is the sooner.

(2) Any holder of a sublease contemplated in subitem (1) who wishes to convert the sublease into an exploration right in terms of this Act, must lodge such sublease for conversion at the office of the designated agency together with:

- (a) the prescribed particulars of the holder;
- (b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
- (c) a statement setting out the period during which he or she conducted exploration operations before the date on which this Act took effect;
- (d) information as to whether or not the OP26 sublease is mortgaged or in any way encumbered by way of endorsement at the Title Deeds Office or the Mining Titles Office;
- (e) a statement setting out the terms and conditions which apply to the sublease;
- (f) the original sublease and the approved environmental management programme, or certified copies thereof;
- (g) an undertaking to the effect that, and a statement setting out the manner in which, the holder of the sublease will give effect to the object referred to in section 2(d) and 2(f); and

- (h) an affidavit verifying that the holder is conducting or has been conducting exploration operation on the area of land to which the conversion relates and setting out the periods during which such exploration operations were converted and the results thereof.
- (3) The Minister must convert the sublease if the holder:
 - (a) has complied with the provisions of subitem (2);
 - (b) is conducting exploration in respect of the sublease in question;
 - (c) indicates that he or she will continue to conduct exploration operations upon the conversion of such right; and
 - (d) has paid the prescribed conversion fee.
- (4) No terms and conditions applicable to the sublease remain in force if they are contrary to any provision of the Constitution or this Act.
- (5) the holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mineral and Petroleum Titles Registration Office for deregistration and simultaneously at the Deeds office or the Mineral and Petroleum Titles Registration Office for deregistration of the OP26 sublease as the case may be.
- (6) The registration contemplated in subitem (5) must occur within six months from the date on which the sublease has been converted and must be done at the same time as the deregistration of the sublease at the Mineral and Petroleum Titles Registration Office.
- (7) Upon the conversion of the sublease and the registration of the exploration right into which it was converted, the sublease ceases to exist.
- (8) If the holder fails to lodge the sublease for conversion before the expiry of the period referred to in subitem (1) the sublease ceases to exist.

5. Continuation of production operations

- (1) Any OP26 mining lease in force immediately before this Act took effect continues in force for a period of five years from the date on which this Act took effect, subject to the terms and conditions under which it was granted.
- (2) Any holder of a lease contemplated in subitem (1) who wishes to convert the lease into a production right in terms of this Act, must lodge an application for the conversion of the lease at the designated agency together with:
 - (a) the prescribed particulars of the holder;
 - (b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
 - (c) a statement setting out the period during which he or she conducted production operations before the date on which this Act took effect;
 - (d) a statement setting out the period for which the production right is required substantiated by a mining work programme;
 - (e) an affidavit verifying that the holder is conducting production operations on the area of the land to which the conversion relates and setting out the period for which such production operation has been conducted;
 - (f) a prescribed social and labour plan;
 - (g) information as to whether or not the old order OP26 lease is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;
 - (h) a statement setting out the terms and conditions which apply to the lease;
 - (i) the original lease and the approved environmental management programme, or certified copies thereof; and

- (j) an undertaking to the effect that, and a statement setting out the manner in which, the holder of the lease or sublease will give effect to the object referred to in section 2(d) and 2(f).
- (3) The Minister must convert the lease if the holder:
 - (a) has complied with the provisions of subitem (2);
 - (b) is producing petroleum in respect of the lease in question;
 - (c) indicates that he or she will continue to conduct production upon the conversion of such lease; and
 - (d) has paid the prescribed conversion fee.
- (4) No terms and conditions applicable to the lease remain in force if they are contrary to any provision of the Constitution or this Act.
- (5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mineral and Petroleum Titles Registration Office for registration and simultaneously at the Deeds office or the Mineral and Petroleum Titles Registration Office for deregistration for deregistration of OP26 lease, as the case may be.
- (6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act 47 of 1937), or the Mining Titles Registration Act, 1967 (Act 16 of 1967), over the lease, the production right into which it is converted must be registered subject to such mortgage bond, and the relevant registrar must make such endorsements on any relevant document and such entries in his or her registers as may be necessary in order to give effect [to] this subitem, without payment of transfer duty, stamp duty, registration fees or charges.
- (7) Upon the conversion of the lease and the registration of the production right into which it was converted, the lease ceases to exist.
- (8) If the holder fails to lodge the lease for conversion before the expiry of the period referred to in subitem (1) the sublease ceases to exist.

6. Continuation of old order prospecting right

- (1) Subject to subitems (2) and (8), any old order prospecting right in force immediately before this Act took effect continues in force for a period of two years from the date on which this Act took effect subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.
- (2) A holder of an old order prospecting right must lodge the right for conversion within the period referred to in subitem (1) at the office of the Regional Manager in whose region the land in question is situated together with:
 - (a) the prescribed particulars of the holder;
 - (b) a sketch plan or diagram depicting the prospecting area for which the conversion is required, which area may not be larger than the area for which he or she holds the old order prospecting right;
 - (c) the name of the mineral or group of minerals for which he or she holds the old order prospecting right;
 - (d) an affidavit verifying that the holder is conducting or has conducted prospecting operations immediately before this Act took effect on the area of that land to which the conversion relates and setting out the periods during which such prospecting operations were conducted and the results thereof;
 - (e) a statement setting out the period for which the prospecting right is required, substantiated by a prospecting work programme;
 - (f) information as to whether or not the old order prospecting right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;

- (g) a statement setting out the terms and conditions which apply to the old order prospecting right;
 - (h) the original title deed in respect of the land to which the old order prospecting right relates, or a certified copy thereof;
 - (i) the original old order right or a certified copy thereof; and
 - (j) all prospecting information and the results thereof to which the right relates.
- (3) The Minister must convert the old order prospecting right into a prospecting right if the holder of the old order prospecting right:
- (a) complies with the requirements of subitem (2);
 - (b) has conducted prospecting operations in respect of the right in question;
 - (c) indicates that he or she will continue to conduct such prospecting operations upon the conversion of such right;
 - (d) has an approved environmental management programme; and
 - (e) has paid the prescribed conversion fee.
- (4) No terms and conditions applicable to the old order prospecting right remain in force if they are contrary to any provision of the Constitution or this Act.
- (5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mineral and Petroleum Titles Registration Office for registration and simultaneously at the Deeds Office or the Mineral and Petroleum Titles Registration Office for deregistration of the old order prospecting right, as the case may be.
- (6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act 47 of 1937), or the Mining Titles Act, 1967 (Act 16 of 1967), over the old order prospecting right, the prospecting right into which it was converted must be registered in terms of this Act subject to such mortgage bond, and the relevant registrar must make such endorsements on every relevant document and such entries in his or her registers as may be necessary in order to give effect to this subitem, without payment of transfer duty, stamp duty, registration fees or charges.
- (7) Upon the conversion of the old order prospecting right and the registration of the prospecting right into which it was converted, the old order prospecting right ceases to exist.
- (8) If the holder fails to lodge the old order prospecting right for conversion before the expiry of the period referred to in subitem (1), the old order prospecting right ceases to exist.

7. Continuation of old order mining right

- (1) Subject to subitems (2) and (8), any old order mining right in force immediately before this Act took effect continues in force for a period not exceeding five years from the date on which this Act took effect or the period for which it was granted, whichever period is the shortest, subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.
- (2) A holder of an old order mining right must lodge the right for conversion within the period referred to in subitem (1) at the office of the Regional Manager in whose region the land in question is situated together with:
- (a) the prescribed particulars of the holder;
 - (b) a sketch plan or diagram depicting the mining area for which the conversion is required, which area may not be larger than the area for which he or she holds the old order mining right;
 - (c) the name of the mineral or group of minerals for which he or she holds the old order mining right;

- (d) an affidavit verifying that the holder is conducting mining operations on the area of the land to which the conversion relates and setting out the periods for which such mining operations [are] conducted;
 - (e) a statement setting out the period for which the mining right is required substantiated by a mining work programme;
 - (f) a prescribed social and labour plan;
 - (g) information as to whether or not the old order mining right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mineral and Petroleum Registration Office;
 - (h) a statement setting out the terms and conditions which apply to the old order mining right;
 - (i) the original title deed in respect of the land to which the old order mining right relates, or a certified copy thereof;
 - (j) the original old order right and the approved environmental management programme or certified copies thereof; and
 - (k) documentary proof of the manner in which, the holder will give effect to the object referred to in section 2(d) and 2(f).
- (3) The Minister must convert the old order mining right into a mining right if the holder of the old order mining right:
- (a) complies with the requirements of subitem (2);
 - (b) has conducted mining operations in respect of the right in question;
 - (c) indicates that he or she will continue to conduct such mining operations upon the conversion of such right;
 - (d) has an approved environmental management programme; and
 - (e) has paid the prescribed conversion fee.
- (3A) If the applicant does not comply with the requirements of the subitem (2) and (3), the Regional Manager must in writing request the applicant to comply within 60 days of such request.
- (3B) If the applicant does not comply with subitem 3A, the Minister must refuse to convert the right and must notify the applicant in writing of the decision within 30 days with reasons.
- (3C) If the application relates to land occupied by the community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.
- (4) No terms and conditions applicable to the old order mining right remain in force if they are contrary to any provision of the Constitution or this Act.
- (5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mineral and Petroleum Titles Registration Office for registration and simultaneously at the Deeds office or the Mineral and Petroleum Titles Registration Office for deregistration of the old order mining right, as the case may be.
- (6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act 47 of 1937), or the Mining Titles Act, 1967 (Act 16 of 1967), over the old order mining right, the mining right into which it was converted must be registered in terms of this Act subject to such mortgage bond, and the relevant registrar must make such endorsements on every relevant document and such entries in his or her registers as may be necessary in order to give effect to this subitem, without payment of transfer duty, stamp duty, registration fees or charges.
- (7) Upon the conversion of the old order mining right and the registration of the mining right into which it was converted the old order mining right ceases to exist.

(8) If the holder fails to lodge the old order mining right for conversion before the expiry of the period referred to in subitem (1), the old order mining right ceases to exist.

8. Processing of unused old order rights

(1) Any unused old order right in force immediately before this Act took effect, continues in force, subject to the terms and conditions under which it was granted, acquired or issued or was deemed to have been granted or issued, for a period not exceeding one year from the date on which this Act took effect, or for the period for which it was granted, acquired or issued or was deemed to have been granted or issued, whichever period is the shortest.

(2) The holder of an unused old order right has the exclusive right to apply for a prospecting right or a mining right, as the case may be, in terms of this Act within the period referred to in subitem (1).

(3) An unused old order right in respect of which an application has been lodged within the period referred to in subitem (1) remains valid until such time as the application for a prospecting right or mining right, as the case may be, is granted and dealt with in terms of this Act or is refused.

(4) Subject to subitems (2) and (3), an unused old order right ceases to exist upon the expiry of the period contemplated in subitem (1).

9. Continuation of reservations, permissions and certain rights

(1) Any reservation or permission for or right to the use of the surface of land granted or acquired or deemed to have been granted or acquired:

- (a) in terms of section 75 of the Precious and Base Metals Act, 1908 (Act 35 of 1908), of the Transvaal;
- (b) in terms of section 126(2) of the Precious Stones Act, 1964 (Act 73 of 1964);
- (c) in terms of section 90, 91, 92, 93(4) or (7), 102, 103, 111, 113 or 116 of the Mining Rights Act, 1967 (Act 20 of 1967);
- (d) in terms of section 127, 128 or 129 read with section 130 of the Mining Rights Act, 1967 (Act 20 of 1967); or
- (e) by virtue of a reservation under section 158 of the Mining Rights Act, 1967 (Act 20 of 1967),

as the case may be, and in force in terms of section 48 of the Minerals Act immediately before this Act took effect, remains in force subject to the terms and conditions under which it was granted or acquired and contained in the document or documents concerned under which it continues to exist or remain in force and in those cases where they were attached to old order rights will so remain in force notwithstanding the cessation or existence of the relevant old order right to which they were attached if such old order right is replaced by a prospecting right or mining right in terms of items 6 or 7 and shall thereupon similarly attach to such permit or right, as the case may be.

(2) The holder, user or acquirer of any reservation, permission or right to use the surface of land contemplated in subitem (1) must register such reservation, permission or right in the Mineral and Petroleum Titles Registration Office within six years from the date on which this Act took effect and if such holder, user or occupier fails to register such reservation, permission or right, the reservation, permission or right shall cease to exist.

(3) Any reservation, permission or right to use the surface of land contemplated in subitem (1) which could have been ceded, transferred, let, sublet, subdivided, amended or mortgaged, wholly or in part, immediately before this Act took effect may be ceded, transferred, let, sublet, subdivided, amended or mortgaged, wholly or in part, in terms of this Act, but the holder must lodge it at the Mining Titles Office within 90 days for the

registration of such cession, transfer, letting, subletting, tributing, subdivision, amendment or mortgage.

(4) The owner of the land or any other person contemplated in section 48(2)(a) of the Minerals Act who was receiving compensation in terms of that section immediately before this Act took effect, or such owner's or person's successors in title, are entitled to continue receiving such compensation.

(5)(a) The holder of a reservation, permission or right contemplated in subitem (1) may abandon such reservation, permission or right, wholly or in part, by written notice to the relevant Regional Manager.

(b) The reservation, permission or right contemplated in paragraph (a), or such part thereof as may have been abandoned, must thereupon be regarded as having lapsed with effect from the date of such notice.

(6) The Director-General may cancel any reservation, permission or right if the holder thereof fails to comply with any term or condition of such right, reservation or permission, in which case section 47 applies with the necessary changes.

(7) Any lease of the State's interest in a mine in terms of section 74 of the Precious Stones Act, 1964 (Act 73 of 1964), which was in force immediately before this Act took effect in terms of section 47(1)(a)(iii) of the Minerals Act continues in force subject to the terms and conditions contained in the document under which it was granted or entered into.

10. Continuation of approved environmental management programme

(1) Any environmental management programme approved in terms of section 39(1) of the Minerals Act and in force immediately before this Act took effect and any steps taken in respect of the relevant performance assessment and duty to monitor connected with that environmental management programme continues to remain in force when this Act comes into effect.

(2) Subitem (1) does not prevent the Minister from directing the amendment of an environmental management programme in order to bring it into line with the requirements of this Act.

(3) Any person exempted in terms of section 39(2)(a) of the Minerals Act before this Act took effect and whose exemption does not otherwise remain in force in terms of this Act must apply for an exemption in terms of this Act within one year from the date on which this Act took effect, otherwise the exemption lapses.

(4) If the holder of an old order prospecting right or old order right mining right or the owner of previous works ceases the relevant prospecting or mining operation works, the holder must apply for a closure certificate in terms of section 43.

(5) Sections 38, 41(2) and 45 apply to a holder of an old order prospecting right or old order mining right.

(6) If no application for a certificate contemplated in section 12 of the Minerals Act has been made, the holder referred to in that section, who remains liable for complying with the relevant provision of that Act, must apply for a closure certificate in terms of section 43.

10A. Section 52 applies to a holder of an old order prospecting right or old order mining right.

11. Consideration or royalty payable

(1) Notwithstanding the provisions of item 7(7) and 7(8), any existing consideration, contractual royalty or future consideration, including any compensation contemplated in section 46(3) of the Minerals Act, which accrued to any community immediately before this Act took effect, continues to accrue to such community.

(2) The community contemplated in subitem (1) must annually, and at such other time as required to do so by the Minister, furnish the Minister with such particulars regarding the usage and disbursement of the consideration or royalty as the Minister may require.

(3) If the consideration or royalties contemplated in subitem (1) accrued to a natural person, it may continue to accrue to the person subject to such terms and conditions as the Minister may determine, if:

(a) the discontinuation of such consideration or royalty will cause undue hardship to the person; or

(b) the person uses such consideration or royalty for social upliftment.

(4) If it is determined that the consideration or royalties referred to in subitem (3) continues then the provision of subitem (2) [will] apply to such a recipient.

(5) The recipients contemplated in subitems (1) and (3) must within five years from the date on which this Act took effect inform the Minister of their need to continue to receive such consideration or royalties and the reasons therefor, and furnish the Minister with the prescribed information.

(6) Any person who or community which receives any consideration or royalty by virtue of this item must:

(a) keep prescribed records at an address in the Republic where they may be inspected by the Director-General; and

(b) submit annual audited financial statements.

(7) The preservation contained in subitem (1) and continuation contemplated in subitem (4) when applied in respect of communities is subject to such terms and conditions as may be determined by the Minister which terms and conditions must, among others, include:

(a) the manner in which such royalty will be used for purposes of promoting rural, regional and local economic development and the social upliftment of a community;

(b) proper financial control is in respect of such consideration or royalty;

(c) a development plan, indicating the manner in which the consideration or royalty is being used and any projects sponsored therewith;

(d) an undertaking that the consideration or royalty is being or will be used for the benefit of all the members of the community in question;

(e) the right of the Minister to intervene, in the event that it is alleged that the said consideration royalties is not being utilised for the purposes agreed to between the Minister and the community concerned; and

(f) the establishment of a trust, section 21 Company, Agency or other structure to administer the funds, on whose Board of Directors or trustees or Executive Committee there is representation by members of the community affected.

12. Payment of compensation

(1) Any person who can prove that his or her property has been expropriated in terms of any provision of this Act may claim compensation from the State.

(2) When claiming compensation, a person must:

(a) prove the extent and nature of Actual loss and damage suffered by him or her;

(b) indicate the current use of the property;

(c) submit proof of ownership of such property;

(d) give the history of acquisition of the property in question and price paid for it;

(e) detail the nature of such property;

(f) prove the market value of the property and the manner in which such value was determined; and

- (g) indicate the extent of any State assistance and benefits received in respect of such property.
- (3) In determining just and equitable compensation all relevant factors must be taken into account, including, in addition to sections 25(2) and 25(3) of the Constitution:
 - (a) the State's obligation to redress the results of past racial discrimination in the allocation of and access to mineral and petroleum resources;
 - (b) the State's obligation to bring about reforms to promote equitable access to all South Africa's natural resources;
 - (c) the provisions of section 25(8) of the Constitution; and
 - (d) whether the person concerned will continue to benefit from the use of the property in question or not.
- (4) Any claim for compensation must be lodged with the Director-General and the Minister may prescribe:
 - (a) the manner in which such claim may be lodged;
 - (b) the procedure to be followed by the claimant and the Director-General in respect of such claim; and
 - (c) the time when any legal proceedings may be instituted in respect of the determination or payment of compensation as contemplated in subitem (1).
- (5) Despite the provisions of the Prescription Act, 1969 (Act 68 of 1969), prescription in respect of a claim for compensation shall only commence to run:
 - (a) when the claimant has been informed in writing by the Director-General that he or she has denied the validity of the claim and the claimant has not appealed against such denial in terms of section 96; or
 - (b) where a claimant decides to appeal the denial of the Director-General in terms of section 96, when the claimant has been informed in writing by the Minister of the confirmation of the said denial; or
 - (c) 180 days after the claimant has been informed in writing that the Director-General has refused a determination and payment of compensation.
- (6) On the occurrence of any of the event described in subitems (5)(a) to (c):
 - (a) to the extent that they may be applicable, the provisions of sections 10(4), (5), (7) and (8), 14, 15, 19, 21 of the Expropriation Act, 1975 (Act 63 of 1975), apply with necessary changes to a claim made in terms of subitem (1); and
 - (b) the claimant may issue proceedings in a court of law for the determination and payment of compensation, but not before.
- (7) The provisions of this item do not apply to expropriation of property in terms of section 55 of the Act.

13. Certain functions of Director: Mineral Development to be performed by Regional Manager or Minister

- (1) Until an officer is designated for a region in terms of section 8 as Regional Manager, the officer appointed as Director: Mineral Development for that region in terms of section 4 of the Minerals Act must:
 - (a) be regarded as having been appointed as Regional Manager; and
 - (b) must perform any function in the region for which he or she was appointed which the Regional Manager must perform under or in terms of this Act.
- (2) The regions contemplated in section 3 of the Minerals Act remain in force until the Minister divides the Republic, the sea and continental shelf into regions in terms of section 7.

TABLE 1 (Old order prospecting rights)**Category 1**

The common law mineral right, together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

Category 2

A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto, together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

Category 3

A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act, the common law mineral right attached thereto and a prospecting permit obtained in accordance with section 6(1) of the Minerals Act.

Category 4

Any permission to prospect in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act 9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act 94 of 1998), and the common law mineral right attached thereto together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

Category 5

A temporary permit authorising the continuation of a prospecting operation on the land comprising the subject of a prospecting permit which had been authorised under such prospecting permit, as provided for in section 10 of the Minerals Act, 1991 (Act 50 of 1991).

TABLE 2 (Old order mining rights)**Category 1**

The common law mineral right, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

Category 2

A consent to mine granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation issued in connection therewith in terms of section 9(1) of the Minerals Act.

Category 3

A right to dig or to mine or claim licence, a tributing agreement or a mynpachten referred to in section 47 of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith under section 47(1)(e) in terms of section 9(1) of the Minerals Act.

Category 4

A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

Category 5

Any permission to mine in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act 9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act 94 of 1998), and the common law mineral right attached thereto and a mining authorisation in terms of the Minerals Act.

Category 6

A temporary authorisation or permit authorising the continuation of a mining operation on the land comprising the subject of a mining authorisation or permit which had been authorised under such mining authorisation or permit, as provided for in section 10 of the Minerals Act, 1991 (Act 50 of 1991).

TABLE 3 (Unused old order rights)**Category 1**

A mineral right under the common law for which no prospecting permit or mining authorisation was issued in terms of the Minerals Act.

Category 2

A mineral right under the common law for which a prospecting permit or mining authorisation was issued in terms of the Minerals Act.

Category 3

A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto in respect of which a prospecting permit was issued in terms of section 6(1) of the said Act.

Category 4

A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto in respect of which no prospecting permit was issued in terms of section 6(1) of the said Act.

Category 5

A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act and the common law mineral right attached thereto in respect of which a prospecting permit was issued in terms of section 6(1) of the Minerals Act.

Category 6

A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act and the common law mineral right attached thereto in respect of which no prospecting permit was issued in terms of section 6(1) of the Minerals Act.

Category 7

A consent to mine issued or granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto in respect of which a mining authorisation was issued in terms of section 9(1) of the Minerals Act.

Category 8

A consent to mine granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto in respect of which no mining authorisation was issued in terms of section 9(1) of the Minerals Act.

Category 9

A consent to mine issued or granted in terms of section 9(1)(a) or 9(2) of the Minerals Act and the common law mineral right attached thereto without a mining authorisation issued in terms of section 9(1) of the Minerals Act.

Category 10

A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

Category 11

Any permission to prospect or mine in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act 9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act 94 of 1998), and the common law mineral right attached thereto and a prospecting permit or mining permit issued in terms of the Minerals Act.

2.2.3.1.7 Nuclear Energy Act

Description: This Act was promulgated to establish the South African Nuclear Energy Corporation Limited (the 'Corporation'), as a public company owned by the State. The Act defines the functions, powers, as well as the financial and operational accountability of the Corporation. The Nuclear Energy Act of 1999 further introduces provisions for the regulation of the Corporation's governance and management by a Board of Directors and a Chief Executive Officer. The Act regulates responsibilities for the implementation and application of the Safeguards Agreement and any additional protocols entered into by the Republic and the International Atomic Energy Agency in support of the Nuclear Non-Proliferation Treaty.

The Act further regulates the acquisition and possession of nuclear fuel, certain nuclear as well as related material and equipment. The Act regulates the importation and exportation of (and certain other activities relating to) fuel, material and equipment in order to comply with the international

obligations of the Republic. Certain provisions of the Act prescribe measures regarding the disposal of radioactive waste and the storage of irradiated nuclear fuel.

2.2.3.1.8 Nuclear Regulator Act

Description: The Nuclear Regulator Act of 1999 establishes the National Nuclear Regulator charged with the regulation of nuclear activities. The Act provides for the objects, functions, as well as the manner in which the Regulator and its staff are to be managed. The Act specifies the safety standards and regulatory practices for the protection of persons, property and the environment against nuclear damage.

2.2.3.1.9 Conservation of Agricultural Resources Act

Description: The Act provides for the regulation of control over the utilisation of the natural agricultural resources in order to promote the conservation of soil, water and vegetation and provides for combating weeds and invader plant species.

2.2.3.1.10 Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies

Description: The Act provides for the appointment of a Registrar of Fertilisers, Farm Feeds and Agricultural Remedies; the registration of fertilisers, farm feeds, agricultural remedies, stock remedies, sterilising plants and pest control operators; and regulates or prohibits the importation, sale, acquisition, disposal or use of fertilisers, farm feeds, agricultural remedies and stock remedies. Finally, the Act provides for the designation of technical advisers and analysts.

2.2.3.1.11 Agricultural Pests Act

Description: The Agricultural Pests Act 30 of 1983 introduces measures by which agricultural pests may be prevented and combated.

2.2.3.2 Atmospheric Pollution

In accordance with Roman law there exists a general rule that the air is regarded as *res omnium communes*. This means that the air is owned by nobody but subject to the enjoyment of all. Common law principles of this nature are currently applicable in South Africa. In respect of air pollution, the Roman law maxim *sic utere tuo ut alienum non laedas* (use your property in a way which does not harm another) forms the underlining principle to the formulation of current air pollution laws. Notwithstanding, the Atmospheric Pollution Act 45 of 1965 was the primary piece of legislation regulating air pollution in South Africa until 2005, when it was superseded by the National Environmental Management Act: Air Quality Act 39 of 2004.

With the advent of the 1996 Constitution and the entrenchment of the environmental right in the Bill of Rights, protection in respect of air quality was strengthened. The 1996 Constitution also ensured that the regulation of air pollution at provincial level enjoys greater attention. Air pollution is regarded in terms of schedule 4 of the Constitution as a matter of concurrent national and provincial jurisdiction.

The National Environmental Management Act 107 of 1998 creates a legislative framework which has greater potential to mitigate the adverse effects of pollution. Air Quality is currently regulated through the National Environmental Management Act: Air Quality Act 39 of 2004 and the ambit of the regulation falls within the Mandate of the Department of Water and Environmental Affairs (Chief Directorate: Environmental Quality and Protection).

2.2.3.2.1 Atmospheric Pollution Prevention Act 45 of 1965

Description: This Act provides for the prevention of the pollution of the atmosphere.

2.2.3.2.2 National Environmental Management: Air Quality Act

Description: The Air Quality Act regulates air quality in order to protect the environment. It provides reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development. The Act further provides for national norms and standards regulating air quality monitoring, management and control by all spheres of government. It also provides for specific air quality measures.

(Refer to page 157 for this Act)

2.2.3.3 Noise Pollution

Sound and noise pollution are common forms of pollution. In respect of these forms of pollution the Roman maxim *sic utere tuo ut alienum non laedas* (use your property in a way which does not harm another) still finds application in South African law and has been invoked in many reported cases.³

Although sound travels through the atmosphere, noise pollution was not included in the Atmospheric Pollution Prevention Act 45 of 1965. Noise pollution is addressed under a variety of local authority by-laws guided by the Environmental Conservation Act 73 of 1989 and its regulations.

Apart from the Environmental Conservation Act 73 of 1989, other national statutes, such as the Aviation Act 74 of 1962, the Road Traffic Act 29 of 1989 and the Building Standards Act 103 of 1997 regulate various specific forms of noise pollution. Although South Africa has a sophisticated array of common law and statutory principles regarding noise pollution in place, effective co-ordination between these principles will guarantee success in mitigating noise pollution.

2.2.3.3.1 The Aviation Act

Description: The Act consolidates the statutes that give effect to certain International Aviation Conventions and makes provision for the control, regulation and encouragement of aviation activities within the Republic of South Africa.

2.2.3.4 Pollution of Fresh Water

Land based water resources can primarily be divided into two types of water resources: Ground water and surface water. Due to the fact that our country's water resources can be described as both scarce and limited, these resources must be preserved in both quantity and quality for the benefit of both maintaining this resource from an ecological, environmental and conservation point of view as well as with the view of ensuring adequate resource availability for human consumption.

Pollution, as defined in the National Water Act (Act 36 of 1998), is essentially any action that results in the direct or indirect alteration of the physical, chemical or biological properties of a water resource rendering less fit for any beneficial intended use or renders it harmful or potentially harmful for human consumption, any aquatic or non-aquatic organisms, the resource quality or harmful to property.

³ *Holland v Scott* (1882) 2 EDC 307, *Graham v Dittman & Son* 1917 TPD 288 and *Gien v Gien* 1979 (2) SA 1114 (T).

In the context of freshwater resources such resources can severely and adversely be affected by a range of activities including settlements; prospecting and mining activities; landfills; agricultural activities; hazardous substances and any other activity that can impact on the environment.

Currently, legislative norms geared at protecting freshwater resources include the National Water Act, the National Environmental Management Act, Act 107 of 1998 (NEMA) and the Environmental Impact Assessment Regulations promulgated in terms of NEMA.

In the context of pollution and relevant to the protection of freshwater resources, the National Water Act provides for a *duty of care* in section 19 of the Act. Section 19 places a duty on the owner of land, a person in control of land or a person who occupies or uses land on which any activity occurs that has caused, causes or may cause the pollution of a water resource to take reasonable measures to prevent such pollution from occurring, continuing or reoccurring. In addition, section 20 makes provision for the management of any emergency incidents that may adversely impact on and/or pollute a water resource. Moreover, potential adverse impacts through *inter alia* discharges into water sources are also regulated through licensing requirements and the issuing of water licenses: sections 21 and 22 of the Act.

Further reading:

1. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)
2. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9

Also see:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (Chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*

2.2.3.4.1 National Water Act

Description: This Act was promulgated to provide for the fundamental reform of the law relating to water resources, the relationship between these new laws and reforms; and to repeal certain laws.
(Refer to page 209 for this Act)

2.2.3.4.2 National Environmental Management: Waste Act

Description: To reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development; to provide for institutional arrangements and planning matters; to provide for national norms and standards for regulating the management of waste by all spheres of government; to provide for specific waste management measures; to provide for the licensing and control of waste management activities; to provide for the remediation of contaminated land; to provide for the national waste information system; to provide for compliance and enforcement; and to provide for matters connected therewith.

(Refer to page 183 for this Act)

2.2.3.5 Marine Pollution

Marine pollution control laws are considered in the context of both international and domestic law. This can be ascribed to the fact that international conventions and laws have been enacted at the domestic level.

Legislation dealing with the regulation and prevention of marine pollution can be divided into five categories:

- Statutes of general application, for example the National Environmental Management: Integrated Coastal Management Act 24 of 2008;
 - Statutes dealing with pollution from ships and shipping, such as the Marine Pollution (Control and Civil Liability) Act 6 of 1981;
 - Statutes dealing with pollution from seabed activities;
 - Statutes dealing with pollution from land-based activities, for example the National Water Act 36 of 1998; and
 - Statutes dealing with wreck pollution such as the National Heritage Resources Act 25 of 1999.
-

2.2.3.5.1 National Environmental Management: Integrated Coastal Management Act

Description: This Act establishes a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable. It also defines rights and duties in relation to coastal areas and determines the responsibilities of organs of state in relation to coastal areas. It furthermore prohibits incineration at sea, controls dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment. Finally the Act gives effect to South Africa's international obligations in relation to coastal matters.

(Refer to page 228 for this Act)

2.2.3.5.2 Marine Living Resources Act

Description: This Act introduces regulating measures for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and access to exploitation, utilisation and protection of certain marine living resources. In this regard the Act provides that the control over marine living resources be exercised in a fair and equitable manner, to the benefit of all the citizens.

2.2.3.5.3 Marine Pollution (Control and Civil Liability Act)

Description: This Act provides for the protection of the marine environment from pollution by oil and other harmful substances. In this regards it also provides for the prevention and combating of pollution of the sea by oil and other harmful substances. It furthermore determines liability for loss or damage caused by the discharge of oil from ships, tankers and offshore installations.

2.2.3.5.4 Marine Pollution (Intervention) Act

Description: This Act has been enacted to give effect to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, and to the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil in 1973.

Marine Pollution (Intervention) Act 64 of 1987

As last amended by the South African Maritime Safety Authority Act 5 of 1998.

1. Definitions

In this Act, unless the context otherwise indicates:

'*Authority*' means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;

'*Convention*' means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties done at Brussels on 29 November 1969, the English text of which is set forth in schedule 1;

'*Minister*' ...

'*Protocol*' means the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil done at London on 2 November 1973, the English text of which is set forth in schedule 2, as modified by any amendment made under article III of that Protocol that has entered into force for the Republic;

'*regulation*' means a regulation made under this Act;

'*this Act*' includes the regulations.

2. Application and interpretation of Convention and Protocol

- (1) Subject to the provisions of this Act, the Convention and Protocol shall have the force of law in the Republic.
- (2) The Minister shall, as soon as practicable after any amendment of the Protocol has entered into force for the Republic, by notice in the *Gazette* amend schedule 2 to reflect such amendment.
- (3) Unless the context indicates otherwise, a reference in the Convention and Protocol to a State or State Party shall, in relation to the Republic, be construed as a reference to the Authority, and any reference to a Party shall be construed accordingly.

3. Regulations

- (1) The Minister of Transport may make regulations relating to the carrying out of, and giving effect to, the provisions of the Convention and Protocol, and generally for the better achievement of the objects of this Act.
- (2) Regulations made under subsection (1) may:
 - (a) prescribe, for any contravention thereof or failure to comply therewith, penalties of a fine not exceeding R500 000, or imprisonment for a period not exceeding five years, or such fine as well as such imprisonment;
 - (b) be applicable outside the Republic.

4. Jurisdiction

- (1) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.
- (2) Notwithstanding anything to the contrary contained in any other law, a magistrate's court shall have jurisdiction to impose any penalty provided for in this Act.

4A. Application of Act to Prince Edward Islands

This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948), and any reference in this Act to the Republic shall include a reference to those Islands.

5. Short title

This Act shall be called the Marine Pollution (Intervention) Act, 1987.

2.2.3.5.5 Marine Pollution (Prevention of Pollution from Ships) Act

Description: This Act provides for the protection of the sea from pollution by oil and other harmful substances discharged from ships. As such it gives effect to the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978.

2.2.3.5.6 Mineral and Petroleum Resources Development Act

Description: The Mineral and Petroleum Resources Development Act of 2002 guarantees equitable access to, and sustainable development of, the nation's

mineral and petroleum resources and provides for environmental protection and rehabilitation in cases of mine-closure.

2.2.3.5.7 Wreck And Salvage Act

Description: The Wreck and Salvage Act of 1996 provides for the salvage of certain vessels, the application in the Republic of the International Convention of Salvage (1989) and provides for the repeal or amendment of certain provisions of the Merchant Shipping Act (1951) and the Admiralty Jurisdiction Regulation Act (1983).

Wreck and Salvage Act 94 of 1996

As last amended by Ship Registration Act 58 of 1998.

1. Definitions

In this Act, unless the context indicates otherwise:

'Authority' means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;

'Convention' means the International Convention on Salvage, 1989, contained in the schedule;

'master', in relation to a ship, means any person, other than a pilot, having charge or command of such ship;

'Minister' means the Minister of Transport;

'owner of a ship' means any person to whom a ship or a share in a ship belongs;

'port' means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to load or discharge goods or persons;

'prescribe' means prescribe by regulation under section 21;

'Republic' includes the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948);

'salvage officer' means a salvage officer appointed in terms of section 8;

'seaman' means any person, except a master or a pilot, employed or engaged in any capacity on a ship;

'ship' means any vessel used or capable of being used on any waters, and includes any hovercraft, power boat, yacht, fishing boat, submarine vessel, barge, crane barge, crane, dock, oil or other rig, mooring installation or similar installation, whether floating or fixed to the sea-bed and whether self-propelled or not;

'South African ship' means any ship having South African nationality by virtue of section 3 of the Ship Registration Act, 1998;

'wreck' includes any flotsam, jetsam, lagan or derelict, any portion of a ship or aircraft lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of any such ship or aircraft and any portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress.

2. Application and interpretation of Convention

- (1) The Convention shall, subject to the provisions of this Act, have the force of law and apply in the Republic.
- (2) The provisions of Attachment 1 to the Convention shall have effect in connection with the application and interpretation of the Convention.
- (3) This Act shall not affect any rights or liabilities arising out of any salvage operations or other acts started before the commencement of this Act.
- (4) Any reference in the Convention to a State Party shall be construed as, or as including, a reference to the Republic.
- (5) Notwithstanding anything to the contrary in any other law or the common law contained, a court of law or any tribunal may, in the interpretation of the Convention, consider the preparatory texts to the Convention, decisions of foreign courts and any publication.
- (6) Notwithstanding anything to the contrary in article 3 or any other article of the Convention, a subject of salvage shall include any fixed or floating platform or any mobile offshore drilling unit whether or not it is engaged in the exploration, exploitation or production of sea-bed mineral resources.
- (7) 'Damage to the environment' as defined in article 1 of the Convention shall for purposes of this Act, notwithstanding anything to the contrary contained in this Act, not be restricted to coastal or inland waters or to areas adjacent thereto, but shall apply to any place where such damage may occur.
- (8) Notwithstanding the provisions of article 14(3) of the Convention, for the purposes of this Act, the expression 'fair rate' means a rate of remuneration which is fair having regard to the scope of the work and to the prevailing market rate, if any, for work of a similar nature.
- (9) In the case of any conflict between the Afrikaans and English texts of this Act and the Convention the English text shall be decisive.
- (10) Any claimant under this Act shall be entitled to enforce a maritime *lien*.

3. Court trying salvage claim may be assisted by assessors

The court in which proceedings for a claim relating to salvage have been instituted may, in its discretion, appoint one or more assessors acting only in an advisory capacity, and those assessors shall be impartial persons who are conversant with maritime affairs.

4. Application to aircraft

The provisions of this Act relating to wreck and to salvage of life or property and to the duty to render assistance to ships in distress shall apply to aircraft as they apply to ships, and the owner of an aircraft shall be entitled to the award of a sum for salvage services rendered by the aircraft and be liable to pay a sum of salvage in respect of services rendered in saving life from the aircraft or in saving the aircraft or any wreck from the aircraft in any case where the owner of the aircraft would have been so entitled or liable had it been a ship.

5. Obligation to assist ships in distress

- (1) The master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, shall proceed with all speed to the assistance of the persons in distress, informing them if possible that he or she is doing so, unless he or she is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he or she is released under the provisions of subsection (3) or (4) from the obligation imposed by this subsection.
- (2) Where the master of any ship in distress has requisitioned any South African ship that has answered his or her call for assistance, it shall be the duty of the master of the South African ship to comply with the requisition by

continuing to proceed with all speed to the assistance of the person in distress unless he or she is released under the provisions of subsection (4) from the obligation imposed by this subsection.

(3) A master shall be released from the obligation imposed by subsection (1) as soon as he or she is informed of the requisition of one or more ships other than his or her own and that the requisition is being complied with by the ship or ships requisitioned.

(4) A master shall be released from the obligation imposed by subsection (1), and if his or her ship has been requisitioned, from the obligation imposed by subsection (2), if he or she is informed by the person in distress, or by the master of any ship that has reached the person in distress, that assistance is no longer required.

(5) If the master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to go to the assistance of the person in distress, he or she shall forthwith cause a statement to be entered in the official logbook, of his or her reasons for not going to the assistance of that person.

(6) Compliance by the master of a ship with the provisions of this section shall not affect his or her right, or the right of any other person, to salvage.

(7) In the application of this section every reference to a ship in distress shall be interpreted so as to include a reference to an aircraft or a survival craft from a vessel or an aircraft in distress.

6. Duty to render assistance to persons in danger at sea

(1) The master of a ship shall, so far as he or she can do so without serious danger to his or her ship or to any person on the ship, render assistance to every person who is found at sea in danger of being lost, even if that person is a citizen of a country at war with the Republic or with the country in which the ship is registered.

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered.

7. Duty of masters of ships in collision to render assistance

(1) In every case of collision between two or more ships, it shall be the duty of the master of each ship, if and in so far as he or she can do so without danger to any person on the ship:

- (a) to render to the other ship and every person thereon such assistance as may be practicable and necessary to save them from any danger caused by the collision and to stay by the other ship until he or she has ascertained that there is no need for further assistance; and
- (b) to give to the master of the other ship, the name of his or her ship and of its port of registry and the name of the port from which it has come and to which it is bound.

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered.

8. Salvage officers

(1) The Minister may appoint suitably qualified persons to be salvage officers at ports or other places in the Republic in respect of any defined area.

(2) Such officers shall be appointed for the period and under the conditions as the Minister may deem fit.

(3) The powers, duties and functions of salvage officers appointed under this section shall be as prescribed.

9. Payment of allowances to salvage officers

Any person appointed under this Act as a salvage officer and who is not in the employ of the Government shall be paid such remuneration and allowances towards subsistence and transport as the Minister with the concurrence of the Minister of Finance may determine.

10. Exercise of powers in absence of salvage officer

- (1) If a salvage officer or his or her authorised representative is not present:
 - (a) a suitably qualified officer in the South African Police Service; or
 - (b) in the absence of an officer referred to in paragraph (a), a suitably qualified commissioned officer in the South African National Defence Force, may do anything he or she is authorised to do by the salvage officer.
- (2) Any person acting for a salvage officer in terms of subsection (1) shall in respect of any wreck be considered to be the agent of the salvage officer and shall comply with the provisions of section 112 (2) of the Customs and Excise Act, 1964 (Act 91 of 1964), but shall not be deprived, by reason of his or her so acting, of any right to salvage to which he or she would otherwise be entitled.
- (3) Any salvage officer or any person acting for a salvage officer shall not interfere with the lawful performance of a salvage service by a salvor.

11. Investigation concerning ships wrecked, stranded or in distress

If a ship is wrecked, stranded or in distress, a salvage officer or person authorised by him or her, may conduct an investigation into any or all of the following matters:

- (a) The name and description of the ship;
- (b) the names of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the port from and to which the ship was bound;
- (e) the cause of the wrecking, stranding or distress of the ship;
- (f) the services rendered; and
- (g) such other relevant matters or circumstances as he or she deems fit.

12. Powers to pass over adjoining lands

- (1) Whenever a ship is wrecked, stranded or in distress all persons may, for the purpose of rendering assistance to the ship or of saving the lives of any shipwrecked persons or of saving any wreck, unless there is some public road or camping site equally convenient, pass and repass either with or without vehicles or animals over any lands and camp on such lands, without being subject to interruption by the owner or occupier, if they do so with as little damage as possible, and may also, on the same condition, deposit on such lands any goods required for the construction of a camp and their stay thereat, and any wreck recovered from the ship.
- (2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights granted by this section shall be a charge on the ship or wreck in respect of or by which the damage is caused.
- (3) The amount payable in respect of the damage referred to in subsection (2) shall, in the event of a dispute, be determined in the same manner as salvage is determined in terms of this Act, and shall, in default of payment, be recoverable in the same manner as salvage is recoverable under this Act.

13. Power of salvage officer to suppress plunder and disorder

No person shall, when a ship is wrecked, stranded or in distress, plunder, create disorder or obstruct the preservation of the ship or shipwrecked persons or the wreck, and the salvage officer or his or her authorised

representative may cause any person contravening the provisions of this section to be detained.

14. Interfering with wrecked ship or aircraft

- (1) No unauthorised person shall board any ship or aircraft wrecked, stranded or in distress without the leave of the person in charge of such ship or aircraft, and any person boarding such ship or aircraft without permission may be repelled by reasonable force.
- (2) No person shall:
 - (a) impede or hinder the saving of any ship stranded or in danger of being stranded, or otherwise in distress, or of any life from any such ship, or of any wreck;
 - (b) secrete any wreck, or deface or obliterate any marks thereon; or
 - (c) wrongfully carry away or remove any wreck.

15. Salvage payable for saving life

- (1) Salvage shall be payable to the salvor by the owner of the ship or the owner of any wreck, whether or not such ship or wreck has been saved, when services are rendered in saving life from any ship.
- (2) Notwithstanding anything to the contrary contained in the Convention, the payment of salvage in respect of the preservation of life shall have priority over all other claims for salvage.
- (3) When the ship or wreck is lost or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may, in his or her discretion, award to the salvor, out of moneys made available by Parliament for the purpose, such sum as he or she thinks fit, in whole or part satisfaction of any amount of salvage so left unpaid.

16. Salvage payable by Commissioner for Customs and Excise

When any ship is wrecked, stranded, abandoned or in distress or any wreck is found and services are rendered in saving such ship or wreck, salvage shall, subject to the provisions of section 15(2), be paid to the person who rendered the services by the Commissioner for Customs and Excise if the ship or wreck is disposed of by him or her in terms of section 112(3) of the Customs and Excise Act, 1964.

17. Detention of wreck until salvage is paid

- (1) If the salvage officer is satisfied that salvage is due to any person under this Act, he or she shall detain the ship or wreck saved or assisted or from which life was saved until payment is made for the salvage due, or until process for the arrest or detention of such ship or wreck by a competent court is served.
- (2) The salvage officer may release any ship or wreck detained by him or her under subsection (1) if security to his or her satisfaction is given for the payment of the salvage due.

18. Powers of Authority in respect of certain wrecks and ships

- (1)(a) When a ship is wrecked, stranded or in distress, the Authority may direct the master or owner of such ship, or both such master and such owner, either orally or in writing to move such ship to a place specified by the Authority or to perform such acts in respect of such ship as may be specified by the Authority.
- (b) If the master or owner of a ship referred to in paragraph (a) fails to perform within the time specified by the Authority any act which he or

she has in terms of that paragraph been required to perform, the Authority may cause such act to be performed.

- (2) The Authority may, notwithstanding the provisions of subsection (1), cause any wreck or any wrecked, stranded or abandoned ship or any part thereof to be raised, removed or destroyed or dealt with in such a manner as it may deem fit, if it has not been able to contact the master or the owner of the said wreck, ship or part thereof.
- (3) If the Authority incurs any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2), it may recover such expenses from the owner of the wreck or ship in question or, in the case of an abandoned wreck or ship, from the person who was the owner thereof at the time of the abandonment.
- (4) If the Authority incurred or will incur any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2) in respect of any wreck or ship, it may cause any goods to be removed from such wreck or ship.
- (5) The Authority may:
 - (a) sell any wreck or ship in respect of which any power has been exercised in terms of subsection (1)(b) or (2), any part of such wreck or ship and any goods removed therefrom in terms of subsection (4) and apply the proceeds of the sale towards the defrayal of any expenses incurred in connection with the exercise of such power; or
 - (b) cause any such wreck, ship or goods to be detained until security to the satisfaction of the Authority has been given for the payment of such expenses.
- (6) If any wreck, ship or goods are sold in terms of subsection (5) and the proceeds of the sale exceed the amount of the expenses referred to in that subsection, the surplus shall be paid to the owner of the wreck, ship or goods in question after deducting therefrom the amount of any duty payable in respect of such wreck, ship or goods in terms of the Customs and Excise Act, 1964.
- (7) The Authority, or any person acting under the authority of the Authority, shall not be liable in respect of anything done in good faith in terms of the provisions of this section.

19. Agreement to forfeit right to salvage is void

- (1) A seaman of a South African ship shall not by agreement abandon any right that he or she may have or obtain in the nature of salvage, and any provision in any agreement with him or her inconsistent with the provisions of this section shall be void.
- (2) The provisions of subsection (1) shall not apply to any provision made by a seaman belonging to a ship engaged in salvage service regarding the remuneration to be paid to him or her for salvage services to be rendered by that ship to any other ship.

20. Restrictions on assignment of salvage

The following provisions shall apply to salvage due or to become due to a seaman of a South African ship:

- (a) Such salvage shall not be liable to attachment or subject to any form of execution under a judgment or order of any court;
- (b) an assignment or hypothecation thereof shall not bind the person making the same;
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
- (d) a payment of salvage to a seaman shall be valid in law, notwithstanding any previous assignment or hypothecation of salvage, or any attachment of or execution upon that salvage.

21. Regulations

(1) The Minister may make regulations to prescribe any matter which in terms of this Act may be prescribed or which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

(2) Any regulation contemplated in subsection (1) may for any contravention of or failure to comply with its provisions, provide for penalties of a fine or imprisonment for a period not exceeding three months.

22. Offences and penalties

Any person who contravenes or fails to comply with the provisions of section 5(1) or (2), 6(1), 7 (1), 13 or 14(1) or (2) shall be guilty of an offence, and shall on conviction be liable:

- (a) in the case of an offence mentioned in section 13 or 14(1) or (2) to a fine or imprisonment for a period not exceeding two years; and
- (b) in the case of an offence mentioned in section 5(1) or (2), 6(1) or 7(1) to a fine or to imprisonment for a period not exceeding one year.

23. Declaration of wreck to be a monument

This Act shall not derogate from the operation of the National Monuments Act, 1969 ().

24. Act to bind State

This Act shall bind the State.

25. Amends section 1(1) of the Admiralty Jurisdiction Regulation Act 105 of 1983, by substituting paragraph (k) of the definition of 'maritime claim'.

26. Amends section 134 of the Merchant Shipping Act 57 of 1951, as follows: paragraph (a) substitutes subsection (1); and paragraph (b) deletes subsection (2).

27. Amends section 135 of the Merchant Shipping Act 57 of 1951, by substituting subsection (1).

28. Repeals sections 234, 258, 293 to 306, 330 and 331 of the Merchant Shipping Act 57 of 1951.

29. Amends section 344 of the Merchant Shipping Act 57 of 1951, by substituting subsection (1).

30. Substitutes section 345 of the Merchant Shipping Act 57 of 1951.

31. Short title and commencement

This Act shall be called the Wreck and Salvage Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule**PART 1: International Convention on Salvage, 1989**

The states parties to the Present Convention,
RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

HAVE AGREED as follows:

CHAPTER I: General Provisions

Article 1: Definitions

For the purpose of this Convention:

- (a) 'Salvage operation' means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) 'Vessel' means any ship or craft, or any structure capable of navigation.
- (c) 'Property' means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) 'Damage to the environment' means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) 'Payment' means any reward, remuneration or compensation due under this Convention.
- (f) 'Organization' means the International Maritime Organization.
- (g) 'Secretary-General' means the Secretary-General of the Organization.

Article 2: Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

Article 3: Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

Article 4: State-owned vessels

(1) Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that State decides otherwise

(2) Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph (1), it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

Article 5: Salvage operations controlled by public authorities

(1) This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

(2) Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

(3) The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

Article 6: Salvage contracts

(1) This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

(2) The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

(3) Nothing in this article shall affect the application of article 7 nor duties to prevent or minimise damage to the environment.

Article 7: Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

CHAPTER II: Performance of Salvage Operations

Article 8: Duties of the salvor and of the owner and master

(1) The salvor shall owe a duty to the owner of the vessel or other property in danger:

- (a) to carry out the salvage operations with due care;
- (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimise damage to the environment;
- (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

(2) The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:

- (a) to co-operate fully with him during the course of the salvage operations;
- (b) in so doing, to exercise due care to prevent or minimise damage to the environment; and
- (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 9: Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 10: Duty to render assistance

(1) Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.

(2) The State Parties shall adopt the measures necessary to enforce the duty set out in paragraph (1).

(3) The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph (1).

Article 11: Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

CHAPTER III: Rights of Salvors**Article 12: Conditions for reward**

(1) Salvage operations which have had a useful result give right to a reward.

(2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.

(3) This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13: Criteria for fixing the reward

(1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- (a) the salvaged value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

(2) Payment of a reward fixed according to paragraph (1) shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

(3) The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged values of the vessel and other property.

Article 14: Special compensation

(1) If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

(2) If, in the circumstances set out in paragraph (1), the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph (1) may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph (1), may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

(3) Salvor's expenses for the purpose of paragraphs (1) and (2) means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1 (h), (i) and (j).

(4) The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

(5) If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

(6) Nothing in this article shall effect any right of recourse on the part of the owner of the vessel.

Article 15: Apportionment between salvors

(1) The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

(2) The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

Article 16: Salvage of persons

(1) No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

(2) A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimising damage to the environment.

Article 17: Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Article 18: The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

Article 19: Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

CHAPTER IV: Claims and Actions**Article 20: Maritime lien**

(1) Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.

(2) The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

Article 21: Duty to provide security

(1) Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.

(2) Without prejudice to paragraph (1), the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.

(3) The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

Article 22: Interim payment

(1) The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.

(2) In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

Article 23: Limitation of actions

(1) Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.

(2) The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. The period may in the like manner be further extended.

(3) An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

Article 24: Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

Article 25: State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

Article 26: Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a state, if such state has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

**ATTACHMENT 1: COMMON UNDERSTANDING CONCERNING ARTICLES
13 AND 14 OF THE INTERNATIONAL CONVENTION ON SALVAGE
1989**

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under article 14.

2.2.3.6 Pollution From Land-based Activities

Marine pollution from land-based activities poses one of the most serious threats to the coastal and marine environment. This is caused by a number of activities which leads to environmental pressures such as industrial activities that causes run-off into the ocean, agricultural activities that cause soil erosion and pollution of pesticides and fertilizers to the water and soil, change in climatic conditions caused by the emission of green house gasses, tourism activities, which cause pollution to coastal areas and damage to the coastal environment and coastal infrastructure, like harbours, roads and other infrastructure.

The National Environmental Management: Integrated Coastal Management Act 24 of 2008 now regulates some of these activities in that it provides for regulation of the discharge of effluent that originates from a source on land into coastal waters. This matter is further regulated by the National Environmental Management: Waste Act 59 of 2008 and the National Water Act 39 of 1998.

2.2.3.6.1 National Environmental Management: Integrated Coastal Management Act

Description: This Act establishes a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in

order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable. It also defines rights and duties in relation to coastal areas and determines the responsibilities of organs of state in relation to coastal areas. It furthermore prohibits incineration at sea, controls dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment. Finally the Act gives effect to South Africa's international obligations in relation to coastal matters.
(Refer to page 228 for this Act)

2.2.3.6.2 National Environmental Management: Waste Act

Description: This Act regulates waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. It also provides for institutional arrangements and planning matters; national norms and standards for regulating the management of waste; and specific waste management measures. It provides for the licensing and control of waste management activities, the remediation of contaminated land a national waste information system. It also deals with the issue of compliance and enforcement.
(Refer to page 183 for this Act)

2.2.3.6.3 National Water Act

Description: This Act was promulgated to provide for the fundamental reform of the law relating to water resources, as well as the relationship between these new laws and reforms.
(Refer to page 336 for this Act)

2.2.3.7 Waste Management

South Africa generates approximately 300 million tons of solid waste annually, which form part of the tons of effluent and gas released into the atmosphere. Although waste does not *per se* constitute pollutant materials as is the case with pesticides, waste can cause pollution, especially when mismanaged or neglected. Various legislative measures have been introduced to ensure the proper management of waste.

Effective waste management strategies are required in South Africa and government has a duty to incorporate such strategies into its co-operative environmental governance policies. Waste management is predominantly regulated by statutory provisions that regulate pollution.

South Africa generates approximately 300 million tons of solid waste annually, which form part of the tons of effluent and gas released into the atmosphere. Although waste does not *per se* constitute pollutant materials as is the case with pesticides, waste can cause pollution, especially when mismanaged or neglected.

Until recently waste management regulation had fallen predominantly within the domain of local government with only the issue of landfill sites being regulated by national legislation, the Environment Conservation Act 73 of 1989. This has changed with the promulgation of the promulgation of the National Environmental management: Waste Act 59 of 2008 which now provides for the regulation of the management of waste by all spheres of government. It brings about a new regime in the licensing and control of waste management activities and introduces provisions to deal with contaminated land.

2.2.3.7.1 National Environmental Management: Waste Act

Description: This Act regulates waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. It also provides for institutional arrangements and planning matters; national norms and standards for regulating the management of waste; and specific waste management measures. It provides for the licensing and control of waste management activities, the remediation of contaminated land and a national waste information system. It also deals with the issue of compliance and enforcement.

(Refer to page 183 for this Act)

2.2.3.7.2 The Hazardous Substances Act

Description: This Act was promulgated to provide for the control of substances which may cause injury or ill-health to, or death of, humans by reason of their toxic, corrosive, irritant, strongly sensitising or flammable nature. The Hazardous Substances Act also provides for matters concerning the division of such substances or products into groups in relation to the degree of danger, the prohibition and control of the importation, manufacture, sale, use, operation, application and disposal of such substances and products.

2.2.3.7.3 National Water Act

Description: This Act was promulgated to provide for the fundamental reform of the law relating to water resources, as well as the relationship between these new laws and reforms.

(Refer to page 336 for this Act)

2.2.3.7.4 Health Act

Description: This Act was promulgated to provide for measures for the promotion of the health of the inhabitants of the Republic. It thus provides for the rendering of health services and the duties, powers and responsibilities of certain authorities which render health services in the Republic. In addition, it provides for local authorities to take measures to maintain hygienic and clean conditions within its district.

2.2.3.7.5 Occupation Health And Safety Act

Description: This Act and its regulations provide for the control of hazardous chemical substances (HCS), such as asbestos, lead and major hazardous installations that may have adverse health and safety effects.

2.2.4 Energy and Energy Resources

South Africa has an abundance of both non-renewable and renewable energy resources. Fossil fuels such as coal, uranium, liquid fuels and gas play an integral role in the socio-economic development of our country and simultaneously provide the necessary infrastructural economic base for foreign investment relating to the energy sector. Historically mining has been the driving force behind the South African economy. The most important non-legislative development within the area of energy and energy resources was the drafting of the White Paper on the Energy Policy for South Africa (The Energy White Paper).

South Africa underwent fundamental changes with the transition to a constitutional democracy which resulted in significant changes in the country's energy policy. These changes necessitated a review of the existing energy policy. The Energy White Paper covers a wide scope of policy problems and challenges. For example, emissions from coal-based electricity have dire environmental implications, with potential adverse long-term effects on the environment. The objectives set by the Energy White Paper focus on the forever increasing need for access to affordable energy services, improving energy governance, stimulating economic development, managing energy-related environmental and health impacts. However, South Africa currently lacks a coherent energy strategy and policy to give content to its constitutional and international law obligations regarding greenhouse gases and climate change.

Mining, the energy sector and nuclear radiation are in terms of the 1996 Constitution not defined as provincial competencies. However, part B of Schedule 4 include electricity and gas reticulation as a concurrent national and provincial competence with local authorities having executive authority and the right of administration. The burden of providing access to electricity is an obligation imposed upon local government bodies.

Nuclear energy and radiation are also not defined as functional areas of concurrent or exclusive provincial competence in terms of Schedules 4 and 5 of the Constitution. The only statutory provisions to be found are contained in the Hazardous Substances Act 15 of 1973.

The types of energy generated in South Africa may broadly be categorised within the following energy supply sectors: electricity, nuclear energy, oil, liquid fuels, coal and gas. Included in the legislative framework for the regulation of the energy sector, energy resources and mining are the following Acts:¹

- Atmospheric Pollution Prevention Act 45 of 1965;
- Conservation of Agricultural Resources Act 43 of 1983;
- Development Facilitation Act 67 of 1995;
- Dumping at Sea Control Act 73 of 1980;
- Environmental Conservation Act 73 of 1989;
- Hazardous Substances Act 15 of 1973;
- Marine Pollution (Control and Civil Liability) Act 6 of 1981;
- Marine Pollution (Intervention) Act 64 of 1987;
- Marine Pollution (Prevention of Pollution from Ships) Act 2 of 1986;
- National Environmental Management Act 107 of 1998;

¹ This list is not a *numerus clausus* and other statutes such as the Eskom Act 40 of 1987 that are not included in this book may of have relevance to energy and mining in certain circumstances.

- National Forests Act 84 of 1998;
- National Heritage Resources Act 25 of 1999;
- National Parks Act 57 of 1976;
- National Water Act 36 of 1998;
- Physical Planning Act 88 of 1967;
- Physical Planning Act 125 of 1991;
- Sea-Shore Act 21 of 1935; and
- National Environmental Management: Air Quality Act 39 of 2004.

The most important statutes dealing with energy, energy resources and mining are the Electricity Regulation Act 4 of 2006, the Nuclear Energy Act 46 of 1999, the National Nuclear Regulator Act 47 of 1999, the Gas Act 48 of 2001, the Liquid Fuels and Oil Act Repeal Act 20 of 1993 and the Mineral and Petroleum Resources Development Act 28 of 2002. Each of these acts will be dealt with individually.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (Chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.4.1 Electricity

Electricity is a key driver of the South African economy and an essential component to development programmes in order to address past injustices. Electricity is mainly generated from three sources: coal which provides 93% of the electricity; nuclear energy which provides 5,5% of the electricity; and hydro-generated electricity which amounts to less than 1% of the electricity supply.

From a legislative point, electricity is mainly regulated by the Electricity Regulation Act, Act 4 of 2006, which provides a regulatory framework for the electricity supply industry. Regulation predominantly rely on a licensing and registration system for the generation, transmission, distribution, trading as well as import and export of electricity. One of the objectives of the act is, however, ensure a sustainable supply of electricity as energy resource.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)

4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
 5. Glazewski *Environmental Law in South Africa* (2005)
 6. M van der Linde & E Basson *Environment* (chapter 50) in 'Constitutional Law of South Africa' edited by Woolman *et al*
 7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9.
 8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)
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2.2.4.1.1 Electricity Regulation Act

Description: This Act establishes a national regulatory framework for the electricity supply industry and makes the National Energy Regulator of South Africa the custodian and enforcer of the national electricity regulatory framework. It also provides for licences and registration as the manner in which generation, transmission, distribution, reticulation, trading and the import and export of electricity are regulated. Finally it regulates the reticulation of electricity by municipalities.

2.2.4.2 Energy

Energy can be described as one of mankind's most critical resources which is essential to all aspects of our lives and livelihoods. In its most basic form it can be described as our ability to harness natural resources and modify the natural environment to be of beneficial purpose to basic every day needs including sustenance, transport, cooking, heating cooling, communications and entertainment.

Energy, as a resource can be divided into 3 forms: Fossil fuels; Nuclear Energy; and Renewable energy. The first two sources are essentially resource that are harvested from the natural environment (a finite resource) depending on human needs and consumption rates. The third source, renewable energy, is constant state of fluctuation, infinite and needs to be captured from sources such as wind, water and solar radiation.

South Africa's energy resources are largely dependent on the conversion of fossil fuels to generate the bulk of its energy supply. Approximately 89% of our energy supply is generated through the utilisation of coal, oil and gas.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)

6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

A Nuclear Energy

In South Africa, nuclear energy is primarily used to generate electricity at the Koeberg electricity generation facility. The Koeberg facility contributes approximately 2,8% of energy supply and currently government and other relevant institutions are in the process of planning additional nuclear energy generation facilities which would include conventional plants as well as the Pebble Bed Modular Reactors.

From a regulatory framework, nuclear energy is primarily regulated by the Nuclear Energy Act, Act 46 of 1999. The Act, in addition to institutional matters, also provides for safety standards in respect of the protection of persons, property and the environment against potential damage arising from nuclear activities.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.4.2.1 Nuclear Energy Act

Description: This Act was promulgated to establish the South African Nuclear Energy Corporation Limited as a public company owned by the State (the Corporation). It defines the functions, powers, financial and operational accountability of the Corporation. The Nuclear Energy Act of 1999 introduces provisions for the regulation of the Corporation's governance and management by a board of directors and a chief executive officer. The Act regulates the responsibilities for the implementation and application of the Safeguards Agreement and any additional protocols entered into by the Republic and the International Atomic Energy Agency in support of the Nuclear Non-Proliferation Treaty.

The Act further regulates the acquisition and possession of nuclear fuel, certain nuclear and related material and certain related equipment. The Act further regulates the importation and exportation of (certain other activities relating to) fuel, material and equipment in order to comply with the international obligations of the Republic. Provisions further prescribe measures regarding the disposal of radioactive waste and the storage of irradiated nuclear fuel.

Nuclear Energy Act 46 of 1999

As last amended by the Protections of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004.

CHAPTER 1: Introductory Provisions

1. Definitions

In this Act, unless the context indicates otherwise:

'*Atomic Energy Corporation*' means the Atomic Energy Corporation, Ltd contemplated in section 4(1) of the Nuclear Energy Act, 1993 (Act 131 of 1993);

'*Board*' means the Board of Directors of the Corporation as provided for in section 16;

'*chief executive officer*' means the chief executive officer of the Corporation contemplated in section 22;

'*Companies Act*' means the Companies Act, 1973 (Act 61 of 1973);

'*Corporation*' means the South African Nuclear Energy Corporation, Limited, established by section 3;

'*Department*' means the Department of Minerals and Energy;

'*director*' means a member of the Board;

'*Director-General*' means the Director-General of the Department of Minerals and Energy;

'*disposed of*' used in the context of safeguards means sell, exchange, donate, distribute, lend or in any other manner transfer and 'disposal of' has a corresponding meaning;

'*enrich*' means to increase the ratio of an isotopic constituent of an element to the remaining isotopic constituents of that element relative to the naturally occurring ratio, and 'enrichment' has a corresponding meaning;

'*inspector*' means a person appointed in terms of section 53(1);

'*institutional obligations*' means the obligations of the Republic in terms of international agreements or in the national or public interest concerning matters arising from or otherwise involving the use of nuclear energy, such as:

- (a) the decommissioning and decontamination of past strategic nuclear facilities;
- (b) the management of nuclear waste disposal on a national basis;
- (c) the application of radiation technology for medical or scientific purposes;
- (d) the operation of the SAFARI nuclear reactor;
- (e) the operation of the Atomic Energy Corporation's site at Pelindaba and accompanying services;
- (f) the implementation and execution of the safeguards function with the International Atomic Energy Agency, the Nuclear Non-Proliferation

- Treaty, the African Co-operative Agreement, the Treaty of Pelindaba or any other treaty, agreement or protocol;
- '*invention*' means an invention as defined in section 2 of the Patents Act, 1978 (Act 57 of 1978);
- '*ionising radiation*' means electromagnetic or corpuscular emission emitted from radioactive material and capable of producing ions, directly or indirectly, while passing through matter;
- '*Minister*' means the Minister of Minerals and Energy;
- '*nuclear energy*' means all the energy released by a nuclear fission or nuclear fusion process;
- '*nuclear fuel*' means any material capable of undergoing a nuclear fission or nuclear fusion process on its own or in combination with some other material and which is produced in a nuclear fuel assembly or other configuration;
- '*nuclear installation*' means a nuclear installation as defined in section 1 of the National Nuclear Regulator Act, 1999;
- '*nuclear material*' means source material and special nuclear material;
- '*Nuclear Non-Proliferation Treaty*' means the Treaty on the Non-Proliferation of Nuclear Weapons acceded to by the Republic on 10 July 1991;
- '*nuclear-related equipment and material*' means equipment and material declared under section 2(f) to be nuclear-related equipment and material;
- '*plant*' includes any machinery, equipment or device, whether attached to the ground or not;
- '*prescribed*' means prescribed by regulation;
- '*previous Act*' means the Nuclear Energy Act, 1993 (Act 131 of 1993);
- '*process*', when used as a verb in relation to source material, special nuclear material and restricted material, means to extract or recover such a material or to concentrate, refine or convert it in any manner without enriching it, and 'processing' has a corresponding meaning;
- '*radioactive material*' means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial;
- '*radioactive nuclide*' means an unstable atomic nucleus which decays spontaneously with the accompanying emission of ionising radiation;
- '*radioactive waste*' means any radioactive material destined to be disposed of as waste material;
- '*regulation*' means any regulation in force under section 54;
- '*reprocess*' means to extract or separate, from source material or special nuclear material that has been subjected to radiation, the constituents that have undergone transmutations as a result of the radiation, or the constituents that have not undergone those transmutations and are re-usable;
- '*restricted Act or activity*' means any of the acts or activities mentioned in:
- paragraphs (c) to (u) of section 34(1); and
 - section 35(1);
- '*restricted material*' means beryllium and zirconium and any other substance declared under section 2(a) to be restricted material;
- '*restricted matter*' means any or all of the following, namely:
- source material;
 - special nuclear material;
 - restricted material;
 - uranium hexafluoride (UF₆);
 - nuclear fuel; and
 - nuclear-related equipment and material;
- '*SAFARI nuclear reactor*' means the South African Fundamental Atomic Research Installation located at the Atomic Energy Corporation's Pelindaba site, in North West Province;
- '*Safeguards Agreement*' means the comprehensive safeguards agreement entered into on 16 September 1991 between the Republic and the

International Atomic Energy Agency with regard to the application of safeguards for the purposes of the Nuclear Non-Proliferation Treaty pursuant to the Republic's accession to that Treaty on 10 July 1991;

'*site*' means a site as defined in section 1 of the National Nuclear Regulator Act, 1999, for which a nuclear authorisation as defined in that Act is required; '*source material*' means any material declared under section 2(b) to be source material;

'*special nuclear material*' means any material declared under section 2(c) to be special nuclear material;

'*specified date*' means the date referred to in section 61;

'*storage facility*' means a facility for the acceptance, handling and treatment of irradiated fuel and the storage thereof;

'*subsidiary company*' means a 'subsidiary company' contemplated in section 1 of the Companies Act, 1973 (Act 61 of 1973), and which has been established by the Corporation, either alone or in association with any other person;

'*this Act*' includes any regulations; and

'*waste disposal facility*' means a facility for the acceptance, handling, storage and treatment of radioactive waste and irradiated fuel and the disposal of radioactive waste.

2. Declarations, determinations and exemptions relating to material, substances, equipment and premises, etc

The Minister, by notice in the *Gazette*, may:

- (a) declare any substance with a degree of purity as specified in the notice, to be restricted material for the purposes of this Act;
- (b) declare any substance containing uranium or thorium with concentration and mass limits higher than those specified in the notice, to be source material for the purposes of this Act;
- (c) declare any of the following with concentration and mass levels higher than those specified in the notice, to be special nuclear material for the purposes of this Act, namely:
 - (i) plutonium-239;
 - (ii) uranium-233;
 - (iii) uranium enriched in its 235 or 233 isotope;
 - (iv) transuranium elements; or
 - (v) any composition of any of the materials referred to in subparagraphs (i), (ii), (iii) and (iv), or any composition of those materials and any other substance or substances;
- (d) declare any facility, installation, plant or structure designed or adapted for or involved with any process within the nuclear fuel cycle involving radioactive material, to be a nuclear installation for the purposes of this Act;
- (e) exempt any radioactive material from the provisions of this Act;
- (f) for the purposes of this Act, declare equipment and material specially designed or prepared for the processing, use or production of nuclear material, to be nuclear-related equipment and material;
- (g) determine the levels of specific activity and total activity of radioactive material below which the provisions of this Act do not apply.

CHAPTER 2: The South African Nuclear Energy Corporation, Limited

3. Establishment of South African Nuclear Energy Corporation, Limited

- (1) There is hereby established a nuclear energy corporation for the Republic which will be a juristic person.

- (2) Despite the provisions of the Companies Act or any other law, that corporation, with effect from the specified date, will be a public company incorporated in accordance with section 4.
- (3) The main objects of that corporation and, accordingly, those of that company, are to perform the functions mentioned in section 13.

4. Incorporation of South African Nuclear Energy Corporation, Limited

- (1) The Minister must take all the steps that are necessary for the formation and incorporation of that corporation as a public company with a share capital within the meaning of the Companies Act, subject to section 3, this section and section 5.
- (2) Despite the provisions of the Companies Act, the State will be the only member and shareholder of that company upon its incorporation.
- (3) Despite the provisions of the Companies Act:
 - (a) the Minister, who represents the State, will sign the memorandum of association, articles of association and all other documents necessary in connection with the formation and incorporation of the company;
 - (b) the Registrar of Companies must register the memorandum of association and articles of association as signed by the Minister, and incorporate the company as a public company under the name 'The South African Nuclear Energy Corporation Limited', with the State as its only member and shareholder, and issue to the company a certificate to commence business with effect from the date of the company's incorporation.
- (4)(a) The State's rights as member and shareholder of the Corporation are to be exercised by the Minister.
- (b) The relationship between the Corporation and the Minister representing the State as the only member and shareholder, may be closer defined in an agreement entered into by the Corporation and the Minister for that purpose, subject to this Act.

5. Corporation's memorandum and articles of association

- (1) The memorandum of association and articles of association of the Corporation must be so drawn up that the contents thereof are consistent with this Act.
- (2) Despite the Companies Act, an amendment of the memorandum of association or articles of association affecting any arrangement made by any provision of this Act will not be operative or have any legal force unless and until the relevant provision of this Act has been amended accordingly and that amendment has come into effect.

6. Application of Companies Act to Corporation

- (1) The provisions of the Companies Act, which are not in conflict with this Act, apply to the Corporation, subject to subsection (2).
- (2) A provision of the Companies Act will not apply to the Corporation in the following circumstances, namely, where:
 - (a) because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or incapable of being applied; or
 - (b) the Minister of Trade and Industry has issued a declaration under section 7(3) with regard to the provision.

7. Certain provisions of Companies Act may be declared not applicable to Corporation

- (1) The Minister, after consultation with the Corporation, may from time to time, as and when considered necessary, request the Minister of Trade and

Industry to declare any particular provision of the Companies Act, not to be applicable to the Corporation.

(2) The request must be fully motivated, and the necessary particulars about the request, together with the motivation therefor, must be made known by the Registrar of Companies by notice in the *Gazette*. In that notice that Registrar must also invite interested persons who may have any objections to such a declaration, to submit their objections and representations to a person named in the notice, or, if sent by post, to place that person in possession of their objections and representations, not later than 21 days after the date of the notice.

(3) After having considered the objections and representations received within the 21 day period, the Minister of Trade and Industry may, by notice in the *Gazette*, declare the whole or any part of any provision of the Companies Act about which the abovementioned request was made, not to be applicable to the Corporation with effect from a date stated in that notice, if satisfied on reasonable grounds that the non-application of that provision to the Corporation:

- (a) will contribute to its efficiency or will reduce the Corporation's operating costs; and
- (b) will not reduce or limit the Corporation's accountability as a public institution or detract from the requirements of transparency as regards its functioning and operations; and
- (c) will not be prejudicial to the rights, interests or claims of the Corporation's creditors or employees or to the rights or interests of any other interested parties.

8. Corporation successor to property, assets and liabilities of Atomic Energy Corporation

(1) On the specified date, the Corporation will become entitled to and have claim to any money which, immediately before that date, stood to the credit of the Atomic Energy Corporation.

(2) On the specified date, the following will pass to and vest in the Corporation:

- (a) all immovable property registered in the name of the Atomic Energy Corporation and consisting of land, and any servitudes or other real rights with regard to land;
- (b) land and any servitudes or other real rights with regard to land (including any right to use land temporarily) acquired by the Atomic Energy Corporation in terms of the previous Act for the purposes of or in connection with the functions, business or operations of the Atomic Energy Corporation;
- (c) any other assets of which the Atomic Energy Corporation is the owner, immediately before the specified date, for the purposes of or in terms of the previous Act; and
- (d) any liabilities which were incurred by the Atomic Energy Corporation in terms of the previous Act or pursuant to its operations and activities thereunder, which are still outstanding immediately before the specified date.

(3) The Registrar of Deeds concerned must make the entries and endorsements that may be necessary to give effect to subsection (2) in or on any relevant register, title deed or any other document that is filed or on record in the Deeds Registry or has been submitted to that Registrar, and no office fees or other money will be payable with regard to such an entry or endorsement.

9. Transfer of shares by Minister

(1) Despite any provisions of a law to the contrary, the Minister may transfer so much of the State's shares in a subsidiary company contemplated in section 14(1)(a)(i) as the Cabinet approves to such transferees in such manner and on such terms and conditions as the Cabinet approves.

(2) The proceeds of any transfer in terms of subsection (1) may be used wholly or partially for such purpose as the Cabinet approves, but all proceeds not so used within the period determined by the Cabinet must be paid into the National Revenue Fund.

10. State's financial interest in Corporation

(1) In exchange for the nett value of the assets passing to and vesting in the Corporation in terms of section 8, the State, by virtue of having been the sole shareholder in the Atomic Energy Corporation, will hold fully paid-up shares in the Corporation:

(a) for an amount equal to the nett value of the assets so invested in the Corporation; or

(b) for an amount equal to a percentage, specified in the agreement, of the nett value of the assets so invested, subject to subsection (2).

(2)(a) If the amount for which shares in the Corporation are to be held by the State in terms of subsection (1), is less than the nett value of the assets so passing to and vesting in the Corporation, the Corporation will be indebted to the State for an amount equal to the difference between the nett value of those assets and the value of the shares to be so held. The amount of that difference will be regarded and treated as a loan granted to the Corporation by the State.

(b) The terms and conditions of that loan must be set out in the agreement mentioned in subsection (1). In that agreement provision may be made that the Corporation issues the State with debentures for the whole or any part of the amount of the loan.

(3) For the purposes of this section, any reference to the nett value of the assets invested in the Corporation, however expressed, must be understood to mean all the money mentioned in subsection (1) of section 8 plus the value of all the movable, immovable and other property passing to the Corporation in terms of subsection (2)(a), (b) and (c) of that section, an amount representing the sum of all the liabilities passing to the Corporation in terms of subsection (2)(d) of that section.

(4) Where the value of any assets consisting of immovable property is to be determined for the purposes of this section, regard must be had to the criteria mentioned in section 12(1) and (5)(b), (c), (d), (e), (f) and (h) of the Expropriation Act, 1975 (Act 63 of 1975).

11. Financial year

The Corporation's financial year will be from 1 April in any year to 31 March in the following year, both days included. However, the first financial year will run from the specified date to 31 March in the following year, both days included.

12. Judicial management and liquidation

Despite the provisions of any other law, the Corporation may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose.

13. Main functions of Corporation

The main functions of the Corporation are:

- (a) to undertake and promote research and development in the field of nuclear energy and radiation sciences and technology and, subject to the Safeguards Agreement, to make these generally available;
- (b) to process source material, special nuclear material and restricted material and to reprocess and enrich source material and nuclear material; and
- (c) to co-operate with any person or institution in matters falling within these functions subject to the approval of the Minister.

14. Ancillary powers and functions of Corporation

- (1) In connection with its main functions, the Corporation may:
 - (a) for the purpose of developing or in any manner exploiting any invention or technological expertise, subject to the approval of the Minister granted with the agreement of the Minister of Finance:
 - (i) establish a subsidiary company in terms of the Companies Act or in association with any person so establish a company, or acquire an interest in or control over a company;
 - (ii) purchase or otherwise acquire immovable property and encumber or dispose thereof;
 - (iii) purchase, erect, or cause to be erected, any buildings, installations, works or plants;
 - (b) establish and manage facilities for collecting and disseminating information regarding activities falling within the scope of the Corporation's functions and powers;
 - (c) utilise or let buildings, works or plants for the benefit of the Corporation or such a subsidiary company;
 - (d) purchase, hire or otherwise acquire, or hold, movable property, and let, pledge, encumber or dispose of such property of which it is the owner;
 - (e) hire services or let its own services or make them otherwise available;
 - (f) conclude agreements with producers for the production and delivery of any quantities of source material that may be required from time to time by the Corporation or any subsidiary company of the Corporation;
 - (g) cede or assign to any person any or all of the rights or obligations of the Corporation in terms of any contract relating to the sale or supply of source material, subject to this Act;
 - (h) promote the prospection for and mining of source material and restricted material;
 - (i) undertake, cause to be undertaken or promote the development of nuclear technology, nuclear-related technology and know-how, and nuclear research;
 - (j) manufacture or otherwise produce, acquire or possess uranium hexafluoride (UF₆), or dispose thereof, subject to section 34;
 - (k) acquire, possess, utilise, dispose of or process source material, special nuclear material and restricted material, and enrich and reprocess source material and special nuclear material subject to section 34;
 - (l) manufacture, acquire or possess nuclear fuel and dispose thereof subject to section 34;
 - (m) import into or export from the Republic any source material, special nuclear material, restricted material and nuclear related equipment and material and technology, subject to section 34 or 35;
 - (n) store irradiated fuel and operate facilities for that purpose, subject to section 34;
 - (o) undertake the transportation of source material, special nuclear material, nuclear fuel, irradiated nuclear fuel, radioactive material and radioactive waste or cause it to be undertaken, subject to section 34;

- (p) make any arrangements that the Minister considers necessary for the stockpiling of strategic raw materials, materials and equipment;
- (q) with the written permission of the Minister, sell or in any other manner make available to any person, for use on such conditions approved by the Minister, any patent, licence, concession, or right of manufacture or any other right conferring the power to use any information, expertise, process or technology which has been developed by the Corporation or a subsidiary company and which is the Corporation's property;
- (r) co-operate with any educational, scientific or other institution or body with a view to such an institution or body providing instruction to, or training of, persons required by the Corporation, and if considered necessary by the Corporation, provide financial or other assistance to such an institution or body in connection with the instruction or training of those persons;
- (s) award a bursary or loan to any suitable person for study in any scientific or technical field relevant to the Corporation's activities;
- (t) acquire patents, licences, concessions, rights of manufacture or other similar rights conferring the power to use any technology, process, expertise or information and use, exercise, develop or grant licences in respect of such rights, concessions, technology, processes, expertise or information, or otherwise exploit it beneficially;
- (u) perform any other function or exercise any other power assigned or delegated by the Minister in terms of section 55 of this Act.
- (2) In order to create and utilise viable business opportunities in commerce and industry, the Corporation may:
 - (a) produce and otherwise acquire reports, computer software and other intellectual property and dispose thereof;
 - (b) manufacture and sell instruments, equipment and similar products;
 - (c) process and sell minerals;
 - (d) produce and process metals, chemicals and related products;
 - (e) with the permission of the Minister, and subject to this Act:
 - (i) sell or otherwise commercially exploit those metals, chemicals and related products; and
 - (ii) for reward render to any person or institution any service falling within the ambit of the Corporation's functions.
- (3) The Corporation may, at the request or with the written permission of the Minister, undertake the development, transfer or exploitation of nuclear technology or nuclear-related technology on behalf of or in collaboration with any person, or institution in, or any government or administration of, any other country or territory.
- (4) The Corporation may:
 - (a) provide collateral security, including guarantees, to a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990), in respect of a loan granted by the financial institution to any employee of the Corporation in order to acquire, improve or enlarge immovable property for the purposes of occupation;
 - (b) build, cause to be built, buy or hire dwelling houses, flats or flat buildings for occupation by the Corporation's employees, and may sell or let such houses or flats to its employees or, if no longer reasonably required, otherwise alienate or let, or otherwise deal with, such houses, flats or flat buildings;
 - (c) establish, erect, operate or carry on sports and recreational facilities, social clubs, social and health services, restaurants, hostels and study bursary schemes for the benefit of the Corporation's employees, or any

other similar undertakings or schemes which in the opinion of the chief executive officer may be beneficial to those employees.

15. Loans

- (1) The Corporation, with the written permission of the Minister granted with the agreement of the Minister of Finance, may raise loans to finance any expenditure that may be incurred by the Corporation during any financial year in connection with its functions, business and operations in terms of this Act.
- (2) The permission may be granted subject to any conditions determined by the Minister acting with the agreement of the Minister of Finance.
- (3) The State, represented by the Minister acting with the agreement of the Minister of Finance, may guarantee any loan raised by the Corporation in terms of subsection (1).
- (4) The Corporation with the agreement of the Minister so acting, may issue debentures in respect of a loan so raised.

16. Control and management of affairs of Corporation

- (1)(a) The Corporation is governed and controlled, in accordance with this Act, by a Board of Directors.
- (b) The Board must ensure that the goals of this Act are actively pursued, and must exercise general control over the performance of the Corporation's functions.
- (c) The Board represents the Corporation, and all acts performed by the Board or on its authority will be the acts of the Corporation.
- (2) The Board consists of:
 - (a) a chairperson, appointed by the Minister;
 - (b) not fewer than five and not more than seven suitably qualified directors appointed by the Minister;
 - (c) the chief executive officer, who is a member of the Board by virtue of holding the office;
 - (d) an official of the Department, designated by the Minister; and
 - (e) an official of the Department of Foreign Affairs designated by the Minister after consultation with the Minister of Foreign Affairs.
- (3) A person will be disqualified from being appointed or designated or remaining a director:
 - (a) if not a South African citizen who is permanently resident in the Republic;
 - (b) upon being declared insolvent or the person's estate having been handed over to creditors;
 - (c) upon being convicted of an offence and sentenced to imprisonment without the option of a fine;
 - (d) upon having been nominated:
 - (i) as a candidate in any election of members of Parliament or a provincial legislature in terms of the Electoral Act, 1998 (Act 73 of 1998);
 - (ii) to fill a vacant seat in Parliament or a provincial legislature;
 - (e) if appointed to any other public office under the State;
 - (f) if disqualified on any other grounds in terms of the Companies Act from being a director of a company.
- (4) The Minister may, for a director appointed in terms of subsection (2)(d) and (e), appoint a suitably qualified alternate director to act in the place of that director during his or her absence.
- (5)(a) The chairperson of the Board holds office for a period specified in the person's letter of appointment but not exceeding three years, and may be reappointed upon expiry of that term of office.

- (b) A director mentioned in subsection (2)(b) holds office for a period specified in the person's letter of appointment but not exceeding three years, and may be reappointed upon expiry of that term of office.
- (6)(a) Any director mentioned in subsection (2)(a) or (b), will be appointed on the terms and conditions, including terms and conditions relating to the remuneration and allowances payable, as the Minister may determine with the agreement of the Minister of Finance.
- (b) Those terms and conditions must be stipulated in such a director's letter of appointment.
- (7) The Minister must designate one of the directors as deputy chairperson.
- (8) If any appointed or designated director dies or vacates office, the Minister, subject to subsection (2), may appoint or designate another person as director. The person so appointed or designated will serve for the unexpired portion of the predecessor's term of office.
- (9)(a) Despite the preceding provisions of this section, the persons who, immediately before the specified date, served as members of the board of directors of the Atomic Energy Corporation in terms of the previous Act, will, as from the specified date until the day immediately before the Corporation's Board, duly constituted in accordance with subsection (2), meets for the first time, act as the directors of the Corporation's Board.
- (b) The meetings of those acting directors will be held at the times and places determined by their chairperson.

17. Vacation of office

- (1) The Minister may at any time discharge a director from office:
 - (a) if the director repeatedly has failed to perform the duties of that office efficiently;
 - (b) if, because of any physical or mental illness or disability, the director has become incapable of performing the functions of that office or performing them efficiently; or
 - (c) for misconduct.
- (2) A director vacates office:
 - (a) upon becoming disqualified in terms of section 16(3);
 - (b) when discharged in terms of subsection (1);
 - (c) upon having been absent from three consecutive meetings of the Board without the chairperson's permission, unless the Board has condoned the absence on good reasons advanced; and
 - (d) when the person's resignation as a director takes effect.

18. Meetings of Board

- (1) The first meeting of the first Board constituted under section 16, must be held at the time and place determined by the Minister. All meetings thereafter will be held at the times and places that the Board determines.
- (2) The chairperson may at any time call a special meeting of the Board to be held at a time and place as determined by the chairperson.
- (3) All directors must be notified in writing of any meeting mentioned in subsection (1) or (2).
- (4) A majority of the total number of directors forms a quorum at any meeting of the Board.
- (5) Subject to subsection (4), a decision agreed on by a majority of the directors present at a meeting of the Board is a decision of the Board, and in the event of an equality of votes on any matter, the chairperson of the relevant meeting, has a casting vote in addition to a deliberative vote.
- (6) A decision taken by the Board or an act performed under its authority, is not invalid merely because:

- (a) there is a vacancy in the Board; or
- (b) any person not entitled to do so, sat as a director at the time that decision was taken,

if that decision was taken or that Act was authorised by the required majority of directors present at the meeting who were entitled to sit as directors.

(7) In the case where the chairperson is absent or incapacitated or for any reason unable to act, or when the office of chairperson is vacant, the deputy chairperson will perform the functions of the chairperson. However, if the deputy chairperson is also absent or incapacitated or for any reason unable to act, or where the office of the deputy chairperson is vacant, the remaining directors must designate one from their number to act as chairperson.

(8) The Board must hold at least one meeting every three months.

19. Committees of Board

(1) The Board may from time to time appoint one or more committees to assist the Board in performing its functions.

(2) A committee may consist of one or more members, and may be a standing committee or an ad hoc committee appointed for a particular task and period only. A committee must at all times have at least one director as member.

(3) If such a committee has two or more members, the Board must designate one of them as the committee's chairperson, who must be a director of the Board.

(4) The Corporation may pay a member of a committee who is not in the full-time service of the State or an employee of the Corporation, the remuneration and allowances determined by the Minister with the agreement of the Minister of Finance.

(5) A member of a committee holds office at the Board's pleasure.

(6) The Board may fill a vacancy in any committee.

20. Board and committees to keep minutes

(1) The Board and any committee must have minutes prepared and kept of the proceedings of their respective meetings and must have copies of the minutes circulated to their respective members.

(2) The minutes so prepared, when confirmed at a next meeting and signed by the person who chairs that meeting, will, in the absence of proof of error therein, be regarded and treated as a true and correct record of the proceedings and matters that they purport to minute and will be sufficient evidence of those proceedings and matters at any proceedings before a court of law or any tribunal or commission of inquiry.

21. Delegation and assignment of powers and functions by Board

(1)(a) Subject to subsections (2), (3) and (4), the Board, by special resolution, may delegate any of the powers and assign any of the functions or duties conferred or imposed on it by the operation of section 16(1) or conferred or imposed on it elsewhere by this Act, to its chairperson, any other appointed director, the chief executive officer or any committee of the Board.

(b) however, the Board will not be divested of any power nor be relieved of any function or duty it may have delegated or assigned.

(2) The delegation or assignment:

- (a) may be made on and subject to any conditions determined by the Board;
- (b) may, subject to subsection (4), be given together with the power to subdelegate or further assign, on and subject to any conditions so determined (if any);

- (c) must be communicated to the delegatee or assignee in writing. The written communication must contain full particulars of the matters being delegated or assigned and of the conditions determined under paragraph (a), if any, and, where the power of subdelegation or further assignment is conferred, must state that fact as well as any conditions determined under paragraph (b), if any.
- (3) The Board, by special resolution, may at any time:
 - (a) amend or revoke a delegation or assignment made under subsection (1);
 - (b) withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter itself. However, a decision made by a delegatee or assignee may not be withdrawn where it confers a right or entitlement on any third party.
- (4) The Minister, may by notice in the *Gazette*, from time to time:
 - (a) prohibit the delegation by the Board of any particular power or its assignment of any particular function or duty, whether generally or in the circumstances specified in the notice;
 - (b) limit the circumstances in which any particular power, function or duty of the Board may be delegated or assigned (as the case may be);
 - (c) prescribe conditions for the delegation of any particular power or assignment of any particular function or duty;
 - (d) in relation to any power, function or duty of the Board specified in the notice, prohibit subdelegation or further assignment (as the case may be), in the event of the Board's delegation of that power or assignment of that function or duty.

22. Chief executive officer

- (1) The Minister must after consultation with the board appoint a suitable person as chief executive officer of the Corporation.
- (2) A person will be disqualified from being appointed or remaining a chief executive officer if subject to any of the disqualifications mentioned in paragraphs (a) to (f) of section 16(3).
- (3) The chief executive officer holds office for a period specified in the letter of appointment but not exceeding three years, and may be reappointed upon expiry of that term of office.
- (4) The Minister may at any time remove the chief executive officer from office:
 - (a) if the chief executive officer repeatedly has failed to perform the duties of office efficiently;
 - (b) if, because of any physical or mental illness or disability, the chief executive officer has become incapable of performing the functions of that office or performing them efficiently; or
 - (c) for misconduct.
- (5)(a) The person who, immediately before the specified date was the chief executive officer of the Atomic Energy Corporation by virtue of appointment in that office under section 11 of the previous Act, will from the specified date until the date on which the appointment of the Corporation's first chief executive officer under subsection (1) of this section takes effect, act as, and perform the functions imposed by or in terms of this Act on, the Corporation's chief executive officer.
- (b) a person so acting is not precluded from being appointed as the Corporation's chief executive officer under this section.

23. General management of Corporation

- (1) The Corporation's day to day business and operations will be under the general management of the chief executive officer, subject to the general or

specific directions and instructions, if any, that the Board may issue from time to time.

(2) The chief executive officer must:

- (a) ensure that the functions of the Corporation in terms of this Act are complied with;
- (b) report to the Board on the proper performance and functioning of the Corporation;
- (c) compile a report on the activities of the Corporation for each financial year and submit the report to the Board for approval;
- (d) each financial year, after consulting the Board furnish the Minister with a plan of Action for the activities of the Corporation.

(3) The chief executive officer is the accounting officer of the Board charged with the responsibility of accounting for all money received, payments made and assets of the Corporation.

(4) The chief executive officer must exercise all the powers and perform all the duties conferred or imposed on the accounting officer by:

- (a) this Act, the Reporting by Public Entities Act, 1992 (Act 93 of 1992), or any other law;
- (b) the Board.

(5)(a) Whenever, due to absence or for any other reason, the chief executive officer is temporarily unable to perform the functions of that office, or when that office is vacant, the Board may designate an employee of the Corporation to act as chief executive officer until the incumbent of that office resumes the functions of chief executive officer, or, as the case may be, the vacancy is filled by the Minister through the appointment of another person as chief executive officer under section 22,

- (b) while so acting, the designated employee will be competent to exercise and perform all the powers, functions and duties of the chief executive officer in terms of this Act.

24. Delegations and assignments by chief executive officer

(1) The chief executive officer may delegate any of the powers, and assign any of the functions or duties attached to that office, to any employee of the Corporation.

(2) Section 21(1)(b), (2)(a) and (c), (3) and (4) will apply, reading in the changes necessary in the context, to any delegation or assignment in terms of this section.

25. Staff of Corporation

(1) Subject to the general or special directions of the Board, if any, the chief executive officer may appoint the staff for the Corporation that may be necessary to perform the work arising from or connected with the Corporation's functions, business and operations in terms of this Act.

(2)(a) The terms and conditions of service of the Corporation's staff, and their remuneration, allowances, subsidies and other service benefits will be as determined by the Board.

(b) That remuneration and those allowances, subsidies and other benefits must be determined in accordance with a system approved by the Minister with the agreement of the Minister of Finance.

(3)(a) The persons who, immediately before the specified date, were employees of the Atomic Energy Corporation appointed in terms of section 13(1) of the previous Act, or deemed by section 13(2) of that Act to have been so appointed, will from the specified date be deemed to be staff members of the Corporation who have been appointed in terms of subsection (1) of this section.

- (b) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits that were applicable to those employees immediately before the specified date, will, with effect from the specified date, continue to apply until redetermined by the Board under subsection (2).
- (c) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits so redetermined, may not be less than those applicable before the redetermination.
- (d) Those employees' respective periods of pensionable service with the Atomic Energy Corporation and (where applicable) with its predecessor in terms of any law will be regarded and treated as pensionable service for the purposes of membership of any pension fund or scheme of which they are or may become members after the specified date.
- (e) The leave which has been accumulated by each of those employees while in the service of the Atomic Energy Corporation, will be regarded and treated as if it were leave accumulated by such an employee in the service of the Corporation.
- (4) Subject to subsection (5), the Corporation is deemed to be an associated institution for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963).
- (5) The Corporation, with the approval of the Minister granted with the agreement of the Minister of Finance, may establish, and manage and administer, any pension or provident fund or medical scheme for the benefit of its employees or have such a scheme or fund managed and administered by any other body or person.

26. Finances of Corporation

- (1) The Corporation will be funded and provided with capital from:
 - (a) the capital invested in or lent to the Corporation as contemplated in section 10;
 - (b) money appropriated by Parliament for that purpose;
 - (c) income derived from the sale or other commercial exploitation of its products, technology, services or expertise in terms of this Act;
 - (d) loans raised by the Corporation in terms of section 15;
 - (e) the proceeds of any sale of assets authorised in terms of this Act;
 - (f) income or interest earned on the Corporation's cash balances or on money invested by it; and
 - (g) money received by way of grant, contribution, donation or inheritance from any source inside or outside the Republic. However, money from abroad may be received only with the Minister's approval.
- (2) Money that in terms of subsection (1) are [sic] the funds of the Corporation, will be utilised to meet the expenditure incurred by the Corporation in connection with its functioning, business and operations in terms of this Act.
- (3)(a) Those money [sic] may be so utilised only as provided for in a statement of the Corporation's estimated income and expenditure contemplated in subsection (4), that has been approved by the Minister.
- (b) Money received by way of grant, contribution, donation or inheritance in terms of subsection (1)(g), must be utilised in accordance with the conditions (if any) imposed by the grantor, contributor, donor or testator concerned.
- (4)(a) The Board must in each financial year, at a time determined by the Minister, submit to the Minister for approval a statement of the Corporation's estimated income and expenditure for the next financial year. However, the Board may at any time during the course of a financial year concerned, submit a supplementary statement of

- estimated income and expenditure of the Corporation for that financial year, to the Minister for approval.
- (b) The Minister may grant the approval of the statement referred to in subsection (4)(a), with the agreement of the Minister of Finance.
 - (c) The Corporation may not incur any expenditure in excess of the total amount approved under paragraph (b).
 - (5) The Board may establish a reserve fund for any purpose that is connected with the Corporation's functions under this Act and has been approved by the Minister, and may allocate to the reserve fund the money that may be made available for that purpose in the statement of estimated income and expenditure (including any supplementary statement) approved under subsection (4)(b).
 - (6)(a) The chief executive officer, subject to the conditions set by the Board, must open an account in the name of the Corporation with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990), and deposit therein all money contemplated in subsection (1).
 - (b) The money of the Corporation that are [sic] not required for immediate use or as a reasonable working balance, may be invested with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act 46 of 1984).

27. Accounting and auditing

The Corporation is deemed to be a listed entity as defined in section 1 of the Reporting by Public Entities Act, 1992 (Act 93 of 1992).

28. Rights to discoveries, inventions and improvements made by Corporation's employees and certain other persons

- (1) Subject to the provisions of subsections (4) and (5), the rights in all discoveries, inventions and improvements made by employees of the Corporation in the course of their work as its employees, will vest in the Corporation which, with the Minister's permission, may make any such discovery, invention or improvement available for use in the public interest, subject to any conditions and the payment of any fees and royalties that may be determined by the Corporation and approved by the Minister.
- (2) The Corporation may, for such a discovery, invention or improvement, pay out of its funds to the employee concerned any bonus, reward or other financial benefit that the Board may determine.
- (3)(a) The chief executive officer, on the instruction of the Board, may apply on behalf of the Corporation for a patent in terms of the Patents Act, 1978 (Act 57 of 1978), for any invention or improvement referred to in subsection (1).
- (b) The chief executive officer may direct the registrar of patents to keep secret any such invention and the manner in which it is to be applied.
- (4) The rights in respect of any discovery, invention or improvement made by employees of the Corporation in the course of any work done by them as in that capacity on behalf of or for the benefit of another person or institution, will vest in the Corporation unless otherwise agreed between the Corporation and the person or institution concerned.
- (5) The rights in respect of any discovery, invention or improvement made in the course of work or during a special investigation done or carried out by any other person or institution on behalf of or for the benefit of the Corporation, will vest in the Corporation or in the other person or institution, or in the Corporation and the person or institution jointly, as may be agreed in writing by the parties beforehand, and the party or parties whom the rights in such an invention or improvement are vested, may apply for a patent for the invention or improvement.

29. Provisions with regard to security of Corporation's installations, sites and premises, etc

(1) The installations, sites, premises and land belonging to or under the control of the Corporation, on which any of its business, operations and activities in terms of this Act are conducted or performed or any records in connection therewith are kept, stored or to be found, are restricted areas.

(2) In view thereof, the Corporation, subject to subsection (3), may make any arrangements it considers reasonably necessary for the proper protection of:

- (a) those installations, sites, premises and land (hereinafter called high security areas);
- (b) the persons employed or present at or in the high security areas;
- (c) all property of the Corporation, whether of a physical or intellectual nature, at or in the high security areas; and
- (d) the records and information of the Corporation that are kept, stored or to be found thereat or therein, irrespective of the manner in which or the medium on or by means of which the records and information are kept, stored or recorded.

(3) No person will be allowed to enter or be present in a high security area unless the person has consented to any search that may be conducted in terms of subsection (4)(a).

(4) Any person authorised thereto in writing by the chief executive officer, may:

- (a) search any person or vehicle about to enter or leave any high security area, and may open and inspect any container or parcel and inspect any object, device, article, item or thing (including any material or substance) which is in the possession of such a person or is on or in that vehicle;
- (b) search any person present or any vehicle found in the high security area if there are reasonable grounds to suspect that any person or anything in the person's possession or in or on the vehicle, constitutes a threat to or endangers the lives or physical integrity of persons or the physical safety of property;
- (c) seize or attach any object, device, article, item or thing (including any material or substance) in the possession of a person mentioned in paragraph (a) or (b) or found on or in such a vehicle:
 - (i) if such an object, device, article, item or thing belongs to the Corporation or is subject to its control and is not in the lawful possession of the person or lawfully being conveyed in or on the vehicle for the purpose of performing any function or work of the Corporation; or
 - (ii) if, in the opinion of the authorised person, it constitutes a threat or danger of the nature contemplated in paragraph (b), or may be used by the person from whom it was taken or any other person for the purposes of a threat or danger of that nature;
- (d) arrest any person found in unlawful possession of restricted matter or anything else contemplated in paragraph (c)(i), or any person mentioned in paragraph (b).

30. Exemption from duties and fees

The Corporation, but not its subsidiary companies, is exempt from the payment of any duty or fee which, were it not for the provisions of this section, would have been payable by it to the State in terms of any law, except the Customs and Excise Act, 1964 (Act 91 of 1964), or the Value Added Tax Act, 1991 (Act 105 of 1991), in respect of an Act or transaction to which the Corporation is a party, or any document connected with such an Act or transaction.

31. Disclosure of confidential information concerning Corporation's activities

- (1) Subject to subsection (2), no information concerning any operation, transaction, project, work or activity of the Corporation in connection with restricted matter or any restricted Act or activity which is not yet public knowledge, may be published or made known or be transmitted or otherwise disclosed, except with the written permission of the chief executive officer acting on the authority of the Board, by any:
 - (a) employee or former employee of the Corporation or of a subsidiary company;
 - (b) any person who is or was involved in the business, operations or activities of the Corporation or subsidiary company in the capacity of agent, contractor or consultant or in any similar or related capacity, as well as the employee, partner or associate of such a person.
- (2) Subsection (1) does not preclude the disclosure of information:
 - (a) in so far as may be necessary for the exercise of any power or performance of any function or duty of the Corporation in terms of this Act or for the performance of any work in connection therewith; or
 - (b) on the order of a competent court of law.

32. Minister may authorise performance of Corporation's functions by other person or body in certain circumstances

- (1) If, in any particular case, the Corporation should fail, in relation to any matter or matters, to perform any function imposed on the Corporation in terms of this Act in circumstances where, in law, it is under a duty to perform that function, the Minister, by notice in writing to the Board, may order the Corporation to perform the function concerned, which must be specified in the notice.
- (2) The Board and the chief executive officer must ensure that any lawful order issued under subsection (1) is complied with.
- (3) If the Corporation should fail to comply with such an order, the Minister, in writing, may authorise any person or other body that is competent and has the necessary capacity for that purpose, to perform that function in relation to the particular matter or matters (as the case may be).
- (4) The Minister may recover from the Corporation the costs of having such a function performed by a person or body so authorised.

CHAPTER 3: Nuclear Non-proliferation

33. Minister's responsibilities concerning Republic's international obligations with regard to nuclear non-proliferation

- (1) The Minister acts as the national authority of the Republic for the purposes of the implementation and application of the Safeguards Agreement and any additional protocols in order to timeously detect and identify nuclear material intended to be used for peaceful nuclear activities and deter the diversion of such nuclear material to the manufacture of nuclear weapons or other nuclear explosive devices or for use in connection with any other purpose that is unknown.
- (2) In order to fulfil the responsibilities referred to in subsection (1):
 - (a) the Minister must liaise with the International Atomic Energy Agency on an ongoing basis as regards:
 - (i) negotiations on subsidiary arrangements under the Safeguards Agreement;
 - (ii) the furnishing and updating of information regarding the design of nuclear installations and sites;

- (iii) the furnishing of reports required by or in terms of the Safeguards Agreement and the subsidiary arrangements thereunder;
- (iv) requests for exemption from or termination of safeguards relating to nuclear material;
- (v) the provision of facilities and support to the inspectors of the International Atomic Energy Agency;
- (vi) the selection of inspectors nominated in respect of the Republic by the International Atomic Energy Agency;
- (vii) the accompaniment of that Agency's inspectors during inspections;
- (viii) the handling of importation into, and exportation from, the Republic of equipment and samples;
- (b) the Minister may issue instructions:
 - (i) concerning the measuring methods and systems with regard to nuclear material;
 - (ii) on the procedures for the handling of shipper-receiver differences in respect of nuclear material;
 - (iii) requiring and otherwise relating to the undertaking of periodic physical stocktaking of nuclear material;
 - (iv) on the operation of accounting systems in relation to any materials;
 - (v) relating to the keeping of records and reporting on nuclear material;
 - (vi) relating to the furnishing of information regarding the design, and changes to the design of nuclear installations and sites;
 - (vii) on the provision of information about the importation into, and exportation from, the Republic of nuclear material and nuclear-related equipment and material;
 - (viii) about applications for the exemption from or termination of requirements or safeguards in relation to nuclear material;
 - (ix) about the physical protection of nuclear material;
- (c) the Minister may:
 - (i) have the arrangement and verification undertaken of the physical inventory of any nuclear material in the Republic;
 - (ii) have inspections and investigations undertaken in accordance with and subject to sections 37, 38 and 39;
 - (iii) cause the measuring methods and systems employed by any person or body with regard to nuclear material to be verified;
 - (iv) have samples taken of and analysis undertaken of any product, article, object or thing subject to section 38;
 - (v) have independent measurements of nuclear material taken;
- (d) the Minister may apply any measures he or she considers necessary for the containment and surveillance of nuclear material;
- (e) the Minister must consult with the South African Council for the Non-Proliferation of Weapons of Mass Destruction, established by section 4 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act 87 of 1993), on any matter affecting the proliferation of weapons of mass destruction.
- (3) Any person in possession of, using, handling or processing nuclear material must:
 - (a) keep the prescribed records;
 - (b) submit the prescribed reports to the Minister at the times or intervals or on the occurrence of any event as prescribed;
 - (c) perform the prescribed measurements on nuclear material and maintain the prescribed measuring control programmes;
 - (d) in the prescribed manner provide the Minister with information regarding the design of any nuclear installation and site concerned and all changes effected to the design thereof;

- (e) periodically undertake the physical stocktaking of nuclear material in the manner and at the times as prescribed;
 - (f) in the prescribed manner give prior notice of the importation or exportation of nuclear material and nuclear-related equipment and material;
 - (g) implement and maintain the prescribed physical protective measures in respect of nuclear material;
 - (h) without delay report to the Minister any loss of nuclear material in excess of the prescribed limits;
 - (i) periodically, at the times and in the manner as prescribed, provide the Minister with schedules of planned activities;
 - (j) allow the designated officials of the International Atomic Energy Agency and any inspectors appointed under section 53 to carry out, without hindrance, inspections at any nuclear installation or site with a view to monitoring compliance with the provisions of this chapter.
- (4)(a) All information furnished or disclosed by any person in compliance or supposed compliance with this section, as well as all accompanying information contained in the communication or presentation of the first-mentioned information, is highly confidential and may not be published or otherwise made known or disclosed by the Minister or any official of the State while serving as such except:
- (i) in so far as may be necessary for or in connection with the exercise of any power or performance of any function or duty of the Minister, in terms of this Act, or for the performance of any work in connection therewith; or
 - (ii) on the order of a competent court of law.
- (b) '*Accompanying information*', for the purposes of paragraph (a), means any information whatsoever which does not have to be furnished or disclosed to the Minister in terms of this section, whether derived directly from any express statement made in the communication or presentation or indirectly, by implication or inference, having regard to the context of the communication or presentation and, amongst others, to:
- (i) surrounding facts or circumstances;
 - (ii) particular personal knowledge;
 - (iii) the manner or medium of communication or presentation.
- (5) All fees that from time to time, are due to the International Atomic Energy Agency by the Republic, must be paid by the Minister on behalf of the Republic.

34. Authorisations required for acquisition or possession of, and certain activities relating to, nuclear material, restricted material and nuclear-related equipment and material

- (1) Except with the written authorisation of the Minister, no person, institution, organisation or body may:
 - (a) be in possession of any source material, except where:
 - (i) the possession has resulted from prospecting, reclamation or mining operations lawfully undertaken by the person, institution, organisation or body; or
 - (ii) the possession is on behalf of anyone who had acquired possession of the source material in the manner mentioned in subparagraph (i); or
 - (iii) the person, institution, organisation or body has lawfully acquired the source material in any other manner;
 - (b) be in possession of the following, namely:
 - (i) special nuclear material;
 - (ii) restricted material;

- (iii) uranium hexafluoride (UF₆);
 - (iv) nuclear fuel;
 - (v) nuclear-related equipment and material;
 - (c) acquire, use or dispose of any source material;
 - (d) import any source material into the Republic;
 - (e) process, enrich or reprocess any source material;
 - (f) acquire any special nuclear material;
 - (g) import any special nuclear material into the Republic;
 - (h) use or dispose of any special nuclear material;
 - (i) process, enrich or reprocess any special nuclear material;
 - (j) acquire any restricted material;
 - (k) import any restricted material into the Republic;
 - (l) use or dispose of any restricted material;
 - (m) produce nuclear energy;
 - (n) manufacture or otherwise produce or acquire, or dispose of, uranium hexafluoride (UF₆);
 - (o) import uranium hexafluoride (UF₆) into the Republic;
 - (p) manufacture, or acquire, or dispose of, nuclear fuel;
 - (q) import nuclear fuel into the Republic;
 - (r) manufacture or otherwise produce, import, acquire use or dispose of nuclear-related equipment and material;
 - (s) dispose of, store or reprocess any radioactive waste or irradiated fuel (when the latter is external to the spent fuel pool);
 - (t) transport any of the abovementioned materials;
 - (u) dispose of any technology related to any of the abovementioned materials or equipment.
- (2)(a) The Minister may after consultation with the South African Council for the Non-Proliferation of Weapons of Mass Destruction on any matter affecting the proliferation of weapons of mass destruction grant any authorisation required by subsection (1), after application made to the Minister in the prescribed manner for that purpose.
- (b) The authorisation may be granted subject to any conditions (if any) that the Minister may determine.
- (3) Where an application for such an authorisation has been refused the Minister, in writing, must inform the applicant accordingly, stating the reasons for the refusal.

34A. Prohibitions relating to nuclear material

- (1) For purposes of this section, 'international organisation', has the meaning ascribed to it in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004.
- (2) No person may:
- (a) intentionally and without lawful authority, receive, possess, use, transfer, alter, dispose of or disperse, nuclear material which causes or is likely to cause death or serious bodily injury to any person or substantial damage to property;
 - (b) intentionally obtain nuclear material by means of theft or robbery;
 - (c) intentionally obtain nuclear material by means of embezzlement or fraud;
 - (d) intentionally demand nuclear material by threat or use of force, or by any other form of intimidation;
 - (e) intentionally threaten to:
 - (i) use nuclear material to cause death or serious injury to any person or substantial damage to property;

- (ii) commit an act described in paragraph (b) in order to compel a natural or legal person, international organisation or State to do or to refrain from doing any act;
- (f) use any nuclear material or device or use or damage a nuclear installation or nuclear plant in a manner which release or risk the release of radio-active material, with the intent to:
 - (i) cause death or serious bodily injury;
 - (ii) cause substantial damage to property or the environment; or
 - (iii) to compel a natural or juristic person, an international organisation or a State to do, to abstain or refrain from doing an act; or
- (g) attempt, conspire with any other person, or aid, abet, induce, incite, instigate, instruct or command, counsel or procure another person, to commit an offence referred to in paragraphs (a) to (f).

35. Exportation of source, special nuclear or restricted material or nuclear-related equipment and material

- (1) No person may export any source material, special nuclear material or restricted material or any nuclear-related equipment and material from the Republic except with the written authorisation of the Minister.
- (2) The Minister, having consulted with the South African Council for the Non-Proliferation of Weapons of Mass Destruction on any matter affecting the proliferation of weapons of mass destruction and duly taken into account the provisions of the Nuclear Non-proliferation Treaty, the Safeguards Agreement and the Republic's obligations under any other treaty or international agreement with another state, may grant any authorisation required by subsection (1) after application made to the Minister in the manner as prescribed for that purpose.
- (3) The authorisation may be granted subject to any conditions (if any) that the Minister may impose. However, where the source material, special nuclear material, restricted material or nuclear-related equipment and material is to be exported:
 - (a) to a nuclear weapons state, the authorisation at all times must be made subject to the condition that the material and equipment concerned may be used for peaceful purposes only;
 - (b) to a non-nuclear weapons state, the authorisation at all times must be made subject to the condition that the material and equipment concerned will be subject to comprehensive international safeguards at all times.
- (4) Where an application for such an authorisation has been refused, the Minister must in writing inform the applicant accordingly, stating the reason for the refusal.

36. Furnishing of information and reports

- (1) The Minister, in writing, may direct any person to whom authorisation was granted under section 34 or 35, to furnish to the Minister a return concerning:
 - (a) any source material, restricted material or special nuclear material acquired by, in the possession of, or under the control of that person;
 - (b) any nuclear-related equipment or material acquired by, in the possession of, or under the control of that person;
 - (c) any other information in that person's possession relating to any work carried out by, on behalf of or under the direction of that person in connection with the production, use, processing, enrichment or reprocessing of source material, restricted material, special nuclear material or nuclear energy, or in connection with research with regard to matters connected therewith.

(2) The return to be so furnished, must contain the particulars and be accompanied by the plans, drawings and other documents specified in the direction.

37. Inspector may enter upon or enter premises to monitor compliance with Act with regard to restricted matter and restricted acts and activities

(1) An inspector appointed in terms of section 53 may at any reasonable time, without a warrant, enter upon or enter any land, premises, place or means of conveyance at, on or in which restricted matter is kept or to be found or at, on, in, from where or by means of which any restricted Act or activity is performed or carried out, with a view to performing thereat, thereon or therein, any inspection or investigation necessary or expedient for monitoring compliance with:

- (a) the terms of the Minister's authorisation for possessing the restricted matter or performing or carrying out the restricted Acts or activity, and compliance with the provisions of this Act relating to restricted matter or restricted Acts or activities;
- (b) the conditions imposed by the Minister under section 34 or 35 (as the case may be) in respect of that authorisation;
- (c) any other relevant requirement imposed by or in terms of this Act with regard to restricted matter or restricted Acts or activities.

(2) An inspector acting under subsection (1) may not search the land, premises, place or means of conveyance except on the authority of a warrant issued under section 40.

38. Inspectors, powers of search, seizure, etc

(1) An inspector acting on the authority of a warrant issued under section 40, may enter upon or enter any land, premises, place or means of conveyance:

- (a) at, on or in which there is to be found or on reasonable grounds is expected to be found, any restricted matter the possession of which is unlawful in terms of section 34, or anything reasonably suspected of being such restricted matter;
- (b) at, on, in, from or by means of which, any restricted Act or activity on reasonable grounds is suspected to be or to have been performed or carried out without the necessary authorisation in terms of section 34 or 35 (as the case may be);

and inspect and search the land, premises, place or means of conveyance and any person thereat, thereon or therein, for restricted matter or evidence relating to possession of restricted matter or a restricted Act or activity, and for any other evidence relating to the contravention of section 34 or 35 in relation to the restricted matter or restricted Act or activity. For the purposes of entering and searching a means of conveyance, any inspector who is assisted by a police official may stop the means of conveyance, whether public or private, if necessary by force, wherever found.

(2) An inspector who has gained access to any land, premises, place or means of conveyance on the authority of a warrant, may:

- (a) take any steps that may be reasonably necessary to terminate the unlawful performance or carrying out of a restricted Act or activity at, on, in, from or by means of the land, premises, place or means of conveyance and to prevent the recurrence of such an Act or activity. Those steps may include any of the steps contemplated in paragraphs (b), (c) and (d) but do not include the destruction or alienation of restricted matter unless authorised thereto by a court of law;

- (b) seize and detain, and, where applicable, remove for detention, restricted matter found at, on or in the land, premises, place or means of conveyance;
 - (c) bar or restrict access to the land or premises, place or any part thereof, or seal off or seal the premises, place or means of conveyance;
 - (d) seize and detain, and, where applicable, remove for detention, any tools or equipment used or suspected on reasonable grounds to have been used to perform or carry out a restricted Act or activity;
 - (e) in any manner reasonably appropriate, take samples of any mineral, material or substance found on, under, or in the land, premises, place or means of conveyance for the purpose of analysis or conducting any test or investigation in respect thereof, and remove, and retain without compensation, any sample so taken; and
 - (f) question any person at, on or in the land, premises, place or means of conveyance who may furnish any information about restricted matter or a restricted Act or activity, and demand and procure from that person any book, document, plan, sketch or other record of whatever nature that may be relevant to the acquisition or possession of the restricted matter, or to the performance or carrying out of the restricted Act or activity, and make copies or extracts from such a book, document, plan, sketch or other record.
- (3) An inspector who, without a warrant, has entered upon or entered any land, premises, place or means of conveyance in terms of section 37 and who, in the course of carrying out or conducting any inspection or investigation thereat, thereon or therein in terms of that section:
- (a) is satisfied on reasonable grounds that an offence in terms of section 56, based on the unlawful possession of restricted matter or the performance or carrying out of any restricted Act or activity without the Minister's authorisation in terms of section 34 or 35 or on the breach of any term of, or condition imposed in respect of, such an authorisation, has been committed at, on, in, from or by means of the land, premises, place or means of conveyance, may, in so far as may be appropriate and reasonably necessary in the circumstances, exercise any of the powers contemplated in paragraphs (a) to (f) of subsection (2) in accordance with the provisions of those paragraphs, but excluding the power in terms of paragraph (e) of that subsection to take a sample of any mineral, material or substance from below the surface of land. However, such a sample may be taken from below the surface of land:
 - (i) with the consent of the owner or person in control of the land, premises or place concerned; or
 - (ii) on the authority of a warrant issued under section 40;
 - (b) suspects, on reasonable grounds, that such an offence has been committed at, on, in, from or by means of the land, premises, place or means of conveyance, may bar or restrict access to the land, premises or place or any part thereof, or seal off or seal the premises, place or means of conveyance pending the issuing of a warrant in terms of section 40 that authorises the inspector to search the land, premises, place or means of conveyance or any person thereat, thereon or therein. Upon the issue of the warrant, the inspector also may, in so far as may be appropriate and reasonably necessary in the circumstances, exercise any of the powers contemplated in paragraphs (a) to (f) of subsection (2), in accordance with the provisions of those paragraphs.
- (4)(a) Despite the preceding provisions of this section, an inspector may, during the day and after having furnished proof of identity, without a warrant enter or enter upon any land, premises, place or means of conveyance in the circumstances mentioned in paragraph (a) or (b) of

subsection (1) and exercise thereat, thereon or therein the power of search contemplated in that subsection and any of the powers contemplated in paragraphs (a) to (f) of subsection (2), in accordance with the provisions of subsection (1) or those paragraphs (as the case may be), if the person who is competent to consent to the entry and to the search gives that consent, subject to paragraph (b) of this subsection.

- (b) The powers mentioned in paragraphs (a) to (f) of subsection (2) may be exercised only if the inspector, when requesting that person for consent, informs that person of the nature and extent of the powers contemplated in those paragraphs.
- (5) An answer given or statement made by any person to an inspector exercising the power contemplated in subsection (2)(f) or given or made to any inspector exercising that power by virtue of subsection (3) or (4), if self-incriminating, will not be admissible as evidence against that person in criminal proceedings instituted in any court against that person, except in criminal proceedings where that person is tried for an offence contemplated in section 56(1)(c)(iv), and then only to the extent that such an answer or statement is relevant to those proceedings.

39. Inspectors acting under section 37 or 38 entitled to information concerning safety, and to be accompanied

- (1)(a) Before carrying out or conducting any inspection or investigation under section 37 or conducting any search under section 38, the inspector concerned must consult with a knowledgeable person employed or performing duties at or in connection with the land, premises or place, or any part thereof, where the inspection is to be carried out or the investigation or search is to be conducted, with a view to determining whether the carrying out or conducting of the inspection, investigation or search at the relevant venue will or is likely to endanger or be harmful to the health of a person or will or is likely to result in the injury of any person or damage to any property.
- (b) Where the inspector and the person so consulted, hold different views on the matter, the inspector may refer the matter to the Minister for a decision.
- (2) In undertaking any inspection or investigation under section 37 or any search under section 38(1), or exercising any power under section 38(2), (3) or (4), an inspector who considers it necessary, may:
 - (a) be accompanied and assisted by any person that the inspector regards suitable for that purpose;
 - (b) bring onto or into the land, premises, place or means of conveyance on or in which:
 - (i) the inspection or investigation is to be carried out or conducted, any apparatus, equipment, machinery and tools required for the purposes of the inspection or investigation; or
 - (ii) the search is to be conducted, any apparatus, equipment, machinery and tools required for the purpose or for performing any Act mentioned in section 38(2).
- (3) Where the inspection, investigation or search is to be carried out or conducted on or in any land, premises or place, the vehicles necessary for the conveyance of the apparatus, equipment, machinery or tools concerned must, if required and where possible, be allowed onto or into the land, premises or place concerned.

40. Provisions regarding issuing and execution of warrants

(1) Any warrant required in terms of section 38 may be issued in chambers by any judge of the High Court or by a magistrate who has jurisdiction in the area in which:

- (a) the land, premises or place where the search is to be undertaken, is situated;
- (b) the means of conveyance to be searched, is to be found; or
- (c) the land from under the surface of which a sample is to be taken, is situated.

(2) A warrant contemplated in section 38(1) or (3)(b) will be issued only if it appears to the judge or magistrate from information on oath or affirmation that there are reasonable grounds for believing that:

- (a) restricted matter, the possession of which is unlawful in terms of section 34, is to be found on or in the land, premises, place or means of conveyance for which the search warrant is required; or
- (b) a restricted Act or activity is being, has been or is likely to be performed or carried out thereat, thereon, therein or therefrom; or
- (c) an offence in terms of section 56 based on the unlawful possession of restricted matter or the performance or carrying out of any restricted Act or activity without the Minister's authorisation, in terms of section 34 or 35, is being or has been committed at, on, in, from or by means of the land, place, premises or means of conveyance concerned.

(3) The inspector applying for the warrant must indicate whether the search of any person will be or is likely to be necessary. No person may be searched unless it is expressly authorised in the warrant.

(4) The entry upon or entry onto or into the land, premises, place or means of conveyance specified in a warrant issued under subsection (2) and, where authorised by that warrant, the search of any person thereat, thereon or therein, must be conducted with strict regard to decency and order, including the individual's:

- (a) right to respect for and protection of personal dignity;
- (b) right to freedom and security of person; and
- (c) right to personal privacy.

(5) An inspector who, on the authority of a warrant issued under subsection (2), may enter upon or enter, and search, any land, premises, place or means of conveyance and, where applicable, search any person thereat, thereon or therein, may use the force that may be reasonably necessary to overcome any resistance to the entry and search.

(6) A warrant contemplated in section 38(3)(a) will be issued only if it appears to the judge or magistrate from information on oath or affirmation that there are reasonable grounds for believing that:

- (a) an offence contemplated in subsection (2)(c) has been committed; and
- (b) the sample to be taken from under the surface of the land concerned is likely to afford or corroborate evidence relating to that offence.

(7) A warrant in terms of this section may be issued on any day and remains in force until the occurrence of any of the following events (whichever occurs first):

- (a) the warrant has been executed; or
- (b) it is cancelled by the judge or magistrate who issued it, or, if not available, by any other judge, or by any other magistrate with like authority (as the case may be); or
- (c) the expiry of three months from the day of its issue; or
- (d) the purpose for which the warrant was issued, no longer exists.

(8) A warrant issued in terms of this section may be executed by day only, unless the person who has issued the warrant has authorised the execution thereof by night.

- (9) An inspector executing a warrant in terms of this section, must immediately before commencing with the execution thereof:
 - (a) furnish proof of identity to the person in control of the land, premises, place or means of conveyance to be entered upon or entered, if that person is present, and hand to that person a copy of the warrant, or, if that person is not present, affix a copy of the warrant to a prominent spot at, on or to the land, premises, place or means of conveyance; and
 - (b) at the request of that person, furnish to that person particulars regarding the inspector's authority to execute the warrant. For that purpose, production of the inspector's certificate of appointment issued under subsection 53(2), may be demanded.

41. Disposal of patents for inventions with regard to nuclear energy, nuclear material and restricted matter

- (1) Despite anything to the contrary in the Patents Act, 1978, or any other law, any person who, in terms of section 25 of that Act, lodges with the registrar of patents an application for a patent in respect of an invention with regard to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter, must:
 - (a) immediately notify the Minister in writing of that application; and
 - (b) furnish the Minister with a copy of the specification relating to the invention; and
 - (c) provide the Minister with any other information regarding the invention that the Minister may require.
- (2) The Minister must treat all information furnished or provided in terms of subsection (1) as highly confidential, and it may not be disclosed or used except as provided in this section.
- (3) The registrar of patents must:
 - (a) allow any person authorised thereto in writing by the Minister, to inspect any application for a patent mentioned in subsection (1) and any specification or other document accompanying or relevant to the application;
 - (b) postpone acceptance of the application for a period of three months as from the date on which it was submitted to the patents office, which period may be extended for a further three months at the written request of the Minister;
 - (c) at the written request of, and until otherwise directed by, the Minister, withhold acceptance or sealing of the application, keep its specification secret and notify the applicant to that effect.
- (4) The communication of an invention to the Minister in terms of subsection (1) or to such an authorised person, or anything done by that person in connection with the invention for the purposes of an inspection contemplated in subsection (3)(a), will not be regarded as publication or use of the invention that may prejudice the granting or validity of any patent for the invention.
- (5) If satisfied on reasonable grounds, from all the available information relevant to the invention, that the granting of a patent for the invention:
 - (a) will be against the interests of the security of the Republic, the Minister, who must act in consultation with the Minister of Defence, must give the registrar of patents written notice thereof and in the notice direct that registrar to refuse the granting of the patent, and thereupon that registrar will:
 - (i) refuse to grant the patent;
 - (ii) in writing notify the applicant for the patent of the refusal; and

- (iii) keep secret the specification and any other documents relating to the invention, as well as the manner in which it is to be performed or applied; or
- (b) will be contrary to the Republic's obligations in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement, or in terms of any other agreement of that kind between the Republic (including its national agency) and any other state or any international or multi-national nuclear agency or institution, the Minister must give the registrar of patents written notice thereof, and in the notice:
 - (i) direct that registrar to refuse the granting of the patent, whereupon that registrar must act in accordance with subparagraphs (i), (ii) and (iii) of paragraph (a); or
 - (ii) direct that the patent may only be granted on the condition that the claims in the specification of the invention must, with regard to the invention, contain the disclaimer mentioned in the direction; or
- (c) will not have any of the consequences mentioned in paragraphs (a) and (b), the Minister (who must act in consultation with the Minister of Defence with regard to the consequence contemplated in paragraph (a)), must in writing inform the registrar of patents to that effect and withdraw any direction issued under subsection (3)(b) or (c).
- (6) The Minister may not take any Action in terms of subsection (5)(a) or (b) unless:
 - (a) the Minister, by written notice, has informed the applicant for a patent with regard to the invention concerned, of the proposed action and given the applicant sufficient opportunity to show cause why the proposed action should not be taken, and to make written or oral representations in that regard; and
 - (b) the Minister has duly considered the applicant's response and representations (if any).
- (7) Upon the withdrawal of a direction issued under subsection (3)(b) or (c) (in this subsection called a suspending direction), or when a direction is issued under subsection (5)(b)(ii):
 - (a) any steps in connection with the application for a patent taken in terms of the Patents Act, 1978, before the date on which a suspending direction was issued, may be continued as if they had not been interrupted by the suspending direction;
 - (b) any period that has lapsed after that date but before the date of withdrawal of the suspending direction or the date on which the direction mentioned in subsection (5)(b)(ii) was issued, as the case may be, will not be taken into account in calculating any period prescribed by or in terms of the Patents Act, 1978.
- (8) A patent granted, contrary to the provisions of this section, with regard to an invention mentioned in subsection (1), will have no legal force or effect whatsoever.

42. Application, in appropriate circumstances, of section 36, 79 or 80 of Patents Act, 1978, to invention contemplated in section 41 of this Act

- (1) The provisions of section 41 of this Act do not prevent sections 36(2) or (3), 79 and 80 of the Patents Act, 1978, from being applied in appropriate circumstances with regard to any invention, relating to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter, in respect of which application for a patent has been made in terms of section 25 of the Patents Act, 1978, nor, where applicable, with regard to any patent granted in respect of such an invention.

(2) For that purpose, section 36 of the Patents Act, 1978, is hereby amended:

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

(2) If, where an application for a patent is made, it appears to the registrar that the invention in respect of which the application is made:

(a) might be used in any manner contrary to law; or

(b) where it relates to the production or use of nuclear energy or to the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, might be used for a purpose or in a manner:

(i) that will be harmful to or endanger the security of the Republic; or

(ii) that is not permissible in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement or in terms of any other agreement of that kind between the Republic (including its national agency with regard to nuclear matters) and any other state or any international or multinational nuclear agency or institution.

the registrar may refuse the application unless the specification is amended by the addition of such disclaimer in respect of that invention, or such other reference to the illegality, harmfulness, endangerment or unlawfulness thereof, as the registrar may determine: Provided that, in the case of an invention mentioned in paragraph (b)(ii), the disclaimer shall be determined in consultation with the Minister of Minerals and Energy; and

(b) by the addition of the following subsection:

(3) The registrar shall not dispose of any application for a patent in respect of an invention mentioned in subsection (2)(b), unless he or she has informed the Minister of Minerals and Energy thereof in writing with a view to enabling that Minister, if considered necessary, to take action in terms of section 41 of the Nuclear Energy Act, 1999, or make representations or take appropriate steps for the purposes of subsection (2) of this section or section 79 of this Act, and has given that Minister sufficient opportunity to do so.

(3) For the purpose of applying section 79 of the Patents Act, 1978, to such an invention, that section is hereby amended:

(a) in subsection (1), by the addition of the following paragraph after the existing provisions (which become paragraph (a)):

(b) the proprietor of an invention relating to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, shall, if called upon to do so by the Minister of Minerals and Energy, assign the invention or the patent obtained or to be obtained for the invention, to the Minister of Minerals and Energy on behalf of the State:

(i) if the interests of the security of the Republic so require. However, such an assignment may be made only at the request of the Minister of Defence;

(ii) if the commercial exploitation of the invention is not permissible in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement as defined in section 1 of the Nuclear Energy Act, 1999, or in terms of any other agreement of that kind between the Republic (including its national agency with regard to nuclear matters) and any other state or any international or multi-national nuclear agency or institution; and

(b) in subsection (2), by the addition after the words 'Minister of Defence' of the words 'or the Minister of Minerals and Energy (as the case may be)';

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

(3) Where an invention has been so assigned:

(a) the Minister of Defence may, in respect of an invention contemplated in subsection (1)(a), by notice in writing to the registrar

- direct that the invention and the manner in which it is to be performed, shall be kept secret;
- (b) the Minister of Minerals and Energy shall, in respect of an invention contemplated in paragraph (b)(i) or (ii) of subsection (1), by notice in writing to the registrar direct that the invention and the manner in which it is to be performed, shall be kept secret;
- (d) by the addition after the words 'Minister of Defence', wherever they occur in subsections (4), (5) and (6), of the words 'or Minister of Minerals and Energy (as the case may be)'; and
- (e) by the substitution for subsection (7) of the following subsection:
- (7)(a) The Minister of Defence may by notice in writing to the registrar direct that any invention of the nature mentioned in subsection (1)(a) and in respect of which a direction of secrecy had been issued in terms of subsection (3), need no longer be kept secret.
- (b) When the circumstances mentioned in subsection (1)(b) no longer exist in relation to an invention of the nature mentioned in that subsection, the Minister of Minerals and Energy may by notice in writing to the registrar direct that the invention concerned need no longer be kept secret.
- (c) Where a direction of secrecy no longer applies, the specifications, drawings and other documents relating to the invention concerned will be open to inspection by the public, and may be published, in all respects as if such a direction had not been issued.
- (4) For the purpose of applying section 80 of the Patents Act, 1978, to an invention relating to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter, that section is hereby amended by the insertion of the following subsection after subsection (1):
- (1A) The Minister shall, in the case of an invention relating to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, make such an order if requested thereto in writing by the Minister of Minerals and Energy on the grounds that disclosure or publication of such an application, specification, drawing or other document:
- (a) will or is likely to be harmful to or endanger the security of the Republic. However, the Minister of Minerals and Energy may make such a request only at the instance of the Minister of Defence;
- (b) is not permissible, or will constitute a breach of the Republic's obligations, in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement as defined in section 1 of the Nuclear Energy Act, 1999, or any other agreement of that kind between the Republic (including its national agency with regard to nuclear matters) and any other state or any international or multinational nuclear agency or institution.

43. Prohibition of applications by South African subjects for certain patents in other countries

- (1) Except with the written consent of the Minister, a person who is a South African citizen or is resident in the Republic, and a juristic person that is registered in the Republic, may not apply in any other country for a patent for an invention with regard to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter.
- (2) The Minister's consent under subsection (1), may be given on any conditions considered fit. However, consent may not be given in any case where the granting of a patent for the invention concerned, would have been refused, or made subject to a disclaimer, in terms of section 41 of this Act or section 36(2) of the Patents Act, 1978, had the application for the patent concerned been made in the Republic in terms of section 25(1) of the Patents Act, 1978.

- (3) The consent must be given or refused within three months from the date on which the application therefor was lodged with the Minister.

CHAPTER 4: Minister's Responsibilities Regarding Source Material, Special Nuclear Material, Restricted Material, Radioactive Waste and Irradiated fuel

44. Acquisition by State of source material and special nuclear material

- (1) The Minister, with due regard to the requirements and provisions of the Safeguards Agreement, may acquire or cause to be acquired by purchase, lease or expropriation any source material (whether mined only or processed) and any special nuclear material whenever, in the Minister's opinion, the national interest so requires.
- (2) The overall control of all source material and special nuclear material acquired by the State under subsection (1), vests in the Minister.
- (3) As consideration for any source material or special nuclear material expropriated under subsection (1), the Minister must pay to the person from whom it was expropriated, the compensation that may be agreed upon by that person and the Minister acting with the concurrence of the Minister of Finance, or, failing such an agreement, that may be determined by arbitration.
- (4) Sections 7, 8 and 9 of the Expropriation Act, 1975 (Act 63 of 1975), will apply, with the necessary changes, in respect of any expropriation under subsection (1).

45. Authority over management of radioactive waste, and storage of irradiated nuclear fuel

- (1) The authority over the management and discarding of radioactive waste and the storage of irradiated nuclear fuel vests in the Minister.
- (2) The Minister, in consultation with the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry, may make regulations prescribing the manner of management, storage and discarding of radioactive waste and irradiated nuclear fuel.
- (3) The Minister must perform that function with due regard to the provisions of the National Nuclear Regulator Act, 1999.

46. Discarding of radioactive waste and storage of irradiated nuclear fuel

- (1) Except where authorised by a ministerial authority issued under the Hazardous Substances Act, 1973 (Act 15 of 1973), no person may, without the written permission of the Minister, discard radioactive waste in any manner or cause it to be so discarded.
- (2) Except with the written permission of the Minister, no person may store any irradiated nuclear fuel or cause it to be stored.
- (3) A permission in terms of subsection (1) or (2) may be granted subject to any conditions that the Minister, in concurrence with the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry, deem fit to impose. The conditions so imposed will be additional to any conditions contained in a nuclear authorisation as defined in section 1 of the National Nuclear Regulator Act, 1999.

47. Reporting of information on occurrence of source material

- (1) Any person who, by virtue of information obtained in the course of any prospecting or mining operations or carrying out any scientific investigation or chemical or metallurgical process, or otherwise, has reason to believe that

any source material is present at any place, must, within 30 days after having developed the belief, submit to the Minister or any person designated by the Minister for that purpose, a written report on the matter, containing full particulars of the grounds on which the belief is based and of the place where the material may be present.

(2) Despite anything to the contrary contained in any other law, the Minister will have access to and be entitled to the use of all information with regard to mineral values that is in the possession of any person, and such a person must make that information available to the Minister if requested by the Minister to do so. However:

- (a) no information made available under this subsection may be disclosed to anyone except the Director-General, if necessary, for the performance of any function or work entrusted to the latter in terms of this Act, except with the written permission of the person who made the information available to the Minister under this subsection; and
- (b) the State may use the information only for feasibility and other studies with regard to source material reserves in the Republic, or matters incidental thereto.

48. Provision of certain restricted matter for research, development and training purposes

(1) The Minister, having regard to the national interest and public safety, may make available for nuclear research, the development of nuclear technology and the training of persons, any nuclear material, radioactive material and nuclear-related equipment and material of any kind or quantity that may be required.

(2) In making any nuclear material, radioactive material, or nuclear-related equipment and material so available, the Minister may impose any conditions considered fit.

49. This chapter not applicable to certain substances and certain radioactive material

This chapter does not apply with regard to:

- (a) Group IV hazardous substances as defined in section 1 of the Hazardous Substances Act, 1973, subject to section 46(1);
- (b) radioactive material with a specific activity and a total activity below the levels determined in terms of section 2(g);
- (c) radioactive material exempted in terms of section 2(e).

50. Responsibility for institutional obligations of Republic

The responsibility for the Republic's institutional nuclear obligations vests in the Minister.

CHAPTER 5: General Provisions

51. Non-disclosure of Minister's reasons for decisions adversely affecting persons, permissible where security of Republic is involved

(1) Whenever, in exercising any power or performing any function under this Act which affects or is likely to affect any person, or in proposing to do so, the Minister is satisfied on reasonable grounds that disclosure of the reasons for exercising or performing the power or function or proposing to do so will endanger or be harmful to the security of the Republic, the Minister need not disclose those reasons.

- (2)(a) Subsection (1) does not preclude any High Court from enquiring into and deciding on the validity of any non-disclosure purporting to be justified in terms of subsection (1).

- (b) The court conducting such an enquiry may at any time on application by the Minister or of its own accord, order that the proceedings before it be conducted in camera if the interests of the security of the State so require. For that purpose the court must assess the matters raised and the evidence, statements and addresses that have been or may be tendered, made or given, as well as other developments in the matter, on an ongoing basis for potential danger or harm to the security of the Republic.

52. Court proceedings and arbitration proceedings arising from this Act may be held *in camera*

- (1) In the case of any civil or criminal proceedings before a court of law, or any proceedings before an arbitration tribunal, arising from the application or administration of this Act, the court or arbitral tribunal (as the case may be) may direct that the proceedings before it be held in camera if the interest of the security of the Republic so require.
- (2) For that purpose, the court or tribunal (as the case may be) must assess the matters raised and the evidence, statements and addresses that have been or may be tendered, made or given in the proceedings concerned, as well as other developments in the proceedings, on an ongoing basis for potential danger or harm to the security of the Republic.

53. Appointment of inspectors

- (1) The Minister must appoint suitably qualified persons who are fit and proper persons as inspectors for the purposes of this Act.
- (2) The Minister must issue a certificate of appointment for every person appointed under subsection (1).
- (3) The Minister must have inspections undertaken subject to sections 37, 38 and 39.
- (4) The Minister must prescribe the qualifications of inspectors.

54. Regulations

- (1) The Minister may make regulations not inconsistent with this Act, with regard to anything which in terms of this Act, may or must be prescribed or provided for or governed or otherwise dealt with by regulation.
- (2) In any regulations made under subsection (1), provision may be made:
 - (a) that the contravention of or failure to comply with any particular provisions thereof, will be an offence; and
 - (b) that a person convicted of such an offence will be punishable with a term of imprisonment not longer than the period specified in the regulations or with a fine, but no term of imprisonment in excess of 12 months may be so specified.
- (3) The regulations made under the provisions of section 77 of the previous Act and in force immediately before the specified date, in so far as they relate to matters which, in terms of this Act, may or must be prescribed, provided for, governed or otherwise dealt with by regulation, remain in force and continue to apply to those matters:
 - (a) despite the repeal of those provisions by this Act;
 - (b) in so far as they are not inconsistent with this Act; and
 - (c) until they are amended, substituted or repealed under this section.
- (4) Before any regulations are made in terms of subsection (1), the Minister must:
 - (a) by notice in the *Gazette*, invite the public to comment on the proposed regulations; and
 - (b) consider that comment.

55. Delegations and assignments by Minister

(1) The Minister may delegate any power and assign any function conferred or imposed upon the Minister in terms of this Act, except the power to make regulations, to the Director-General of the Department of Minerals and Energy, who may subdelegate or reassign any delegated power or assigned function in the circumstances and manner as prescribed.

(2) The Minister may assign any institutional obligation to the Corporation or any statutory or other body, which has the capacity to fulfil the Republic's responsibilities with regard thereto.

(3) A delegation or assignment under subsection (1) or (2) must be in writing and may be subject to any conditions or limitations determined by the Minister.

(4) The Minister will not be divested of any power nor be relieved of any function or duty that the Minister may have delegated or assigned.

(5) The Minister may at any time:

- (a) amend or revoke a delegation or assignment made under subsection (1) or (2);
- (b) withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter himself or herself. However, a decision made by a delegatee or assignee may not be withdrawn where it confers a right or entitlement on any third party.

56. Offences and penalties

(1) A person is guilty of an offence upon:

- (a) failing to discharge any duty or obligation imposed on the person by or in terms of section 33(3);
 - (b) publishing, making known or disclosing any information in contravention of section 33(4) or 31;
 - (c)(i) failing to furnish a return in compliance with a direction given under section 36(1); or
 - (ii) furnishing a false, incorrect or inaccurate return in response to a direction, knowing or believing the return not to be true, correct or accurate; or
 - (iii) negligently furnishing an incorrect or inaccurate return in response to such a direction; or
 - (iv) when questioned by an inspector in terms of subsection (2)(f) of section 38, knowingly furnishes an answer or makes a statement that is false or misleading or furnishes an answer or makes a statement not knowing or believing it to be true;
 - (d) performing or carrying out any restricted Act or activity without an authorisation required in terms of section 34 or 35 (as the case may be), or in contravention of the relevant authorisation or any condition imposed in respect thereof under section 34 or 35 (as the case may be);
 - (e) being in possession of restricted matter in contravention of section 34(1)(a) or (b);
 - (f) failing to submit a report in compliance with section 47;
 - (g) obstructing or hindering any inspector in performing or carrying out any function or duty in terms of this Act or refusing or failing to comply with any question or comply with any demand or direction lawfully put, made or given by an inspector in terms of this Act.
 - (h) performing any act prohibited under section 34A.
- (2) A person is liable, on conviction of an offence in terms of:
- (a) subsection (1)(a), (b) or (c)(i), (ii) or (iv), to a fine or a term of imprisonment not longer than five years;
 - (b) subsection (1)(c)(iii), (f) or (g) to a fine or a term of imprisonment not longer than three years;

- (c) subsection (1)(d) or (e), to a fine or a term of imprisonment not longer than 10 years.
- (d) subsection (1)(h), to a fine or to imprisonment for a period up to imprisonment for life.

56A. Consent of National Director to institute proceedings and reporting obligations

- (1) No prosecution under section 56(1)(h) may be instituted without the written authority of the National Director of Public Prosecutions.
- (2) The National Director must communicate the final outcome of the proceedings promptly to the Director General of the International Atomic Energy Agency if a person is prosecuted for an offence referred to in subsection (1), except where:
 - (a) the offence was committed in the Republic;
 - (b) the offence involved nuclear material used for peaceful purposes in domestic use, storage or transport; and
 - (c) both the alleged offender and the nuclear material remained in the territory of the Republic.

57. Legal succession to Atomic Energy Corporation

- (1) The Corporation will be substituted for the Atomic Energy Corporation in any contract or agreement entered into by the latter before the specified date, if the contract or agreement:
 - (a) relates to any matter which, on the specified date, falls within the Corporation's competence in terms of this Act; and
 - (b) is still pending on the specified date, that is to say, where the term of the contract or agreement has not yet expired, or any obligation thereunder has not been fulfilled (whichever may be applicable).
- (2) As from the specified date, the Corporation:
 - (a) will take over from the Atomic Energy Corporation the responsibility for all projects and work which had been commenced with before that date in terms of the previous Act:
 - (i) with regard to matters which, on the specified date, fall within the Corporation's competence in terms of this Act; and
 - (ii) which, on the specified date, have not been completed; and
 - (b) will be competent to continue with and to carry out those projects and that work or to have them carried out subject to the provisions of this Act and any agreements, contemplated in subsection (1), relating to the execution of the projects or the performance of the work by the other contracting party.
- (3)(a) The Corporation will be substituted for the Atomic Energy Corporation as party in any legal proceedings instituted by or against the Atomic Energy Corporation before the specified date and still pending on that date, where the legal proceedings are founded on a cause of Action relating to or arising from the exercise or performance of any power, function or duty of the Atomic Energy Corporation in terms of, or purportedly in terms of, the previous Act or from its business or operations thereunder, if, on the specified date, the Corporation would have been competent in terms of this Act to exercise or perform such a power, function or duty or to carry on or conduct any business or operations of a nature substantially the same as those relevant in the proceedings.
- (b) Any legal proceedings founded on a cause of Action which arose before the specified date, relates to or arises from the exercise or performance of any power, function or duty of the Atomic Energy Corporation in terms of the previous Act or from its business and operations thereunder

and which is brought after the specified date, must be instituted by or against the Corporation if, on the specified date, the Corporation would have been competent in terms of this Act to exercise or perform such a power, function or duty or to carry on or conduct any business or operations of a nature substantially the same as those relevant to the proceedings.

- (4)(a) The State, as represented by the Minister, will be substituted for the Atomic Energy Corporation in:
- (i) any contract or agreement entered into by the Atomic Energy Corporation before the specified date and still pending on that date, in any case where subsection (1) does not apply;
 - (ii) any legal proceedings instituted by or against the Atomic Energy Corporation before the specified date and still pending on that date, where the legal proceedings are founded on a cause of Action relating to or arising from the exercise or performance of any power, function or duty or the carrying on or conducting of any business or operations of the Atomic Energy Corporation, in any case where subsection (3)(a) does not apply.
- (b) Any legal proceedings founded on such a cause of Action that arose before the specified date and which are brought after the specified date, must be instituted by or against the State, as represented by the Minister, in any case where subsection (3)(b) does not apply.
- (c) The Minister will:
- (i) take over from the Atomic Energy Corporation, with effect from the specified date, the responsibility for all projects and work commenced before the specified date but not yet completed by that date, in any case where subsection (2)(a) does not apply.
 - (ii) be competent to continue with and carry out those projects and that work, subject to the provisions of this Act and any agreement referred to in subsection (2)(b).

58. ...

Amends section 1 of the Hazardous Substances Act 15 of 1973 by substituting the expression 'Nuclear Energy Act, 1993', where it occurs in the definition of 'Group IV hazardous substance', with the expression 'Nuclear Energy Act, 1999'.

59. Amendment of Act 87 of 1993

The Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act 87 of 1993), is amended as set out in the schedule.

60. Partial repeal of Act 131 of 1993, and savings

- (1) The following provisions of the Nuclear Energy Act, 1993 (Act 131 of 1993), are hereby repealed:
- (a) sections 2 and 3, and chapters II, III and IV; and
 - (b) section 1, in so far as it relates to anything in any of those sections or in any of those chapters; and
 - (c) the provisions of chapter VII, in so far as they relate to the Atomic Energy Corporation.
- (2) Despite any repeal effected by subsection (1), but subject to any specific transitional arrangements made elsewhere in this Act:
- (a) any delegation or assignment made by the board of directors or chief executive officer of the Atomic Energy Corporation under section 14(2) or (3) of the previous Act, must be regarded and treated as having been made by the Corporation's Board of Directors or chief executive officer, respectively, under section 20 or 24 (as the case may be) of this Act, to

a functionary under this Act corresponding to the relevant delegatee under the previous Act;

- (b) any notice, declaration, determination, exemption, direction, instruction, authorisation, authority, consent, permission, report, return, submission, application, arrangement, measure, verification or measurement issued, given, made, granted, withdrawn, furnished, submitted or taken, and any other Act or thing performed or done, under, in terms of or in compliance with the provisions of the previous Act, will be regarded and treated as having been issued, given, made, granted, withdrawn, furnished, submitted, taken, performed or done under, in terms of or in compliance with the corresponding provisions of this Act.

61. Short title and commencement

- (1) This Act is called the Nuclear Energy Act, 1999.
- (2)(a) Except for section 4, this Act comes into operation on a date specified by the President by proclamation in the *Gazette*.
- (b) The date to be so specified, must be so determined by the President, after consultation with the Registrar of Companies, as to coincide with the incorporation of the South African Nuclear Energy Corporation Limited in accordance with section 4.
- (3) Section 4 comes into operation on the date of the promulgation of this Act in the *Gazette*.

Schedule 1: RESTRICTED MATERIAL

1. Beryllium – Beryllium as follows: Metal, alloys containing more than 50% of beryllium by mass, compounds containing beryllium, and manufactures thereof, except:

- (a) metal windows for X-ray machines;
- (b) oxide shapes in fabricated or semi-fabricated forms specially designed for electronic component parts or as substrates for electronic circuits.

Technical Note: This control applies to waste and scrap containing beryllium as defined here.

2. Hafnium – Hafnium of the following description: Metal, alloys and compounds of hafnium containing more than 60% hafnium by mass and manufactures thereof.

3. Zirconium – Zirconium as follows: Metal, alloys containing more than 50% zirconium by mass and compounds in which the ratio of hafnium content to zirconium content is less than 1 part to 500 parts by mass, and manufactures wholly thereof: *except zirconium in the form of foil having a thickness not exceeding 0,10 mm.*

Technical Note: This control applies to waste and scrap containing zirconium as defined here.

Schedule 2: SOURCE MATERIAL

Source material is any substance containing:

- (a) uranium, expressed as a conversion to uranium oxide U3O8, above:
 - (i) 0,05 % of the mass of the substance; and
 - (ii) a mass of 3 kilograms; or
- (b) thorium, expressed as a conversion to thorium oxide ThO2, above:
 - (i) 0,05 % of the mass of the substance; and
 - (ii) a mass of 3 kilograms; or
- (c) uranium, depleted in the isotope 235, above 3 kilograms.

Schedule 3: SPECIAL NUCLEAR MATERIAL

Special nuclear material is:

- (a) uranium-233;
- (b) uranium enriched in its uranium-235 isotope;
- (c) transuranium elements; or
- (d) any compound of any of the materials referred to in subparagraphs (a), (b) and (c) or of anything

so referred to and any other substance or substances in a quantity consisting of or containing a mass of any of the isotopes or elements referred to in subparagraphs (a), (b) and (c), above 0,5 gram, regardless of the concentration thereof.

Schedule 4: NUCLEAR RELATED MATERIAL AND EQUIPMENT

Category A: Material

1. Deuterium and heavy water — Deuterium, heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen atoms exceeds 1:5 000 for use in a nuclear reactor.
2. Nuclear grade graphite — Graphite having a purity level better than 5 parts per million boron equivalent and with a density greater than 1,50 g/cm³.

Category B: Equipment

1. Reactors and equipment therefor

- (1) Complete nuclear reactor capable of operation so as to maintain a controlled self-sustaining fission chain reaction.
- (2) Reactor pressure vessels as complete units or as major shop-fabricated parts which are especially designed or prepared to contain the core of a nuclear reactor referred to in subparagraph (1), and are capable of withstanding the operating pressure of the primary coolant.
- (3) Reactor fuel charging and discharging machines especially designed or prepared for inserting or removing fuel in a nuclear reactor referred to in subparagraph (1), which is capable of on-load operation or employing technically sophisticated positioning or alignment features to allow complex off-load fuelling operations such as those in which direct viewing of or access to the fuel is not normally available.
- (4) Reactor control rods especially designed or prepared for the control of the reaction rate in a nuclear reactor referred to in subparagraph (1).
- (5) Reactor pressure tubes which are especially designed or prepared to contain fuel elements and the primary coolant in a reactor referred to in subparagraph (1), at an operating pressure in excess of 5,1 MPa.
- (6) Primary coolant pumps especially designed or prepared for circulating liquid metal as primary coolant for nuclear reactors referred to in subparagraph (1).
- (7) Zirconium metal and alloys in the form of tubes or assemblies of tubes, especially designed or prepared for use in a reactor referred to in subparagraph (1), and in which the relation of hafnium to zirconium is less than 1:500 parts by mass.

2. Plants for the reprocessing of irradiated fuel elements and equipment, especially designed or prepared therefor

- (1) Plants for the recovery of fissionable materials from irradiated nuclear materials.
- (2) Irradiated fuel element chopping machines, remotely operated and especially designed or prepared for use in a reprocessing plant and intended to cut, chop or shear irradiated nuclear fuel assemblies, bundles or rods.
- (3) Dissolvers, which are critically safe tanks (e.g. small diameter, annular or slab tanks) especially designed or prepared for use in a reprocessing plant, intended for the dissolution of irradiated nuclear fuel and which are capable of withstanding hot, highly corrosive liquids and which can be remotely loaded and maintained.
- (4)(a) Solvent extractors and solvent extraction equipment such as packed or pulse columns, mixer settlers or centrifugal contactors especially designed or prepared for use in a plant for the reprocessing of irradiated fuel.
- (b) Solvent extractors:
 - (i) must be resistant to the corrosive effect of nitric acid; and
 - (ii) are normally fabricated to extremely high standards (including special welding and inspection and quality assurance and quality control techniques) out of low carbon stainless steels, titanium, zirconium, or other high quality materials.
- (5)(a) Chemical holding or storage vessels especially designed or prepared for use in a plant for the reprocessing of irradiated fuel.
- (b) The holding or storage vessels:
 - (i) must be resistant to the corrosive effect of nitric acid;
 - (ii) are normally fabricated of materials such as low carbon stainless steels, titanium or zirconium, or other high quality materials; and
 - (iii) may be designed for remote operation and maintenance and may have the following features for control of nuclear criticality:
 - (aa) walls or internal structures with a boron equivalent of at least 2 %; or
 - (bb) a maximum diameter of 175 mm for cylindrical vessels; or
 - (cc) a maximum width of 75 mm for either a slab or annular vessel.
- (6) Plutonium nitrate to oxide conversion systems especially designed or prepared for the conversion of plutonium nitrate to plutonium oxide, in particular adapted so as to avoid criticality and radiation effects and to minimise toxicity hazards.
- (7) Plutonium oxide to metal production systems especially designed or prepared for the production of plutonium metal, in particular adapted so as to avoid criticality and radiation effects and to minimise toxicity hazards.

3. Plants for the fabrication of fuel elements

A 'plant for the fabrication of fuel elements' includes the equipment:

- (a) which normally comes in direct contact with, or directly processes, or controls, the production flow of nuclear material; or
- (b) which seals the nuclear material within the cladding.

4. Plants for the separation of isotopes of uranium and equipment, other than analytical instruments, especially designed or prepared therefor

- (1) Gas centrifuges and assemblies and components especially designed or prepared for use in gas centrifuges, including:
 - (a) rotating components such as complete rotor assemblies, rotor tubes, rings or bellows, baffles and top and bottom caps;
 - (b) static components such as magnetic suspension bearings, bearings and dampers, molecular pumps and motor stators;

- (c) especially designed or prepared auxiliary systems, equipment and components for gas centrifuge plants, including:
 - (i) feed systems and product and tails withdrawal systems;
 - (ii) machine header piping systems;
 - (iii) UF₆ mass spectrometers and ion sources; and
 - (iv) frequency changers.
- (2) Especially designed or prepared assemblies and components for use in gaseous diffusion enrichment, including:
 - (a) gaseous diffusion barriers;
 - (b) diffusor housings;
 - (c) compressors and gas blowers;
 - (d) rotary shaft seals;
 - (e) heat exchangers for cooling UF₆, and
 - (f) especially designed or prepared auxiliary systems, equipment and components for use in gaseous diffusion enrichment, including:
 - (i) feed systems and product and tails withdrawal systems;
 - (ii) header piping systems;
 - (iii) vacuum systems;
 - (iv) special shut-off and control valves; and
 - (v) UF₆ mass spectrometers and ion sources.
- (3) Especially designed or prepared systems, equipment and components for use in aerodynamic enrichment plants, including:
 - (a) separation nozzles;
 - (b) vortex tubes;
 - (c) compressors and gas blowers;
 - (d) rotary shaft seals;
 - (e) heat exchangers for gas cooling;
 - (f) separation element housings;
 - (g) feed systems and product and tails withdrawal systems;
 - (h) header piping systems;
 - (i) vacuum systems and pumps;
 - (j) special shut-off and control valves;
 - (k) UF₆ mass spectrometers and ion sources; and
 - (l) UF₆ and carrier gas separation systems.
- (4) Especially designed or prepared systems, equipment and components for use in chemical exchange or ion exchange enrichment plants, including:
 - (a) liquid-liquid exchange columns (chemical exchange);
 - (b) liquid-liquid centrifugal contractors (chemical exchange);
 - (c) uranium reduction systems and equipment (chemical exchange);
 - (d) feed preparation systems (chemical exchange);
 - (e) uranium oxidation systems (chemical exchange);
 - (f) fast-reacting ion exchange resins and absorbends (ion exchange);
 - (g) ion exchange columns (ion exchange); and
 - (h) ion exchange reflux systems (ion exchange).
- (5) Especially designed or prepared systems, equipment and components for use in laser-based enrichment plants, including
 - (a) uranium vaporisation systems (AVLIS);
 - (b) liquid uranium metal handling systems (AVLIS);
 - (c) uranium metal 'product' and 'tails' collector assemblies (AVLIS);
 - (d) separator module housings (AVLIS);
 - (e) supersonic expansion nozzles (MLIS);
 - (f) uranium pentafluoride product collectors (MLIS);
 - (g) UF₆ with carrier gas compressors (MLIS);
 - (h) rotary shaft seals (MLIS);
 - (i) fluorination systems (MLIS);
 - (j) UF₆ mass spectrometers and ion sources (MLIS);

- (k) feed systems and product and tails withdrawal systems (MLIS);
 - (l) UF₆ and carrier gas separation systems (MLIS); and
 - (m) laser systems (AVLIS, MLIS and CRISLA).
 - (6) Especially designed or prepared systems, equipment and components for use in plasma separation enrichment plants, including:
 - (a) microwave power sources and antennae;
 - (b) ion excitation coils;
 - (c) uranium plasma generation systems;
 - (d) liquid uranium metal handling systems;
 - (e) uranium metal 'product' and 'tails' collector assemblies; and
 - (f) separator module housings.
 - (7) Especially designed or prepared systems, equipment and components for use in electromagnetic enrichment plants, including:
 - (a) electromagnetic isotope separators;
 - (b) high voltage power supplies; and
 - (c) magnet power supplies.
5. **Plants for the production of heavy water, deuterium and deuterium compounds and equipment especially designed or prepared therefor**
- (1) Water-hydrogen sulphide exchange towers.
 - (2) Blowers and compressors.
 - (3) Ammonia-hydrogen exchange towers.
 - (4) Tower internals and stage pumps.
 - (5) Ammonia crackers.
 - (6) Infrared absorption analysers.
 - (7) Catalytic burners.

2.2.4.2.2 National Nuclear Regulator Act

Description: The Nuclear Regulator Act of 1999 establishes the National Nuclear Regulator charged with the function of regulating nuclear activities. The Act provides for the objects, functions as well as the manner in which the Regulator and its staff is to be managed. The Act specifies safety standards and regulatory practices for the protection of persons, property and the environment against nuclear damage.

Nuclear Regulator Act 47 of 1999

CHAPTER 1: Interpretation

1. Definitions

In this Act, unless the context indicates otherwise:

'action' means:

- (a) the use, possession, production, storage, enrichment, processing, reprocessing, conveying or disposal of, or causing to be conveyed, radioactive material;
- (b) any action, the performance of which may result in persons accumulating a radiation dose resulting from exposure to ionising radiation; or
- (c) any other action involving radioactive material;

'board' means the Board of Directors as referred to in section 8(1);

'certificate of exemption' means a certificate referred to in section 22(1);

'certificate of registration' means a certificate referred to in section 22(1);

'chief executive officer' means the person appointed as such in terms of section 15(1);

'closure' means the completion of all operations after the emplacement of spent fuel or radioactive waste in a disposal facility;

'Council for Nuclear Safety' means the Council for Nuclear Safety contemplated in section 33 of the Nuclear Energy Act, 1993 (Act 131 of 1993);

'enrich' means increase the ratio of an isotopic constituent of an element to the remaining isotopic constituents of that element relative to the naturally occurring ratio, and 'enrichment' has a corresponding meaning;

'financial year', in relation to the Regulator, means the period contemplated in section 18;

'inspector' means the person appointed as such in terms of section 41(1);

'ionising radiation' means electromagnetic or corpuscular emission emitted from radioactive material and capable of producing ions, directly or indirectly while passing through matter;

'Minister' means the Minister of Minerals and Energy;

'nuclear accident' means any occurrence or succession of occurrences having the same origin which:

- (a) results in the release of radioactive material, or a radiation dose, which exceeds the safety standards contemplated in section 36;
- (b) is capable of causing nuclear damage;

'nuclear authorisation' means a nuclear installation licence, nuclear vessel licence, certificate of registration or certificate of exemption;

'nuclear damage' means:

- (a) any injury to or the death or any sickness or disease of a person;
- (b) other damage, including any damage to or any loss of use of property or damage to the environment, which arises out of, or results from, or is attributable to, the ionising radiation associated with a nuclear installation, nuclear vessel or action;

'nuclear energy' means all the energy released by a nuclear fission or nuclear fusion process;

'nuclear incident' means:

- (a) any unintended event at a nuclear installation which causes off-site public exposure of the order of at least one tenth of the prescribed limits;
- (b) the spread of radioactive contamination on a site or exposure of a worker above the prescribed limits or a significant failure in safety provisions other than a nuclear accident;

'nuclear installation' means:

- (a) a facility, installation, plant or structure designed or adapted for or which may involve the carrying out of any process, other than the mining and processing of ore, within the nuclear fuel cycle involving radioactive material, including, but not limited to:
 - (i) a uranium or thorium refinement or conversion facility;
 - (ii) a uranium enrichment facility;
 - (iii) a nuclear fuel fabrication facility;
 - (iv) a nuclear reactor, including a nuclear fission reactor or any other facility intended to create nuclear fusion;
 - (v) a spent nuclear fuel reprocessing facility;
 - (vi) a spent nuclear fuel storage facility;
 - (vii) an enriched uranium processing and storage facility; and

- (viii) a facility specifically designed to handle, treat, condition, temporarily store or permanently dispose of any radioactive material which is intended to be disposed of as waste material; or
- (b) any facility, installation, plant or structure declared to be a nuclear installation in terms of section 2(3);

'nuclear installation licence' means a licence referred to in section 21(1);

'nuclear reprocessing facility' means a facility operated to extract or separate from source material or special nuclear material that has been subjected to radiation, those constituents that have undergone transmutations as a result of the radiation, or those constituents that have not undergone transmutations and are re-usable;

'nuclear vessel licence' means a licence referred to in section 21(2);

'period of responsibility', in relation to the holder of a nuclear authorisation, means the period beginning on the date of the grant of the relevant nuclear installation licence or certificate of registration or, in the case of a nuclear vessel, when it enters South Africa's territorial waters, and ending on whichever of the following dates is the earlier, namely:

- (a) the date on which the Regulator gives notice in writing to the holder that in its opinion the risk of nuclear damage from:
 - (i) anything on the site, or at or in the nuclear installation, in question;
 - (ii) any Act performed in regard to the nuclear installation or site in question;
 - (iii) any action described in section 2(1)(c), as the case may be, no longer exceeds the safety standards contemplated in section 36;
- (b) the date on which a nuclear authorisation in respect of the nuclear installation, site or action in question is granted to some other person;
- (c) in the case of a nuclear vessel, the date on which the nuclear vessel leaves South Africa's territorial waters;

'plant' means any machinery, equipment or device, whether it is attached to the ground or not;

'prescribed' means prescribed by regulation made in terms of section 47;

'previous Act' means the Nuclear Energy Act, 1993 (Act 131 of 1993);

'radioactive material' means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial, including, but not limited to, radioactive waste and spent nuclear fuel;

'radioactive nuclide' means any unstable atomic nucleus which decays spontaneously with the accompanying emission of ionising radiation;

'radioactivity' means the measure of a quantity of radioactive materials;

'Regulator' means the National Nuclear Regulator established by section 3;

'site' means a site on which:

- (a) a nuclear installation is situated or is being constructed; or
- (b) any action which is capable of causing nuclear damage, is carried out;

'specified date' means the date contemplated in section 56(2);

'this Act' includes any regulations made in terms of section 47.

2. Application of Act, and declaration of nuclear installation

(1) Subject to subsection (2), this Act applies to:

- (a) the siting, design, construction, operation, decontamination, decommissioning and closure of any nuclear installation;
- (b) vessels propelled by nuclear power or having radioactive material on board which is capable of causing nuclear damage; and
- (c) any action which is capable of causing nuclear damage.

(2) This Act does not apply to:

- (a) exposure to cosmic radiation or to potassium-40 in the body or any other radioactive material or actions not amenable to regulatory control as

- determined by the Minister, after consultation with the board and by notice in the *Gazette*;
- (b) subject to section 41(4), any action where the radioactivity concentrations of individual radioactive nuclides, or the total radioactivity content, are below the exclusion levels provided for in the safety standards contemplated in section 36;
 - (c) Group IV hazardous substances as defined in section 1 of the Hazardous Substances Act, 1973 (Act 15 of 1973);
 - (d) exposure to ionising radiation emitted from equipment, declared to be a Group III hazardous substance in terms of section 2(1)(b) of the Hazardous Substances Act, 1973.
- (3) For the purposes of this Act, the Minister may, after consultation with the board and by notice in the *Gazette*, declare any facility, installation, plant or structure, including a mine or ore-processing facility, to be a nuclear installation.

CHAPTER 2: National Nuclear Regulator

3. Establishment of National Nuclear Regulator

A juristic person to be known as the National Nuclear Regulator, comprising a board, a chief executive officer and staff, is hereby established.

4. Regulator successor to assets and liabilities of Council for Nuclear Safety

- (1) On the specified date, all assets, rights, liabilities and obligations of the Council for Nuclear Safety pass to the Regulator.
- (2) The Registrar of Deeds concerned must make such entries or endorsements as are necessary to give effect to subsection (1) in or on any relevant register, title deed or any other document in his or her office or submitted to him or her.
- (3) No office fees or other moneys are payable in respect of such an entry or endorsement.

5. Objects of Regulator

The objects of the Regulator are to:

- (a) provide for the protection of persons, property and the environment against nuclear damage through the establishment of safety standards and regulatory practices;
- (b) exercise regulatory control related to safety over:
 - (i) the siting, design, construction, operation, manufacture of component parts, and decontamination, decommissioning and closure of nuclear installations; and
 - (ii) vessels propelled by nuclear power or having radioactive material on board which is capable of causing nuclear damage, through the granting of nuclear authorisations;
- (c) exercise regulatory control over other actions, to which this Act applies, through the granting of nuclear authorisations;
- (d) provide assurance of compliance with the conditions of nuclear authorisations through the implementation of a system of compliance inspections;
- (e) fulfil national obligations in respect of international legal instruments concerning nuclear safety; and
- (f) ensure that provisions for nuclear emergency planning are in place.

6. Co-operative governance

(1) To give effect to the principles of co-operative government and intergovernmental relations contemplated in chapter 3 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), all organs of state, as defined in section 239 of the Constitution, on which functions in respect of the monitoring and control of radioactive material or exposure to ionising radiation are conferred by this Act or other legislation, must co-operate with one another in order to:

- (a) ensure the effective monitoring and control of the nuclear hazard;
- (b) co-ordinate the exercise of such functions;
- (c) minimise the duplication of such functions and procedures regarding the exercise of such functions; and
- (d) promote consistency in the exercise of such functions.

(2) The Regulator must conclude a co-operative agreement with every relevant organ of state to give effect to the co-operation contemplated in subsection (1).

(3) The Minister must, after consultation with the board and in consultation with the Ministers responsible for the relevant organs of state, make regulations regarding:

- (a) time periods and procedures, including procedures for public participation and mechanisms for dispute resolution, in respect of the conclusion of co-operative agreements referred to in subsection (2);
- (b) matters that must be provided for in co-operative agreements, including, but not limited to, provision for:
 - (i) time periods for the implementation of co-operative agreements;
 - (ii) the co-ordination of the functions referred to in subsection (1) in a manner that avoids unnecessary duplication and omissions regarding safety requirements and the issuing of conflicting instructions;
 - (iii) measures to be taken in the event of non-compliance with a co-operative agreement;
 - (iv) dispute resolution in respect of the interpretation or application of co-operative agreements referred to in subsection (2).
- (4) The Minister must publish by notice in the *Gazette* every co-operative agreement concluded in terms of subsection (2).

7. Functions of Regulator

(1) The Regulator may, subject to this Act, for the purpose of achieving its objects:

- (a) grant or amend nuclear authorisations;
- (b) hire, purchase or otherwise acquire any movable and immovable property and proprietary right, and rent or dispose of property so acquired, but may not acquire or dispose of immovable property without the prior approval of the Minister, granted with the agreement of the Minister of Finance;
- (c) collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information, in connection with any matter regarding nuclear energy falling within the objects of the Regulator;
- (d) collaborate with any educational, scientific or other body, a government or institution in connection with the provision of instruction for, or the training of, persons required by the Regulator;
- (e) provide, on such conditions as the Regulator thinks fit, financial or other assistance in connection with the training of persons in so far as in the board's opinion it is necessary to ensure that a sufficient number of trained persons are available to enable the Regulator to perform its functions;

- (f) insure itself against any loss, damage, risk or liability which it may suffer or incur;
 - (g) advise the Minister on matters associated with any action or condition which:
 - (i) is capable of causing nuclear damage;
 - (ii) the Minister refers to the Regulator; or
 - (iii) the Regulator thinks necessary to advise the Minister on;
 - (h) for purposes of this Act, act as the national competent authority in connection with the International Atomic Energy Agency's Regulations for the Safe Transport of Radioactive Material;
 - (i) conclude contracts, enter into agreements or perform any act, whether in the Republic or elsewhere, whereby its objects are carried into effect or which is calculated, directly or indirectly, to enhance the value of the services which the Regulator renders towards the achievement of its objects or which may be prescribed;
 - (j) produce and submit to the Minister an annual public report on the health and safety related to workers, the public and the environment associated with all sites including, but not limited to, the prescribed contents.
- (2) The Minister must table in Parliament the annual public report submitted to him or her in terms of subsection (1)(j) within 14 days after it is so submitted if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.
- (3) The functions of the Regulator must be performed by the chief executive officer, as directed by the board, except where otherwise specified in this Act.

8. Control and management of affairs of Regulator

- (1) The Regulator is governed and controlled, in accordance with this Act, by a Board of Directors.
- (2) The board:
 - (a) must ensure that the objects of the Regulator referred to in section 5 are carried out; and
 - (b) exercises general control over the performance of the Regulator's functions.
- (3) The board represents the Regulator and all acts performed by the board or on its authority are the acts of the Regulator.
- (4) The board consists of:
 - (a) the following directors appointed by the Minister:
 - (i) One representative of organised labour;
 - (ii) one representative of organised business;
 - (iii) one person representing communities, which may be affected by nuclear activities;
 - (iv) an official from the Department of Minerals and Energy;
 - (v) an official from the Department of Environmental Affairs and Tourism; and
 - (vi) not more than seven other directors; and
 - (b) the chief executive officer.
- (5) The Minister must from among the directors of the board referred to in subsection (4)(a)(vi) appoint a chairperson and a deputy chairperson.
- (6) A person may only be appointed as a director in terms of subsection (4)(a) if he or she is suitably qualified.
- (7) For the purposes of appointing the directors of the board referred to in subsection (4)(a)(i), (ii), (iii) and (vi):

- (a) the Minister must through the media and by notice in the *Gazette* invite nominations of persons as candidates for the relevant positions on the board;
- (b) a panel, appointed by the Minister, which may include representatives of the relevant committees of Parliament, must compile a shortlist of not more than 20 candidates from the persons so nominated;
- (c) the Minister must, from the shortlist so compiled and from other persons nominated as contemplated in paragraph (a), appoint persons to the relevant positions on the board; and
- (d) the Minister may, for a director appointed in terms of subsection (4)(a)(i) to (v), appoint a suitably qualified alternate director to act in the place of that director during his or her absence.
- (8) A person is disqualified from being appointed or remaining a director of the board if he or she:
 - (a) is not a South African citizen;
 - (b) is declared insolvent;
 - (c) is convicted of an offence and sentenced to imprisonment without the option of a fine;
 - (d) becomes a member of Parliament, a provincial legislature, a Municipal Council, the Cabinet or the Executive Council of a province;
 - (e) is a holder of a nuclear authorisation or an employee of such holder.
- (9) A director of the board may not be present during, or take part in, the discussion of, or the making of a decision on, any matter before the board in which that director or his or her spouse, life partner, child, business partner or associate or employer, other than the State, has a direct or indirect financial interest.
- (10) Upon appointment of a person as a director of the board he or she must submit to the Minister and the board a written statement in which he or she declares whether or not he or she has any interest contemplated in subsection (9).
- (11) If any director acquires or contemplates acquiring an interest, which could possibly be an interest contemplated in subsection (9), he or she must immediately in writing declare that fact to the Minister and the board.
- (12)(a) The chairperson of the board holds office for a period specified in the letter of appointment but not exceeding three years and may be reappointed upon expiry of that term of office.
- (b) A director referred to in subsection (4)(a) holds office for a period specified in the letter of appointment but not exceeding three years and may be reappointed upon expiry of that term of office.
- (13)(a) If a director dies or vacates office, the Minister may, subject to subsection (8), appoint another person as a director.
- (b) The person so appointed serves for the unexpired portion of the predecessor's term of office.
- (14) Despite the preceding provisions of this section:
 - (a) the persons who, immediately before the specified date, served as members of the council of the Council for Nuclear Safety in terms of the previous Act, must act as the directors of the Regulator's board from the specified date until the day immediately before the Regulator's board, constituted in accordance with subsection (4), meets for the first time; and
 - (b) the chairperson of that council must act as chairperson of that board for the period contemplated in paragraph (a) and must determine the times and places of its meetings.

9. Vacation of office of board members

(1) The Minister may at any time discharge a director of the board from office:

- (a) if the director has repeatedly failed to perform his or her functions efficiently;
- (b) if, because of any physical or mental illness or disability, the director has become incapable of performing his or her functions or performing them efficiently; or
- (c) for misconduct.

(2) A director vacates office when:

- (a) he or she is disqualified in terms of section 8(8);
- (b) he or she is discharged in terms of subsection (1);
- (c) he or she is absent from three consecutive meetings of the board without the chairperson's permission, unless the board has condoned the absence on good reasons advanced; or
- (d) the person's resignation as director takes effect.

10. Meetings of board

(1) The first meeting of the board is held at the time and place determined by the Minister, and thereafter meetings are held at such times and places as the board determines.

(2) The chairperson or, in his or her absence, the deputy chairperson, may at any time call a special meeting of the board to be held at the time and place determined by the chairperson or deputy chairperson.

(3) All directors must be notified in writing of every meeting of the board.

(4) A majority of the directors forms a quorum at any meeting of the board.

(5) Subject to subsection (4), a decision of the majority of the directors present at a meeting of the board constitutes a decision of the board and, in the event of an equality of votes on any matter, the person chairing the relevant meeting has a casting vote in addition to a deliberative vote.

(6) No decision taken by the board or an act performed under its authority, is invalid merely by reason of:

- (a) a vacancy on the board; or
- (b) the fact that any person not entitled to do so, sat as a director at the time that decision was taken, if that decision was taken or that act was authorised by the required majority of directors present at the meeting who were entitled to sit as directors.

(7)(a) If the chairperson is for any reason unable to act, or the office of chairperson is vacant, the deputy chairperson must act as chairperson.

(b) If both the chairperson and deputy chairperson are for any reason unable to act, or both the offices of chairperson and deputy chairperson are vacant, the board must designate any other director to act as chairperson.

11. Minutes of board meetings

(1) The board must cause minutes of its meetings to be kept and copies of the minutes to be circulated to its members.

(2) Such minutes, when signed at a next meeting by the person who chairs that meeting, are, in the absence of proof of error therein, regarded as a true and correct record of the proceedings and are *prima facie* evidence of those proceedings before a court of law, any tribunal or a commission of inquiry.

12. Committees of board

The board may:

- (a) establish such committees as it considers necessary to assist it in the performance of its functions; and

- (b) appoint as members of any such committee such persons, including directors of the board, staff of the Regulator, the holders of nuclear authorisations and employees of such holders, as the board considers appropriate.

13. Remuneration of directors and committee members

A director, or member of a committee, of the board, other than the chief executive officer or a person who is in the full-time employment of the Regulator or other organ of state, is appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister determines with the agreement of the Minister of Finance.

14. Delegation and assignment by board

- (1) Subject to subsections (2), (3), (4) and (5), the board may, by resolution, delegate any power, and assign any duty, conferred or imposed on it by the operation of section 8(1) or (2) or conferred or imposed on it elsewhere by this Act, to its chairperson or a committee of the board.
- (2) The board is not divested of any power or relieved of any function it so delegated or assigned.
- (3) Such delegation or assignment:
 - (a) may be made subject to conditions determined by the board;
 - (b) may, subject to subsection (5), be given together with the power to subdelegate or further assign, subject to conditions determined by the board;
 - (c) must be communicated to the delegatee or assignee in writing.
- (4) The written communication in terms of subsection (3)(c):
 - (a) must contain full particulars of the matters being delegated or assigned and of the conditions determined in terms of subsection (3)(a); and
 - (b) if the power of subdelegation or further assignment is conferred, must state that fact and any conditions determined in terms of subsection (3)(b).
- (5) The board may, by resolution:
 - (a) amend or revoke a delegation or assignment made in terms of subsection (1);
 - (b) withdraw any decision, other than a decision which confers a right or entitlement on any third party, made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter itself.
- (6) The Minister may, by notice in the *Gazette*:
 - (a) prohibit the delegation by the board of any particular power or its assignment of any particular duty, whether generally or in the circumstances specified in the notice;
 - (b) limit the circumstances in which any particular power or duty of the board may be delegated, subdelegated, assigned or further assigned;
 - (c) prescribe conditions for the delegation of any particular power or assignment of any particular duty.

15. Chief executive officer of Regulator

- (1) The Minister must, after consultation with the board, appoint a person with suitable qualifications as chief executive officer of the Regulator.
- (2) A person is disqualified from being appointed or remaining a chief executive officer if subject to any of the disqualifications mentioned in section 8(8).
- (3) A chief executive officer holds office for a period not exceeding three years as specified in the letter of appointment and may be reappointed upon expiry of that term of office.

- (4) The Minister may at any time discharge the chief executive officer from office:
- (a) if the chief executive officer has repeatedly failed to perform the duties of office efficiently;
 - (b) if, because of any physical or mental illness or disability, the chief executive officer has become incapable of performing the functions of that office or performing them efficiently; or
 - (c) for misconduct.
- (5)(a) The person who, immediately before the specified date was the executive officer of the Council for Nuclear Safety by virtue of appointment to that office in terms of section 44 of the previous Act, must, from the specified date until the date on which the appointment of the Regulator's first chief executive officer in terms of subsection (1) of this section takes effect, act as the Regulator's chief executive officer.
- (b) A person so acting is not precluded from being appointed as the Regulator's chief executive officer in terms of subsection (1).
- (6) The chief executive officer must:
- (a) ensure that the functions of the Regulator in terms of this Act are performed;
 - (b) report to the board on the proper functioning of the Regulator;
 - (c) issue a nuclear authorisation in accordance with this Act;
 - (d) complete a report on the activities of the Regulator for each financial year in accordance with the Reporting by Public Entities Act, 1992 (Act 93 of 1992), and submit the report to the board for approval;
 - (e) each financial year, after consultation with the board and with the approval of the Minister, publish and distribute a plan of Action for the activities of the Regulator.
- (7) The board must forward the report mentioned in subsection (6)(d), as approved by it, to the Minister within three months of the end of the financial year concerned.
- (8) The chief executive officer is the accounting officer of the board charged with the responsibility of accounting for all money received and payments made by, and the assets of, the Regulator.
- (9) The chief executive officer must exercise all the powers and perform all the duties conferred or imposed on the accounting officer by:
- (a) this Act, the Reporting by Public Entities Act, 1992, or any other law;
 - (b) the board.
- (10) If the chief executive officer is for any reason unable to perform any of his or her functions, the chairperson of the board must appoint an employee of the Regulator to act as chief executive officer until the chief executive officer is able to resume those functions.
- (11) An acting chief executive officer has all the powers and must perform all the duties of the chief executive officer.

16. Staff of Regulator

- (1) Subject to the written directions of the board, the chief executive officer may appoint such staff for the Regulator as are necessary to perform the work arising from or connected with the Regulator's functions in terms of this Act.
- (2)(a) The terms and conditions of service of the chief executive officer and other staff of the Regulator, including their remuneration, allowances, subsidies and other service benefits, are determined by the board.
- (b) That remuneration and those allowances, subsidies and other service benefits must be determined in accordance with a system approved by the Minister with the agreement of the Minister of Finance.

- (3)(a) The persons who, immediately before the specified date, were employees of the Council for Nuclear Safety appointed in terms of section 13(1) of the previous Act, or deemed by section 13(2) of that Act to have been so appointed, are, from that date, deemed to be employees of the Regulator who have been appointed in terms of subsection (1) of this section.
- (b) The terms and conditions of service, allowances, subsidies and other service benefits that were applicable to those employees immediately before the specified date, continue, with effect from the specified date, to apply until re-determined by the board in terms of subsection (2).
- (c) The terms and conditions of service, allowances, subsidies and other service benefits so re-determined, may not be less than those applicable before the re-determination.
- (d) Those employees' respective periods of pensionable service with the Council for Nuclear Safety or its predecessor in terms of any law must be regarded as pensionable service for the purpose of membership of any pension fund or scheme of which they are members after the specified date.
- (e) The leave which has been accumulated by each of those employees while in the service of the Council for Nuclear Safety must be regarded as if it were leave accumulated by such an employee in the service of the Regulator.
- (4) Subject to subsection (5), the Regulator is regarded to be an associated institution for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963).
- (5) The board may, with the approval of the Minister granted with the agreement of the Minister of Finance, establish, manage and administer any pension or provident fund or medical scheme for the benefit of the staff of the Regulator for the benefit of its employees or have such a scheme or fund managed or administered by any other body or person.
- (6) Any pension or provident fund established by the Council for Nuclear Safety in terms of section 13(4)(b) of the previous Act is deemed to be a fund established in terms of subsection (5).

17. Funds of Regulator

- (1) The funds of the Regulator consist of:
 - (a) money appropriated by Parliament;
 - (b) fees paid to the Regulator in terms of section 28; and
 - (c) donations or contributions received by the Regulator, with the approval of the Minister, from any source.
- (2) The Regulator must, within the constraints of its statement referred to in subsection (7), utilise its funds for the defrayal of the expenses incurred by it in the performance of its functions in terms of this Act.
- (3) The chief executive officer must:
 - (a) open an account in the name of the Regulator with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990); and
 - (b) deposit therein all money received in terms of subsection (1).
- (4) The chief executive officer may, on behalf of the Regulator, invest any money received in terms of subsection (1) which is not required for immediate use:
 - (a) with the approval of the Minister, with the Public Investment Commissioners referred to in section 2 of the Public Investment Commissioners Act, 1984 (Act 45 of 1984); or

- (b) with such other institution as the board and the Minister, with the agreement of the Minister of Finance, determine.
- (5) The Regulator may use interest derived from the investment contemplated in subsection (4) to defray expenses in connection with the performance of its functions in terms of this Act.
- (6) The Regulator may, with the approval of the Minister, granted with the agreement of the Minister of Finance:
 - (a) authorise the establishment of such reserve funds as it considers necessary or expedient; and
 - (b) deposit such amounts therein, as it considers necessary or expedient.
- (7) The Regulator must in each financial year, at such time as determined by the Minister, submit a statement of its estimated income and expenditure for the following financial year to the Minister for his or her approval, granted with the agreement of the Minister of Finance.
- (8) The Auditor-General must externally audit the Regulator.

18. Financial year of Regulator

The Regulator's financial year is from 1 April in any year to 31 March in the following year, but the first financial year is from the specified date to 31 March in the following year.

19. Judicial management and liquidation of Regulator

Despite the provisions of any other law, the Regulator may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose.

CHAPTER 3: Nuclear Authorisation

20. Restrictions on certain actions

- (1) No person may site, construct, operate, decontaminate or decommission a nuclear installation, except under the authority of a nuclear installation licence.
- (2) No vessel which is propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage may:
 - (a) anchor or sojourn in the territorial waters of the Republic; or
 - (b) enter any port of the Republic, except under the authority of a nuclear vessel licence.
- (3) No person may engage in any action described in section 2(1)(c) other than any action contemplated in subsection (1) or (2), except under the authority of a certificate of registration or a certificate of exemption.

21. Application for nuclear installation or vessel licence

- (1) Any person wishing to site, construct, operate, decontaminate or decommission a nuclear installation may apply in the prescribed format to the chief executive officer for a nuclear installation licence and must furnish such information as the board requires.
- (2) Any person wishing to:
 - (a) anchor or sojourn in the territorial waters of the Republic; or
 - (b) enter any port in the Republic, with a vessel which is propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage, may apply to the chief executive officer for a nuclear vessel licence and must furnish such information as the board requires.
- (3) The chief executive officer must direct the applicant for a nuclear installation or vessel licence to:
 - (a) serve a copy of the application upon:

- (i) every municipality affected by the application; and
- (ii) such other body or person as the chief executive officer determines; and
- (b) publish a copy of the application in the *Gazette* and two newspapers circulating in the area of every such municipality.
- (4)(a) Any person who may be directly affected by the granting of a nuclear installation or vessel licence pursuant to an application in terms of subsection (1) or (2), may make representations to the board, relating to health, safety and environmental issues connected with the application, within 30 days of the date of publication in the *Gazette* contemplated in subsection (3)(b).
- (b) If the board is of the opinion that further public debate is necessary, it may arrange for such hearings on health, safety and environmental issues as it determines.
- (5) Subject to the board's approval, the chief executive officer may:
 - (a) refuse an application for a nuclear installation or vessel licence and must provide the applicant in writing with the reasons for the refusal; or
 - (b) grant an application for a nuclear installation licence or nuclear vessel licence subject to such conditions as may be determined in terms of section 23.

22. Application for certificate of registration or exemption for certain actions

- (1) Any person wishing to engage in any action described in section 2(1)(c) may apply in the prescribed format to the chief executive officer for a certificate of registration or a certificate of exemption and must furnish such information as the board requires.
- (2) The chief executive officer may direct that the applicant for a certificate of registration:
 - (a) serve a copy of the application upon:
 - (i) every municipality affected by the application; and
 - (ii) such other body or person as the chief executive officer determines; and
 - (b) publish a copy of the application in the *Gazette* and two newspapers circulating in the area of every such municipality.
- (3) The chief executive officer may, with the approval of the board:
 - (a) refuse to grant an application for a certificate of exemption or a certificate of registration made in terms of subsection (1) and must provide the applicant in writing with the reasons for the refusal; or
 - (b) issue:
 - (i) a certificate of registration subject to such conditions as may be determined in terms of section 23; or
 - (ii) a certificate of exemption if satisfied that the action in question complies with the exemption criteria specified in the safety standards contemplated in section 36.

23. Conditions relating to nuclear installation licence, nuclear vessel licence or certificate of registration

- (1) The chief executive officer may establish standard conditions applicable to one or more categories of certificates of registration.
- (2) The chief executive officer may, subject to subsection (3), impose any condition in a nuclear installation or vessel licence or certificate of registration which:
 - (a) is necessary to ensure the protection of persons, property and the environment against nuclear damage; or
 - (b) provides for the rehabilitation of the site.
- (3) The chief executive officer:

- (a) may, subject to paragraph (c), amend any condition in a nuclear installation or vessel licence or certificate of registration;
- (b) must notify the person in writing to whom the nuclear installation or vessel licence or certificate of registration was issued of such amendment and the reasons therefor; and
- (c) must submit to the board any amendments made to a nuclear authorisation as contemplated in paragraph (a) for ratification at the first meeting of the board following the amendments.

24. Special conditions relating to nuclear vessel licence

- (1) The chief executive officer may include in a nuclear vessel licence:
 - (a) conditions relating to:
 - (i) liability for nuclear damage which may determine, limit or preclude liability, despite any provisions to the contrary in any other law; or
 - (ii) security for nuclear damage and the manner of providing the security, as determined by the Minister;
 - (b) any other conditions as the chief executive officer considers necessary to ensure compliance with the safety standards contemplated in section 36;
 - (c) if the vessel in question is registered outside the Republic, the appropriate terms of any agreement between the government of the Republic and the government of the country in which the vessel is registered.
- (2) Any provision included in an agreement referred to in subsection (1)(c) which could be included in terms of subsection (1)(a) or (b) as a condition of a nuclear vessel licence, is considered to be a condition of that licence, even if it is not expressly embodied in the relevant licence as a condition thereof.
- (3) Subject to the terms of any agreement referred to in subsection (1)(c), the chief executive officer may amend or repeal any condition imposed in terms of this section.
- (4) A nuclear vessel licence is valid for such period as is determined by the chief executive officer, and may from time to time be renewed for any further period.
- (5) The holder of a nuclear vessel licence is not, solely because of the expiry of that licence, relieved of liability for nuclear damage resulting from anything which occurred or which was done or omitted during the currency of that licence.
- (6) The chief executive officer must exercise the powers conferred by this section on behalf of the board and subject to the Minister's directions.

25. Prohibition on transfer of nuclear authorisation

A nuclear authorisation is not transferable.

26. Responsibilities of holders of nuclear authorisations

- (1) The holder of a nuclear authorisation must, at all times, display copies of that authorisation at such places and in such languages and form as determined by the chief executive officer to ensure public access to the conditions specified in the authorisation.
- (2) The holder of a nuclear authorisation must implement an inspection programme to ensure compliance with all conditions of the nuclear authorisation.
- (3) The holder of a nuclear authorisation must provide any information or monthly return as required by the chief executive officer.
- (4) The holder of a nuclear installation licence must establish a public safety information forum as prescribed in order to inform the persons living in the municipal area in respect of which an emergency plan has been

established in terms of section 38(1) on nuclear safety and radiation safety matters.

27. Revocation and surrender of nuclear authorisation

- (1) The chief executive officer may, with the approval of the board, revoke a nuclear authorisation.
- (2) The holder of a nuclear authorisation may surrender that authorisation.
- (3) If a nuclear authorisation has been revoked or surrendered in terms of subsection (1) or (2), the holder of the nuclear authorisation concerned must:
 - (a) if so directed by the chief executive officer, deliver to the person appointed by the chief executive officer, or account for, such nuclear authorisation; and
 - (b) for the duration of his or her period of responsibility, display, or cause to be displayed, on the relevant site or the vessel in respect of which a nuclear authorisation has been granted, such notices as directed by the chief executive officer.
- (4) On revocation or surrendering of a nuclear authorisation, or at any time during the period of responsibility of the holder of that authorisation, the chief executive officer, in writing, may give any direction to the person liable for nuclear damage in terms of section 30, which the chief executive officer believes is necessary to prevent nuclear damage which:
 - (a) may be caused by anything which is being done, may be done or was done; or
 - (b) is or was present, at or in the relevant nuclear installation or site.

28. Fees for nuclear authorisation

The Minister may, on the recommendation of the board and in consultation with the Minister of Finance and by notice in the *Gazette*, determine the fees payable to the Regulator in respect of:

- (a) any application for the granting of a nuclear authorisation;
- (b) an annual nuclear authorisation fee.

CHAPTER 4: Financial Security and Liability

29. Financial security by holder of nuclear installation licence

- (1) The Minister must, on the recommendation of the board and by notice in the *Gazette*, categorise the various nuclear installations in the Republic, based on the potential consequences of a nuclear accident.
- (2) The Minister must, on the recommendation of the board and in consultation with the Minister of Finance and by notice in the *Gazette*, determine:
 - (a) the level of financial security to be provided by holders of nuclear installation licences in respect of each of those categories; and
 - (b) the manner in which that financial security is to be provided, in order for the holder of a nuclear installation licence to fulfil any liability which may be incurred in terms of section 30.
- (3) Despite subsection (2), the Minister may, after consultation with the board, for so long as the holder of a nuclear installation licence may be liable for nuclear damage:
 - (a) increase or decrease the level of financial security to be provided by that holder as determined in terms of subsection (2);
 - (b) if financial security has not been required in terms of subsection (2) require that holder to provide financial security;
 - (c) discharge that holder from the requirement to provide financial security;
 - (d) amend the manner in which that holder must provide financial security.

- (4) If:
 - (a) nuclear damage occurs and compensation is claimed as a result thereof; or
 - (b) the Minister is satisfied that such compensation is likely to be so claimed,
 the Minister may require the holder of the nuclear installation licence in question to give additional financial security in respect of those claims or possible claims, to an amount which the Minister, after consultation with the board, determines.
- (5) The holder of a nuclear installation licence must annually provide proof to the Regulator that any claim for compensation to an amount contemplated in section 30(2), can be met.

30. Strict liability of holder of nuclear installation licence for nuclear damage

- (1) Subject to subsections (2), (3), (5) and (6), only a holder of a nuclear installation licence is, whether or not there is intent or negligence on the part of the holder, liable for all nuclear damage caused by or resulting from the relevant nuclear installation during the holder's period of responsibility:
 - (a) by anything being present or which is done at or in the nuclear installation or by any radioactive material or material contaminated with radioactivity which has been discharged or released, in any form, from the nuclear installation; or
 - (b) by any radioactive material or material contaminated with radioactivity which is subject to the nuclear installation licence, while in the possession or under the control of the holder of that licence during the conveyance thereof from the nuclear installation, to any other place in the Republic or in the territorial waters of the Republic from or to any place in or outside the Republic.
- (2) The liability for nuclear damage by any holder of a nuclear installation licence is limited, for each nuclear accident, to the amounts determined in terms of section 29(2).
- (3) The liability contemplated in subsection (1)(b) ends upon the relevant material coming:
 - (a) onto another site in respect of which a nuclear installation licence has been granted; or
 - (b) onto a site or into the possession or the control of any person authorised in terms of section 3A of the Hazardous Substances Act, 1973 (Act 15 of 1973), where such material is a Group IV hazardous substance as defined in section 1 of that Act.
- (4) For the purposes of subsection (1) radioactive material or material contaminated with radioactivity which is being conveyed on behalf of the holder of a nuclear installation licence is regarded to be in the possession or under the control of the holder of that licence.
- (5) Nothing in this section precludes a person from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), but such person may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act, 1993.
- (6) The holder of a nuclear installation licence is not liable to any person for any nuclear damage:
 - (a) to the extent to which such nuclear damage is attributable to the presence of that person or any property of that person at or in the nuclear installation or on the site in respect of which the nuclear installation licence has been granted, without the permission of the holder of that licence or of a person acting on behalf of that holder; or

- (b) if that person intentionally caused, or intentionally contributed to, such damage.
- (7) The holder of a nuclear installation licence retains any contractual right of recourse or contribution which the holder has against any person in respect of any nuclear damage for which that holder is liable in terms of subsection (1).
- (8) Any person who, without a nuclear installation licence, carries out an action for which such a licence is required, is, whether or not there is intent or negligence on the part of that person, liable for all nuclear damage.
- (9) Nothing in this section affects any right, which any person has in terms of any contract of employment, to benefits more favourable than those to which that person may be entitled in terms of this section.

31. Special provisions for liability for nuclear damage caused by vessels

If the chief executive officer has not determined any conditions for liability for nuclear damage as contemplated in section 24(1)(a)(i) for a holder of a nuclear vessel licence granted in respect of a vessel, the provisions of section 30 apply with the changes required by the context.

32. Liability of holder of certificate of registration for nuclear damage

- (1) The liability of a holder of a certificate of registration, for any nuclear damage caused by or resulting from any action carried out by virtue of that certificate during his or her period of responsibility, must be determined in accordance with:
 - (a) the common law; or
 - (b) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), as the case may be.

33. Claims for compensation in excess of maximum liability

- (1) If:
 - (a) the total amount of claims for compensation against a holder of a nuclear installation licence; or
 - (b) the total amount of claims for compensation against such holder plus the estimated amount of claims for compensation likely to be required to be paid, exceeds, or is likely to exceed, the amount for which that holder has given security in terms of section 29, the holder must immediately notify the board and the Minister thereof in writing.
- (2) Such notice must include:
 - (a) particulars of the total number and amount of all such claims received; and
 - (b) an estimate of the number and amount of any other claims which may have to be satisfied.
- (3) If on receipt of that notice, the Minister is satisfied that the total amount of claims for compensation against a holder of a nuclear installation licence that is unpaid, and of such claims as are likely to be made thereafter, will exceed the amount of security given by that holder in terms of section 29 in respect of such claims, the Minister must:
 - (a) table in Parliament a report on the nuclear damage in question, which recommends that Parliament appropriate funds for rendering financial assistance to the holder to the amount by which the claims exceed or are likely to exceed the security which is available; and
 - (b) by notice in the *Gazette* suspend the obligation to pay the claims in respect of that nuclear damage until Parliament has decided about the recommendation.

(4) The liability of a person who has provided or must provide financial security as contemplated in section 29, is not affected by any appropriation in terms of subsection (3)(b).

(5) If Parliament has by resolution decided that funds to an amount specified in the report by the Minister be appropriated, no payment of any such claim for compensation arising out of the nuclear damage concerned may be made after the passing of such resolution without the approval of the Minister or an order of court.

(6) The giving of additional security by a holder of a nuclear installation licence in terms of section 29(4) does not affect the application of this section.

34. Prescription of Actions

(1) Despite anything to the contrary in any other law, an action for compensation in terms of section 30, 31 or 32 may, subject to subsection (2), not be instituted after the expiration of a period of 30 years from:

- (a) the date of the occurrence which gave rise to the right to claim that compensation; or
- (b) the date of the last event in the course of that occurrence or succession of occurrences, if a continuing occurrence or a succession of occurrences, all attributable to a particular event or the carrying out of a particular operation, gave rise to that right.

(2) If the claimant concerned became aware, or by exercising reasonable care could have become aware, of:

- (a) the identity of the holder of the nuclear authorisation concerned; and
- (b) the facts from which the right to claim compensation arose, during the period of 30 years contemplated in subsection (1), an action for compensation in terms of section 30, 31 or 32 may not be instituted after the expiration of a period of two years from the date on which he or she so became aware or could have become aware.

(3) The running of the period of two years referred to in subsection (2) is suspended from the date negotiations regarding a settlement by or on behalf of the claimant and the relevant holder of the nuclear authorisation are commenced in writing until the date any party notifies the other party that the negotiations are terminated.

35. Compensation for injuries of Regulator's employees

(1) If a person who is employed in any capacity by or on behalf of the Regulator, while so performing services, suffers a personal injury or contracts a disease attributable to ionising radiation from any radioactive material, or to the flammable, explosive, poisonous or special properties of radioactive material, or to the ionising radiation produced by any apparatus, and in respect of which no liability can be established in terms of section 30, 31 or 32, the Regulator must, subject to subsection (2):

- (a) defray all reasonable expenses incurred by or on behalf of such person in respect of any medical treatment, including, but not limited to, the supply and maintenance of any artificial part of the body or other device, necessitated by such injury or disease; and
- (b) pay compensation in respect of disablement or death caused by such injury or disease.

(2) Nothing in this section precludes an employee of the Regulator from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), but such employee may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act, 1993.

(3) Nothing in this section affects any right, which any person has in terms of any contract of employment, to benefits more favourable than those to which that person may be entitled in terms of this section.

CHAPTER 5: Safety and Emergency Measures

36. Safety standards and regulatory practices

(1) The Minister must, on the recommendation of the board, make regulations regarding safety standards and regulatory practices.

(2) Before any regulations are made in terms of subsection (1), the Minister must, by notice in the *Gazette*, invite the public to comment on the proposed regulations and consider that comment.

37. Duties regarding nuclear accidents and incidents

(1) If a nuclear accident occurs in connection with a nuclear installation, nuclear vessel or action, the holder of the nuclear authorisation in question must immediately report it to the Regulator and to any other person described in that nuclear authorisation.

(2) When the occurrence of a nuclear accident is so reported to the Regulator, it must:

- (a) immediately investigate such accident and its causes, circumstances and effects;
- (b) in such manner as it thinks fit, define particulars of the period during which and the area within which, in its opinion, the risk of nuclear damage connected with the accident exceeds the safety standards and regulatory practices contemplated in section 36;
- (c) direct the holder of the nuclear authorisation in question to obtain the names, addresses and identification numbers of all persons who were during that period within that area; and
- (d) if, of the opinion that it has not been informed of all persons who could have been present during that period within that area, publish by notice in the *Gazette* and in two publications of the daily newspapers in circulation in that area, the fact that a nuclear accident has occurred during that period within that area.

(3)(a) The Regulator must, in the prescribed manner, keep a record of the names of all persons who, according to its information, were within the area so defined at any time during the period so defined, and of such particulars concerning them as may be prescribed.

(b) For the purposes of the proof of claims for compensation for nuclear damage, any such record is on its mere production by any person in a court of law admissible in evidence, and is *prima facie* proof of the presence of the person in question within the area and during the period so defined.

(4) The right of any person to claim compensation from a holder of a nuclear authorisation in terms of section 30 is not prejudiced by:

- (a) the defining of any area or period in terms of subsection (2)(b); or
- (b) the failure to record the name of any person in terms of subsection (3).

(5) If a nuclear incident occurs on a site, the holder of the nuclear authorisation in question must report it to the Regulator within the period stipulated in that authorisation.

38. Emergency planning

(1) Where the possibility exists that a nuclear accident affecting the public may occur, the Regulator must direct the relevant holder of a nuclear authorisation, other than a holder of a certificate of exemption, to:

- (a) enter into an agreement with the relevant municipalities and provincial authorities to establish an emergency plan within a period determined by the Regulator;
 - (b) cover the costs for the establishment, implementation and management of such emergency plan insofar as it relates to the relevant nuclear installation or any action contemplated in section 2(1)(c); and
 - (c) submit such emergency plan for its approval.
- (2) The Regulator must ensure that such emergency plan is effective for the protection of persons should a nuclear accident occur.
- (3) When a nuclear accident occurs, the holder of a nuclear authorisation, other than a holder of a certificate of exemption, in question must implement the emergency plan as approved by the Regulator.
- (4) The Minister may, on recommendation of the board and in consultation with the relevant municipalities, make regulations on the development surrounding any nuclear installation to ensure the effective implementation of any applicable emergency plan.

39. Record of nuclear installations

- (1) The Regulator must keep:
- (a) a record of the particulars;
 - (b) a map showing the location; and
 - (c) where applicable, diagrams showing the position and limits, of nuclear installations in respect of which a nuclear installation licence has been granted.
- (2) If the Regulator believes that a risk of nuclear damage:
- (a) arising from anything done or being done; or
 - (b) which has been or is present, at or in any nuclear installation in respect of which a nuclear installation licence is no longer in force, is within safety standards contemplated in section 36, it may remove the particulars in connection therewith from that record.

40. Record of nuclear accidents and incidents and access thereto

The Regulator must:

- (a) keep and maintain a record of the details of every nuclear accident and nuclear incident;
- (b) store that record safely;
- (c) retain that record for 40 years from the date of the nuclear accident or nuclear incident; and
- (d) on the request of any person, make that record available to that person.

41. Appointment and powers of inspectors

- (1) The chief executive officer must, with the approval of the board and subject to section 16(2), appoint such number of suitably qualified inspectors to enforce compliance with the objects of the Regulator referred to in section 5.
- (2) The chief executive officer must issue to every person appointed under subsection (1) a certificate to the effect that such person has been so appointed and restricting such person to the actions in respect of which he or she may exercise the powers and perform the duties conferred or imposed on an inspector in terms of this Act.
- (3) When exercising his or her powers or performing his or her duties in terms of this Act, the inspector must on request by any interested person produce that certificate.
- (4) Subject to the restrictions in the certificate contemplated in subsection (2), an inspector may:
- (a) at all reasonable times enter:

- (i) any nuclear installation or site in respect of which an application for a nuclear installation licence has been made or such a licence has been granted;
- (ii) any place which the inspector on reasonable grounds suspects to be a site on which there is a nuclear installation;
- (iii) any place where parts of a nuclear installation are present or manufactured;
- (iv) any place where radioactive material is kept or is present, and in respect of which an application for a nuclear authorisation has been made or a nuclear authorisation has been granted;
- (v) any place where the inspector on reasonable grounds suspects that radioactive material is kept or present or any action prohibited in terms of section 20 is being carried out;
- (b) carry out inspections and use any applicable equipment during such inspections at any of the nuclear installations, sites or places referred to in paragraph (a) and conduct such investigations as are necessary for the purpose of monitoring or enforcing compliance with this Act;
- (c) if necessary for the purposes of monitoring or enforcing compliance with this Act, direct in writing the holder of or the applicant for a nuclear authorisation, or any other person having any power or duty in connection with or on the relevant nuclear installation, site or place referred to in paragraph (a), to:
 - (i) allow the inspector to take away for investigation the articles or objects pointed out by the inspector;
 - (ii) allow the inspecting of the documents specified by the inspector, and to make copies thereof;
 - (iii) furnish to the inspector information which is under his or her control;
- (d) after signing for any object or document, or copies thereof, remove it for investigation;
- (e) if any action contemplated in section 20, or any condition associated with such action, does not comply with the requirements laid down in the nuclear authorisation, or with the safety standards contemplated in section 32, direct any person in control of the action:
 - (i) to discontinue such action or immediately rectify such condition; or
 - (ii) to rehabilitate the relevant site or other place to a condition that complies with the requirements laid down in the nuclear authorisation or with the safety standards contemplated in section 36;
- (f) if any action contemplated in section 2(2)(b), or any condition associated with such action, does not comply with the exemption criteria specified in the safety standards contemplated in section 36, direct the person in control of the action:
 - (i) to discontinue such action or immediately rectify such condition;
 - (ii) to rehabilitate the site or other place to a condition that complies with the exemption criteria provided for in the safety standards contemplated in section 36; or
 - (iii) to apply for a certificate of registration;
- (g) require any person who causes any site or other place to be contaminated with radioactive material to rehabilitate the site or place to a condition that complies with the safety standards contemplated in section 36;
- (h) be accompanied by such persons as the inspector considers necessary:
 - (i) to assist the inspector in the exercise of his or her powers in terms of this subsection;
 - (ii) to exercise such powers, and perform such duties, of the inspector as he or she determines;

- (i) exercise any other powers and perform any other duties conferred or imposed by this Act.
- (5) An inspector authorised thereto in writing by the Regulator has, in respect of any vessel and subject to the terms of any agreement referred to in section 24(1)(c), has the same powers conferred upon an inspector in respect of nuclear installations, sites and other places contemplated in this section.

42. Regulator's powers regarding security of property and premises

- (1) The Regulator may make or cause to be made such arrangements as it considers necessary for the proper protection or security of property which belongs to, or is under the control of the Regulator or is on any premises on which activities of the Regulator are performed.
- (2) No unauthorised person may enter any premises which:
 - (a) are under the control of the Regulator; and
 - (b) the Regulator has identified as premises where information relating to the safety and security of or on a nuclear installation is kept.

CHAPTER 6: Appeals

43. Appeal to chief executive officer against inspector's decision

- (1) Any person adversely affected by any action or decision of an inspector may appeal to the chief executive officer against that action or decision.
- (2) Such appeal must:
 - (a) be lodged within 60 days from the date of the action or the date on which the decision was made known, as the case may be, or such later date as the chief executive officer permits; and
 - (b) set out the grounds of appeal.
- (3) After considering the grounds of appeal and the inspector's reasons for the action or decision, the chief executive officer must as soon as practicable:
 - (a) confirm, set aside or amend the action or decision; or
 - (b) substitute any other decision for the decision.

44. Appeal to board against chief executive officer's decision

- (1) Any person adversely affected by a decision of the chief executive officer, either in terms of section 43(3) or in the exercise of any power in terms of this Act, may appeal against that decision to the board.
- (2) Such appeal must:
 - (a) be lodged within 60 days from the date on which that decision was made known by the chief executive officer or such later date as the board permits; and
 - (b) must set out the grounds for the appeal.
- (3) After considering the grounds of appeal and the chief executive officer's reasons for the decision, the board must as soon as practicable:
 - (a) confirm, set aside or vary the decision; or
 - (b) substitute any other decision for the decision of the chief executive officer.

45. Appeal to Minister against board's decision

- (1) Any person adversely affected by a decision of the board, either in terms of section 44(3) or in the exercise of any power in terms of this Act, may appeal against that decision to the Minister.
- (2) Such appeal must:
 - (a) be lodged within 60 days from the date on which the decision was made known by the board or such later date as the Minister permits; and
 - (b) set out the grounds for the appeal.

- (3) After considering the grounds of appeal and the board's reasons for the decision, the Minister must as soon as practicable:
- (a) confirm, set aside or vary the decision; or
 - (b) substitute any other decision for the decision of the board.

46. Appeal to High Court against Minister's decision

- (1) Any person adversely affected by a decision of the Minister, either in terms of section 45(3) or in the exercise of any power in terms of this Act, may appeal against that decision to the High Court.
- (2) Such appeal must:
- (a) be lodged within 60 days from the date on which the decision was made known by the Minister or such later date as the High Court permits; and
 - (b) set out the grounds for the appeal.
- (3) The appeal must be proceeded with as if it were an appeal from a Magistrate's Court to a High Court.

CHAPTER 7: General

47. Regulations

- (1) The Minister may, after consultation with the board and by notice in the *Gazette*, make regulations as to any matter:
- (a) required or permitted to be prescribed in terms of this Act;
 - (b) necessary for the effective administration of this Act.
- (2) Any regulation made in terms of subsection (1) may provide that:
- (a) the contravention of or failure to comply therewith, is an offence; and
 - (b) a person convicted of that offence is punishable with a prescribed fine or a term of imprisonment not longer than the period so prescribed.
- (3) Before any regulations are made in terms of subsection (1), the Minister must, by notice in the *Gazette*, invite comment on the proposed regulations and consider that comment.
- (4) Despite the repeal of the previous Act, the regulations made under section 77 of the previous Act and in force immediately before the specified date, in so far as they relate to matters which are required or permitted to be prescribed as contemplated in subsection (1)(a) or (b), are regarded to have been made in terms of subsection (1).

48. Delegations and assignment by Minister

- (1) Subject to subsection (2), the Minister may delegate any power and assign any duty conferred or imposed upon the Minister in terms of this Act to the Director-General: Minerals and Energy.
- (2) Any power or duty conferred or imposed upon the Minister in terms of section 2, chapter 2 and sections 28, 29, 33, 36, 38(4), 45 and 47 may not be delegated or assigned in terms of subsection (1).
- (3) A delegation or assignment under subsection (1) must be in writing and may be subject to any conditions or limitations determined by the Minister.
- (4) The Minister is not divested of any power nor relieved of any power or duty delegated or assigned in terms of subsection (1).
- (5) The Minister may at any time:
- (a) amend or revoke a delegation or assignment made in terms of subsection (1);
 - (b) subject to subsection (5), withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter himself or herself.
- (6) A decision made by a delegatee or assignee may not be withdrawn in terms of subsection (5)(b) where it confers a right or entitlement on any third party.

49. Disagreement between Minister and board

(1) If the Minister rejects a recommendation of the board contemplated in section 28, 29(1) or (2), 36(1) or 38(4), the Minister and the board must endeavour to resolve their disagreement.

(2) If the Minister and the board fail to resolve their disagreement, the Minister makes the final decision, in consultation with the relevant Minister.

50. Exemption from duties and fees

The Regulator is exempt from the payment of any duty or fee which, were it not for the provisions of this section, would have been payable by it to the State in terms of any law, except the Customs and Excise Act, 1964 (Act 91 of 1964), and the Value Added Tax Act, 1991 (Act 105 of 1991), in respect of any Act or transaction or any document connected with that Act or transaction.

51. Disclosure of information

(1) In this section 'information' includes anything purporting to be information or containing or providing information.

(2) Subject to subsection (4) and any national legislation contemplated in section 32 (2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996):

(a) no person may disclose to any other person or publish any information which relates to any nuclear installation or site or vessel or action described in section 2(1)(c) in respect of which a nuclear authorisation has been issued or is to be issued and not yet public knowledge if the disclosure of that information is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic;

(b) no person may be in possession of any documents if not authorised and such possession is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic;

(c) no person may receive any information knowing or having reasonable grounds to believe that it has been disclosed to him or her in contravention of the provisions of paragraph (a) or (b);

(d) a person must take reasonable steps to safeguard information which he or she has in his or her possession or under his or her control and which he or she is in terms of paragraph (a) or (b) prohibited from disclosing to any person, or publishing, or so conduct himself or herself as not to endanger the secrecy thereof.

(3) No member of the board or a committee of the board or an employee of the Regulator may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act except:

(a) to the extent to which it may be necessary for the proper administration of this Act;

(b) for the purposes of the administration of justice; or

(c) at the request of any person entitled thereto.

(4) Despite the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information if:

(a) the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of a health or safety risk or a failure to comply with a duty imposed by this Act; and

(b) the disclosure was made in accordance with subsection (5).

(5) Subsection (4) applies only if the person concerned:

- (a) disclosed the information concerned to:
 - (i) a committee of Parliament or a provincial legislature;
 - (ii) the Public Protector;
 - (iii) the Human Rights Commission;
 - (iv) the Auditor-General;
 - (v) the National Director of or a Director of Public Prosecutions;
 - (vi) the Minister;
 - (vii) the Regulator; or
 - (viii) more than one of the bodies or persons referred to in subparagraphs (i) to (vii); or
- (b) disclosed the information concerned to one or more news medium and on clear and convincing grounds (of which he or she bears the burden of proof) believed at the time of the disclosure:
 - (i) that disclosure was necessary to avert an imminent and serious threat to the health or safety of an individual or the public, to ensure that the health or safety risk or the failure to comply with a duty imposed by the Act was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
 - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; or
- (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure (other than the procedures contemplated in paragraph (a) or (b)); or
- (d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.

52. Offences and penalties

- (1) Any person who:
 - (a) contravenes or fails to comply with section 20 or a condition imposed on him or her in terms of section 23;
 - (b) as a master of a vessel referred to in section 20(2) contravenes or fails to comply with a condition imposed on him or her in terms of section 24;
 - (c) fails to comply with a directive contemplated in section 41(4);
 - (d) fails to pay any fee contemplated in section 28;
 - (e) hinders an inspector in the exercise of his or her powers or the performance of his or her duties in terms of this Act, or fails to comply with any order given to him or her by an inspector in terms of this Act;
 - (f) contravenes section 42(1) or (2); or
 - (g) contravenes or fails to comply with section 51, is guilty of an offence.
- (2) Any person who contravenes or fails to comply with any provision of this Act or any condition, notice, order, instruction, directive, prohibition, authorisation, permission, exemption, certificate or document determined, given, issued, promulgated or granted in terms of this Act is, if any such contravention or failure is not declared an offence in terms of subsection (1), is guilty of an offence.
- (3) Any person convicted of an offence in terms of subsection (1) or (2) is liable on conviction:
 - (a) in the case of an offence referred to in subsection (1)(a), (b), (c), (d), or (f) or (2) to a fine or to imprisonment for a period not exceeding 10 years;
 - (b) in the case of an offence referred to in subsection (1)(e), to a fine or to imprisonment for a period not exceeding five years; or
 - (c) in the case of an offence referred to in subsection (1)(g), to a fine or to imprisonment for a period not exceeding three years.

53. Reproduction of documents by Regulator

- (1) The Regulator may:
 - (a) reproduce or cause to be reproduced documents in its possession or under its control by:
 - (i) microfilming;
 - (ii) electronic means; or
 - (iii) any other process which in its opinion reproduces such a document in a durable and accurate manner; and
 - (b) keep or cause to be kept the reproduction instead of the original document in question.
- (2) For the purposes of this Act:
 - (a) any reproduction referred to in subsection (1) is regarded to be the relevant original document; and
 - (b) a copy obtained by means of that reproduction and certified by the chief executive officer or an officer authorised by the chief executive officer as a true copy, is *prima facie* evidence of the contents of the original document in any court of law, any tribunal or a commission of inquiry.

54. Partial repeal of Act 131 of 1993, and savings

- (1) The following provisions of the Nuclear Energy Act, 1993 (Act 131 of 1993), are hereby repealed:
 - (a) chapters V and VI;
 - (b) section 1, in so far as it relates to anything in any of these chapters; and
 - (c) the provisions of chapter VII, in so far as they relate to the Council for Nuclear Safety.
- (2) On the specified date anything done before such date in terms of any provision of the previous Act repealed by subsection (1), and which could be done in terms of this Act, is regarded to have been done in terms of this Act, except where otherwise provided in this Act.

55. Legal succession to Council for Nuclear Safety

- (1) The Regulator is substituted for the Council for Nuclear Safety in any contract or agreement entered into by the latter before the specified date, if the contract or agreement:
 - (a) relates to any matter which, on the specified date, falls within the Regulator's competence in terms of this Act; and
 - (b) has not yet expired or any obligation thereunder has not been fulfilled, whichever is applicable.
- (2) From the specified date, the Regulator:
 - (a) is responsible for all projects and work which had been commenced by the Council for Nuclear Safety before that date in terms of the previous Act:
 - (i) with regard to matters which, on the specified date, fall within the Regulator's functions in terms of this Act; and
 - (ii) which, on the specified date, have not been completed; and
 - (b) is competent to continue with any project and work and to carry out those projects and that work or to have them carried out subject to:
 - (i) the provisions of this Act; and
 - (ii) any contract or agreement, contemplated in subsection (1), relating to the execution of the projects or the performance of the work by the other contracting party.
- (3)(a) The Regulator is substituted for the Council for Nuclear Safety as a party in any legal proceedings instituted by or against the Council for Nuclear Safety before the specified date and still pending on that date, where the legal proceedings are founded on a cause of Action relating to or arising from the exercise or performance of any power or duty of the

Council for Nuclear Safety in terms of or purportedly in terms of the previous Act or from its business or operations thereunder, if, on the specified date, the Regulator would have been competent in terms of this Act, to exercise or perform such a power or duty or to conduct any business or operations of a nature substantially the same as those relevant in the proceedings.

- (b) Any legal proceedings founded on a cause of Action which arose before the specified date, which relates to or arises from the exercise or performance of any power or duty of the Council for Nuclear Safety in terms of the previous Act or from its business and operations thereunder and which is brought after the specified date, must be instituted by or against the Regulator if, on the specified date, the Regulator would have been competent, in terms of this Act, to exercise or perform such a power or duty or to conduct any business or operation of a nature substantially the same as those relevant in the proceedings.
- (4)(a) The State, as represented by the Minister, is substituted for the Council for Nuclear Safety in:
 - (i) any contract or agreement entered into by the Council for Nuclear Safety before the specified date and still pending on that date, in any case where subsection (1) does not apply; and
 - (ii) any legal proceedings instituted by or against the Council for Nuclear Safety before the specified date and still pending on that date, where the legal proceedings are founded on a cause of Action relating to or arising from the exercise or performance of any power or duty or the conducting of any business or operations of the Council for Nuclear Safety, in any case where subsection (3)(a) does not apply;
- (b) Any legal proceedings founded on such a cause of Action that arose before the specified date and which are brought after the specified date, must be instituted by or against the State, as represented by the Minister, in any case where subsection (3)(b) does not apply.
- (c)(i) The Minister is responsible, from the specified date, for all projects and work commenced by the Council for Nuclear Safety before the specified date but not yet completed by that date, in any case where subsection (2)(a) does not apply.
- (ii) The Minister is competent to continue with and carry out those projects and that work, subject to the provisions of this Act and any agreement referred to in subsection (2)(b).

56. Short title and commencement

- (1) This Act is called the National Nuclear Regulator Act, 1999.
- (2) This Act takes effect on the date of commencement of the Nuclear Energy Act, 1999, as contemplated in section 61 of that Act.

B Gas

South Africa does not have significant crude oil reserves and has to rely on the importation of this resource. It is believed that there exists a potential for offshore discoveries of both natural oil and gas, as well as onshore coal-bed methane. Successful exploitation of these natural resources would contribute to the growth of the economy and relieve pressure on the balance of payments in respect of its importation.

The gas and oil policy framework of the government states that government will ensure the optimal and environmentally sustainable exploration and development of the country's natural oil and gas resources to the benefit of all. In this regard government undertakes to:

- maintain an appropriate capability to perform regulatory and promotional functions in respect of oil and gas exploration on behalf of the state;
- promote the development of South Africa's oil and gas resources by ensuring that the tax regime and contractual arrangements as well as the regulatory and operating environment will be consistent, stable and internationally competitive;
- ensure private sector investment and expertise in the exploitation and development of the country's oil and gas resources;
- promote research, technology development and technology transfer to stimulate the optimal development of the country's oil and gas resources;
- promote oil and gas development by applying the 'use it and keep it' principle in contracts according to standard international practice;
- retain the rights to natural oil and gas (offshore);
- work towards government's long term objective of all onshore mineral rights vesting in the state;
- ensure a safe and healthy working environment in accordance with the Mine Health and Safety Act, 1996, and good international oil and gas field practice;
- ensure that integrated and holistic environmental management on all onshore and offshore oil and gas exploration and production operations is achieved in accordance with international oil and gas field practice;
- ensure that the 'polluter pays' principle is applied in the regulation and enforcement of environmental impact management measures and standards; and
- promote international co-operation with an emphasis on Southern Africa.

The only statute regulating gas is the Gas Act 48 of 2001. The Act provides for the development of 'the piped gas industry' as well the establishment of a national regulatory framework and a National Gas Regulator as the custodian and enforcer of the national regulatory framework.

The Department of Finance and the South African Revenue Service are additionally given the task of promoting and supporting oil and gas exploration and production.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment* (chapter 50) in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.4.2.3 Gas Act

Description: With the promulgation of the Gas Act, the development of ‘the piped gas industry’ was introduced. The Act establishes a national regulatory framework and a National Gas Regulator as the custodian and enforcer of this national regulatory framework.

Gas Act 48 of 2001

As last amended by the National Energy Regulator Act 40 of 2004.

CHAPTER 1: Definitions and Objects

1. Definitions

In this Act, unless the context indicates otherwise:

‘*chief executive officer*’ means the person appointed in terms of section 11(1);

‘*customer*’ means a person purchasing gas, or purchasing transmission, storage or distribution or liquefaction or re-gasification services;

‘*Department*’ means the Department of Minerals and Energy;

‘*distribution*’ means the distribution of bulk gas supplies and the transportation thereof by pipelines with a general operating pressure of more than 2 bar gauge and less than 15 bar gauge or by pipelines with such other operating pressure as the Gas Operator may permit according to criteria prescribed by regulation to points of ultimate consumption or to reticulation systems, or to both points of ultimate consumption and reticulation systems, and any other activity incidental thereto, and ‘*distribute*’ and ‘*distributing*’ have corresponding meanings;

‘*distribution company*’ means any person distributing gas;

‘*eligible customer*’ means a customer who in the prescribed manner may buy gas directly from suppliers without the intervention of a distribution company;

‘*gas*’ means all hydrocarbon gases transported by pipeline, including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, re-gasified liquefied natural gas, liquefied petroleum gas or any combination thereof;

‘*Gas Regulator*’ means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004;

‘*licensee*’ means any person holding a license granted by the Gas Regulator in terms of this Act;

‘*liquefaction*’ means converting natural gas from a gaseous state to a liquid state;

‘*mine*’ means ‘mine’ as defined in the Minerals Act, 1991 (Act 31 of 1991);

‘*Minister*’ means the Minister of Minerals and Energy;

‘*person*’ includes any organ of state as defined in section 239 of the Constitution;

‘*prescribed*’ means prescribed by regulation or by rules;

‘*price*’ means the charge for gas to a distributor, reticulator or final customer;

‘*production*’ means the recovery, processing, treating and gathering of gas from wells in the earth up to the boundary of the mine, or the manufacture

of synthetic or artificial gas, or the manufacturing of any gases in the refining process up to the boundary of the factory, and any other activity incidental thereto, and 'produce' and 'producing' have corresponding meanings;
 're-gasification' means converting liquefied natural gas to a gaseous state at a re-gasification plant;

'regulation' means a regulation made under section 34(l);

'reticulation' means the division of bulk gas supplies and the transportation of bulk gas by pipelines with a general operating pressure of no more than 2 bar gauge to points of ultimate consumption, and any other activity incidental thereto, and 'reticulate' and 'reticulating' have corresponding meanings;

'rule' means by a rule made under section 34(3);

'service' means any service relating to the transmission, distribution, storage, trading, liquefaction or re-gasification of gas;

'specification' means the chemical and physical composition, calorific values and Wobbe Index of the gas that conforms to recognised international standards and the pressure of the gas at point of entry to shared systems;

'storage' means the holding of gas as a service and any other activity incidental thereto, but excludes storage of gas in pipelines which are used primarily for the transmission and distribution of gas;

'storage company' means any person storing gas;

'tariff' means the charge for gas services to any customer;

'trading' means the purchase and sale of gas as a commodity by any person and any services associated therewith, excluding the construction and operation of transmission, storage and distribution systems, and 'trading services' has a corresponding meaning;

'transmission' means the bulk transportation of gas by pipeline supplied between a source of supply and a distributor, reticulator, storage company or eligible customer, or any other activity incidental thereto, and 'transmit' and 'transmitting' have corresponding meanings;

'transmission company' means any person transmitting gas;

'uncommitted capacity' means such capacity determined by the Gas Regulator in a liquefaction, re-gasification, transmission, storage or distribution facility as is not required to meet contractual obligations.

2. Objects of Act

The objects of this Act are to:

- (a) promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities and the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services;
- (b) facilitate investment in the gas industry;
- (c) ensure the safe, efficient, economic and environmentally responsible transmission, distribution, storage, liquefaction and re-gasification of gas;
- (d) promote companies in the gas industry that are owned or controlled by historically disadvantaged South Africans by means of licence conditions so as to enable them to become competitive;
- (e) ensure that gas transmission, storage, distribution, trading, liquefaction and re-gasification services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration;
- (f) promote skills among employees in the gas industry;
- (g) promote employment equity in the gas industry;
- (h) promote the development of competitive markets for gas and gas services;

- (i) facilitate gas trade between the Republic and other countries; and
- (j) promote access to gas in an affordable and safe manner.

CHAPTER 2: National Gas Regulator

3. ...

4. Functions of Gas Regulator

The Gas Regulator must, as appropriate, in accordance with this Act:

- (a) issue licences for:
 - (i) construction of gas transmission, storage, distribution, liquefaction and re-gasification facilities;
 - (ii) conversion of infrastructure into transmission, storage, distribution, liquefaction and re-gasification facilities;
 - (iii) operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities; and
 - (iv) trading in gas;
- (b) gather information relating to the production, transmission, storage, distribution, trading, liquefaction and re-gasification of gas;
- (c) issue notices in terms of section 26(1) and, if necessary, take remedial action in terms of section 26(2);
- (d) undertake investigations and inquiries into the activities of licensees;
- (e) consult with government departments and other bodies and institutions regarding any matter contemplated in this Act;
- (f) consult with government departments and gas regulatory authorities of other countries to promote and facilitate the construction, development and functioning of gas transmission, storage, distribution, liquefaction and re-gasification facilities and services;
- (g) regulate prices in terms of section 21(1)(p) in the prescribed manner;
- (h) monitor and approve, and if necessary regulate, transmission and storage tariffs and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner as contemplated in section 22;
- (i) expropriate land or any right in, over or in respect of such land as is necessary for the performance of a licensee's functions;
- (j) promote competition in the gas industry;
- (k) promote the optimal use of available gas resources;
- (l) take decisions that are not at variance with published government policy;
- (m) publish from time to time a list of other legislation applicable to the gas industry;
- (n) perform any activity incidental to the performance of its functions;
- (o) make rules in accordance with section 34(3); and
- (p) exercise any power or perform any duty conferred or imposed on it under any law.

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CHAPTER 3: Gas Licenses and Registration

15. Activities requiring license

- (1) No person may without a licence issued by the Gas Regulator:
 - (a) construct gas transmission, storage, distribution, liquefaction and re-gasification facilities or convert infrastructure into such facilities;
 - (b) operate gas transmission, storage, distribution, liquefaction or re-gasification facilities; or
 - (c) trade in gas.
- (2) Notwithstanding subsection (1), a person engaged in an activity referred to in schedule 1 is not required to apply for or to hold a license to engage in such activity, but a person engaged in an activity referred to in items 1 and 2 of that schedule must register the operation as contemplated in section 28.
- (3) The Gas Regulator may:
 - (a) determine whether any person is engaged in any of the activities requiring a licence as contemplated subsection (1);
 - (b) direct any person engaged in any of the activities requiring a licence in terms of subsection (1) who is not in possession of the necessary licence to cease such activity.
- (4)(a) Nothing in this Act precludes any person from discussing the contemplated construction of, or conversion of infrastructure into, gas facilities, the operation thereof or the envisaged trading in gas with the Gas Regulator prior to filing a licence application.
- (b) The Gas Regulator must, subject to section 29(4), furnish a person contemplated in paragraph (a) with such information as may facilitate the filing of an application.

16. Application for licence

- (1) Any person who has to apply for a licence in terms of section 15 must do so in the prescribed form and in accordance with the prescribed procedure.
- (2) Any application contemplated in subsection (1) must include:
 - (a) the name, company number (if any) and principal place of business of the applicant;
 - (b) particulars of the owners or shareholder of the applicant if the applicant is not a natural person;
 - (c) documents demonstrating the administrative, financial and technical abilities of the applicant;
 - (d) a description of the proposed facility to be constructed or operated, or the proposed trading to be conducted, including maps and diagrams where appropriate;
 - (e) a general description of the type of customers to be served and the tariff or gas price policies to be applied;
 - (f) the plans and ability of the applicant to comply with all applicable labour, health, safety and environmental legislation;

- (g) a detailed specification of the gas that will be traded under the licence; and
- (h) such other particulars as may be prescribed.
- (3) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to concurrence by the Gas Regulator, such information may be withheld from publicly available copies of the application.

17. Advertising of application for licence

- (1) When application is made for a licence as contemplated in section 16, the person concerned must publish a notice of the application in at least two newspapers circulating in the area of the proposed activity in any two official languages, one of which must be English.
- (2) The advertisement must state:
 - (a) the name of the applicant;
 - (b) the object of the application;
 - (c) the place where the application will be available for inspection by any member of the public;
 - (d) the period within which any objections to the issue of the licence may be lodged with the Gas Regulator;
 - (e) the address of the Gas Regulator where any objections may be lodged; and
 - (f) that objections must be substantiated by way of an affidavit or solemn declaration.
- (3) The advertisement contemplated in subsection (1) must be published for such period or in such number of issues of a newspaper as may be prescribed.

18. Particular information to be supplied by applicant

Before considering an application for a licence in terms of this Act, the Gas Regulator:

- (a) if it is of the view that the proposed construction of gas facilities or the proposed provision of gas services should be altered to provide access to third parties, must inform the applicant of that view and request the applicant to supply reasons as to why the application should not be considered subject to the imposition of such condition;
- (b) may direct the applicant to alter the plans for the proposed construction of gas facilities or the proposed provision of gas services in order to comply with applicable health, safety or environmental legislation;
- (c) must furnish the applicant with all substantiated objections contemplated in section 17(2)(f) in order to allow the applicant to respond thereto;
- (d) may request such additional information as may be necessary to consider the application properly; and
- (e) must publish the criteria contemplated in section 19(2), if applicable, and allow the applicant an opportunity to amend its application.

19. Finalisation of application

- (1) The Gas Regulator must decide on an application in the prescribed manner within 60 days:
 - (a) after the expiration of the period contemplated in section 17(2)(d), if no objections have been received; or
 - (b) after receiving the response of the applicant to objections as contemplated in section 18(c).
- (2) The Minister may direct that when the Gas Regulator decides upon a licence application to establish a specified gas transmission pipeline, gas storage facility, liquefaction or re-gasification facility or to convert infrastructure into such facilities, or to operate such facilities, the Gas

Regulator shall satisfy itself that such application meets, *inter alia*, criteria specified by the Minister, which criteria must be based upon and must reflect:

- (a) the national interest;
 - (b) the promotion of regional growth; or
 - (c) any other social objective.
- (3) The Gas Regulator must provide the applicant with a copy of its decision as well as a list of the factors on which the decision was based.
- (4) The Gas Regulator must issue separate licences for:
- (a) the construction of gas transmission, storage, distribution, liquefaction and re-gasification facilities or the conversion of infrastructure into such facilities;
 - (b) the operation of gas transmission, storage or distribution facilities; and
 - (c) trading in gas.

20. Disposal of gas assets controlled by State

Whenever any state-controlled entity that acquired a licence pursuant to the provisions of section 19(2) sells any of its shares or any of its assets or part thereof, covered by such a licence, to any privately controlled entity, it shall do so by means of an open and transparent bidding procedure.

21. Conditions of licence

(1) The Gas Regulator may impose licence conditions within the following framework of requirements and limitations:

- (a) a licensee must carry out the construction, operation or trading activities for which the licence is granted;
- (b) licensees must provide information to the Gas Regulator of the commercial arrangements regarding the participation of historically disadvantaged South Africans in the licensees' activities as prescribed by regulation and other relevant legislation;
- (c) the gas transmission, storage, distribution, trading, liquefaction and regasification activities of vertically integrated companies must be managed separately with separate accounts and data and with no cross-subsidisation;
- (d) third parties must in the prescribed manner have access on commercially reasonable terms to uncommitted capacity in transmission pipelines;
- (e) interested parties must be allowed to negotiate changes with transmission companies in the routing, size and capacity of proposed pipelines;
- (f) interested parties must be allowed to negotiate with transmission companies for increases in compression of existing transmission pipelines and all pipeline customers must benefit equitably from reduced costs resulting from the increased volume;
- (g) transmission companies are not obliged to incur any additional expenditure to provide the changes referred to in paragraphs (e) and (f), and the total cost for the pipeline must be shared equitably between the transmission company and the parties requesting the change;
- (h) licensees must allow interconnections with the facilities of suppliers of gas, transmitters, storage companies, distributors, reticulators and eligible customers, as long as the interconnection is technically feasible and the person requesting the interconnection bears the increased costs occasioned thereby, which must be taken into account when setting their tariffs;
- (i) third parties must in the prescribed manner have access on commercially reasonable terms to uncommitted capacity in storage facilities;

- (j) interested parties may negotiate with storage companies for changes in the capacity of storage facilities;
 - (k) storage companies are not obliged to incur any additional expenditure to provide the changes contemplated in paragraph (j) and the total cost for the storage facility must be shared equitably between the storage company and the party requesting the change;
 - (l) apart from direct sales via physical by-passes to eligible customers who may alternatively have access to the distribution network at the distributor's discretion, a distributor will be granted an exclusive geographic area, but only for a particular range of specifications of gas determined by the Gas Regulator;
 - (m) a distributor will be granted the construction, operation and trading licences for its exclusive geographic area. The construction and operation licences will be exclusive for the period of validity of such licences, and the trading licence will be exclusive for a period determined by the Gas Regulator;
 - (n) an exclusive geographic area must be based on the distributor's ability to supply present and future potential consumers at competitive prices and conditions;
 - (o) gas must be supplied by a licensed distributor within its exclusive geographic area to any person on request, if such service is economically viable;
 - (p) maximum prices for distributors, reticulators and all classes of consumers must be approved by the Gas Regulator where there is inadequate competition as contemplated in chapters 2 and 3 of the Competition Act, 1998 (Act 89 of 1998);
 - (q) an advisory service with regard to the safe and efficient use, handling and storage of gas must be provided to customers other than eligible customers, by the trading licensee;
 - (r) licensees must maintain their facilities in a fully operative condition;
 - (s) all customers in a licensed distribution area, except eligible customers and reticulators, must purchase their gas from the distribution company licensed for that area;
 - (t) the time period within which gas facilities will become operational must be fixed; and
 - (u) licensees must provide information necessary for the Gas Regulator to perform its functions.
- (2)(a) Any person aggrieved by a condition imposed by the Gas Regulator in terms of subsection (1) may in the prescribed manner apply to the Gas Regulator to have the condition reviewed.
- (b) If the aggrieved person is not the licensee the Gas Regulator must inform the licensee regarding the application for review.
- (c) Whenever there is an application for review in terms of paragraph (a) the Gas Regulator must conduct an investigation and may for that purpose summon witnesses to appear before it.

22. Non-discrimination

- (1) Licensees may not discriminate between customers or classes of customers regarding access, tariffs, prices, conditions or service except for objectively justifiable and identifiable differences regarding such matters as quantity, transmission distance, length of contract, load profile, interruptible supply or other distinguishing feature approved by the Gas Regulator.
- (2) The prohibition of discrimination referred to in subsection (1) applies to actions by licensees in favour of their related undertakings in particular.

23. Term of licence

- (1) Any licence issued in terms of this Act is valid for a period of 25 years or such longer period as the Gas Regulator may determine.
- (2) A licensee may apply to have his or her licence renewed.
- (3) An application for renewal must be granted, but the Gas Regulator may set new or different licence conditions.
- (4) A licensee may not assign its licence to another party.

24. Amendment of licence

- (1) The Gas Regulator may vary, suspend or remove any of the licence conditions, or may include additional conditions:
 - (a) on application by the licensee;
 - (b) with the permission of the licensee;
 - (c) upon non-compliance by a licensee with a licence condition;
 - (d) if it is necessary for the purposes of this Act; or
 - (e) on application by any affected party.
- (2) The procedure to be followed in varying, suspending, removing or adding any licence conditions is as prescribed.

25. Revocation of licence on application

- (1) The Gas Regulator may revoke a licence on the application of a licensee if:
 - (a) the licensed facility or activity is no longer required;
 - (b) the licensed facility or activity is not economically justifiable; or
 - (c) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.
- (2) Licensees must give the Gas Regulator at least 12 months notice in writing of their intention to cease their activities.
- (3) The form and procedure to be followed in revoking a licence under subsection (1) is as prescribed.

26. Contravention of licence

- (1) If a licensee contravenes or fails to comply with a condition of a licence or any provision of this Act, the Gas Regulator may serve a notice on such licensee in which the licensee is directed to comply with the condition or the provision of the Act within a reasonable period specified in the notice.
- (2) If a licensee fails to comply with a notice contemplated in subsection (1) the Gas Regulator may sit as a tribunal and, with due regard to section 10, decide on the matter and may impose a penalty of a fine not exceeding R2 000 000,00 per day for each day on which the contravention or failure to comply continues.
- (3) The Gas Regulator must consider the severity of non-compliance in deciding the amount of any penalty.
- (4) Any person adversely affected by a decision of the tribunal contemplated in subsection (2) may bring such decision under appeal to the High Court.
- (5) The Minister may by notice in the *Gazette* amend the amount referred to in subsection (2) in order to counter the effect of inflation.

27. Revocation of licence by court

- (1) The Gas Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there exists any ground justifying such suspension or revocation, such as failure of the licensee to carry out the construction, operation or trading activities for which the licence was granted.

(2) The court before which an application is made under subsection (1) may grant or refuse the application and may make such order as to costs and maintaining the services of the licensee as it may deem fit.

28. Registration with Gas Regulator

(1) An owner of an operation involving any of the following activities must register the operation with the Gas Regulator:

- (a) the production or importation of gas; or
- (b) an activity referred to in items 1 and 2 of schedule I.

(2) The owner contemplated in subsection (1) must provide the Gas Regulator with such information concerning the activities of the operation as may be prescribed.

(3) Any application for registration in terms of subsection (1) must be submitted in the prescribed form.

CHAPTER 4: General Provisions

29. Entry, inspection and gathering of information by Gas Regulator

(1) For the purposes of this Act, any person authorised thereto in writing by the Gas Regulator may:

- (a) at all reasonable times enter any property on which a licensed activity is taking place and inspect any facility, equipment, machinery, book, account or other document found thereat; and
- (b) require any person to furnish the Gas Regulator with such information as may be necessary for the proper application of this Act.

(2) The Gas Regulator may require that the accuracy of any information furnished in terms of subsection (1) be verified on oath or by way of a solemn declaration.

(3) A person authorised by the Gas Regulator as contemplated in subsection (1) must show the authorisation to any person requesting it.

(4) No information obtained by the Gas Regulator in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or of a proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, except in terms of an order of the High Court.

30. Voluntary resolution of disputes by Gas Regulator

(1)(a) The Gas Regulator may, with the approval of the parties to a dispute, act as mediator or arbitrator in any matter concerning the trading of gas or the rendering of services.

(b) When acting as arbitrator, the Gas Regulator must issue a decision on the matter.

(2)(a) The Gas Regulator may, on request of the parties involved, appoint a person, suitable to the Gas Regulator and such parties, to act as mediator or arbitrator on behalf of the Gas Regulator in any matter contemplated in subsection (1).

(b) Any decision of an arbitrator so appointed must be regarded as being the decision of the Gas Regulator.

(3) Any decision taken by the Gas Regulator acting as arbitrator or by an arbitrator contemplated in subsection (2) is binding on the parties to the dispute.

31. Investigations by Gas Regulator

(1) The Gas Regulator must conduct investigations into complaints by:

- (a) customers relating to the supply of gas;

- (b) customers relating to unreasonable or excessive prices or tariffs imposed by a licensee; and
 - (c) any customer concerning unreasonable differences regarding the supply of gas or gas services by licensees.
- (2) Notwithstanding subsection (1), the Gas Regulator may not conduct investigations into disputes concerning breach of contract between a licensee and an eligible customer.
- (3) A complaint contemplated in subsection (1) must be submitted within the prescribed period and in the prescribed manner and be accompanied by:
- (a) supporting information; and
 - (b) a description of efforts made to resolve the dispute before resorting to the Gas Regulator.

32. Expropriation of land by Gas Regulator

- (1) In pursuit of the objects of this Act, the Gas Regulator may expropriate land, or any right in, over or in respect of land on behalf of a licensee for gas transmission, storage, distribution, liquefaction or re-gasification facilities in accordance with section 25 of the Constitution.
- (2) The procedure to be followed in giving effect to subsection (1) must be prescribed.
- (3) The Gas Regulator may exercise the powers contemplated in subsection (1) only if it is satisfied that:
- (a) a licensee is unable to acquire land or a right in, over or in respect of such land by agreement with the owner; and
 - (b) the land or any right in, over or in respect of such land is reasonably required by a licensee for gas transmission, storage, distribution, liquefaction or re-gasification facilities which will enhance the Republic's gas infrastructure.

33. Rights of licensee in respect of premises or land belonging to others

- (1)(a) Subject to subsections (2) and (3), a licensee may lay and construct pipes for the distribution of gas under or over any such street, and may from time to time repair, alter or remove any pipes so laid or constructed within its licensed area of supply.
- (b) The licensee is responsible for any restoration necessary as a result of the acts referred to in paragraph (a).
- (2) Before exercising a power contemplated in subsection (1)(a), a licensee must consult and coordinate with the authority in whose area of jurisdiction the street in question is situated, except in cases of emergency.
- (3) A licensee must exercise a power contemplated in subsection (1)(a):
- (a) in accordance with a route and in terms of specifications approved by the authority concerned; and
 - (b) except in cases of emergency, under the supervision of the authority concerned.
- (4) Any pipe, meter, fitting, work or apparatus belonging to a licensee and lawfully placed or installed above or under any land or upon any premises not in the licensee's possession remain the property of and may be removed by such licensee.
- (5) Subject to subsection (6) any person authorised thereto in writing by a licensee may at all reasonable times enter any premises to which gas is or has been supplied:
- (a) in order to inspect, repair, replace or alter any pipe, meter, fitting, work and apparatus belonging to such licensee;
 - (b) the purpose of ascertaining the quantity of gas consumed; or
 - (c) where a gas supply is no longer required, for the purpose of removing any pipe, meter, fitting, work and apparatus belonging to such licensee.

- (6) Any person entering a premises under subsection (5) must:
 - (a) except in cases of emergency, make arrangements with the occupant or owner of the premises before entering such premises;
 - (b) adhere to all reasonable security measures of the occupant or owner of the premises; and
 - (c) exhibit his or her authorisation at the request of such occupant or owner.

34. Regulations and rules

- (1) The Minister may, by notice in the *Gazette*, make regulations regarding:
 - (a) ensuring fair administrative action by the Gas Regulator;
 - (b) criteria for distribution;
 - (c) the qualifying thresholds and other requirements that must be met by a person in order to qualify as an eligible customer and the conditions under which such eligible customer may purchase gas from a supplier or trader;
 - (d) the rehabilitation of land used in connection with the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein, the provision of security for rehabilitation purposes and the composition and amount of such security;
 - (e) the determination of gas specifications;
 - (f) the procedure to be followed and fees to be paid in mediation and arbitration proceedings;
 - (g) the procedure to be followed at, and the time within which, expropriation proceedings must be conducted;
 - (h) the rendering of information to the Gas Regulator;
 - (i) price regulation procedures and principles;
 - (j) mechanisms to promote historically disadvantaged South Africans; and
 - (k) any other matter that may or has to be prescribed, or determined or provided for by regulations in terms of this Act.
- (2) Before promulgating regulations contemplated in subsection (1), the Minister must:
 - (a) consult with the Gas Regulator;
 - (b) invite public comments on such regulations; and
 - (c) duly consider the comments.
- (3) The Gas Regulator may make rules regarding:
 - (a) the procedures to be followed at meetings of the Gas Regulator;
 - (b) the keeping of records by the Gas Regulator;
 - (c) the form and manner, and contents of licence applications;
 - (d) the publishing of licence applications and the contents thereof;
 - (e) the form and manner in which objections to licence applications must be lodged and the furnishing thereof to the applicant for his or her response thereto;
 - (f) the procedure to be followed in considering licence applications;
 - (g) the publishing of information relating to uncommitted capacity by the holders of transmission or storage licences and the publishing of prices for gas supplied to customers other than eligible customers by the holders of distribution licences;
 - (h) the procedure to be followed in the variation, suspension or removal or the revocation of licence conditions;
 - (i) the form in which registration must be lodged;
 - (j) the procedures to be followed in investigations, including the summoning of witnesses and the payment of witness fees;
 - (k) the inspection of and enquiry into the construction and operation of any gas facility or any trading in gas; and
 - (l) consultation with interested and affected parties.

35. Transitional provisions

- (1) Any person owning or operating gas facilities or trading in gas prior to the commencement of this Act must, within six months after the commencement, submit to the Gas Regulator an application for a licence in terms of this Act.
- (2)(a) The Gas Regulator must grant a licence contemplated in subsection (1), unless it finds that the applicant is unable or unwilling to own or operate gas facilities or to trade in gas in a manner consistent with the objectives and provisions of this Act.
- (b) Any licence issued in terms of paragraph (a) must for all purposes be regarded as a licence issued in terms of section 19.

36. Mozambique Gas Pipeline Agreement

- (1) In this section, '*the agreement*' means the Mozambique Gas Pipeline Agreement, as it existed immediately before the date of commencement of this Act, entered into between the Minister, the Minister of Trade and Industry and Sasol Limited concerning the introduction of natural gas by pipeline from the Republic of Mozambique into the Republic.
- (2) Despite anything to the contrary in this Act, the agreement binds the Gas Regulator until 10 years after natural gas is first received from Mozambique.
- (3) From the date of the conclusion of the agreement, the terms of the agreement relating to the following matters constitute conditions of a licence issued in terms of section 19:
 - (a) exclusive rights and periods granted in respect of transmission and distribution of gas;
 - (b) third party access to the transmission pipeline from Mozambique and to certain of Sasol's pipelines;
 - (c) prices charged by Sasol for gas;
 - (d) Sasol's obligation to supply customers, distributors and reticulators with gas; and
 - (e) administration of the agreement.
- (4) The Gas Regulator must formally issue licences to the entities contemplated in the agreement and may impose such conditions in respect of each licence in terms of this Act as are not contrary to the agreement.

37. Short title

This Act is called the Gas Act, 2001, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Schedule 1: EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

(Section 15(2))

- (1) Any person engaged in the transmission of gas for that person's exclusive use.
- (2) Small biogas projects in rural communities not connected to the national gas pipeline grid.
- (3) Gas reticulation and any trading activity incidental thereto.
- (4) Liquefied petroleum gas supplied from a bulk storage tank or cylinder, piped at less than 2 bar gauge and crossing no more than four erf lines between separate property boundaries.

C Liquid Fuels

The White Paper on the Energy Policy of the Republic of South Africa points out that prior to 1954, all fuel consumed in South Africa was imported in refined form and distributed by the four oil companies. These oil companies (BP, Shell, Mobil and Caltex) operated as wholesale marketers in South Africa.

Government's future vision is to create a stable and internationally competitive liquid fuels industry. As South Africa is increasingly integrated into the global economy, our industry will be well prepared to adapt to these changing circumstances. This implies an industry with limited government intervention and continued investment in new refining, wholesaling and retailing facilities. As a significant input into the economy, the cost of liquid fuels will be kept as low as possible and be made available as widely as possible.

In order to achieve a stable liquid fuels industry, government has to introduce a change in policy:

- an efficient and internationally competitive industry;
- the stable and continued availability of quality products throughout the country at internationally competitive and fair prices within a framework of appropriate health, safety and environmental standards;
- an equitable balance between the interests of industry participants and consumers;
- an environment conducive to synergistic investment in the liquid fuels industry and the related petro-chemicals industry;
- an industry supportive of government's broader social and economic goals;
- a restructuring of the state's involvement in the industry which will be appropriate to South Africa's changed political and economic circumstances;
- the meaningful inclusion of those interests which have been historically disadvantaged;
- the optimum and efficient utilisation of liquid fuels; and
- an efficient network of pipeline and storage infrastructure whilst protecting against the abuse of market power and restrictive practices in these natural monopolies.

Legislation relevant to liquid fuels include the Liquid Fuels and Oil Repeal Act (Act 20 of 1993) and the Petroleum Products Act (Act 120 of 1977) as last amended.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9
8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)

2.2.4.2.4 Liquid Fuels And Oil Act Repeal Act

Description: The Act repeals the Liquid Fuel and Oil Act (1947) and provides for matters connected therewith.

2.2.4.2.5 Petroleum Products Act

Description: The act provides for measures in managing petroleum products and also reducing the cost of distribution of Petroleum Products. The act also provides for a range of licensing requirements for persons involved in the manufacturing and sale of certain petroleum products. In addition, the act promotes the transformation of the South African petroleum and liquid fuels industry. When considering the provisions of the act, it is essential have regard to the provisions of the regulations promulgated under the act.

2.2.4.3 Mining

During 1994 government released the White Paper: A Minerals and Mining Policy for South Africa. The White Paper re-affirms government's commitment to sustainable development in the mining sector by acknowledging the constitutional environmental right. It states that it is essential to integrate environmental impact management into all economic development activities and that this is in the interest of government's goal of sustainable development.

The most important step towards the sustainable development of mineral and mining resources was the promulgation of the Mineral and Petroleum Resources Development Act 28 of 2002. This Act repeals various acts, including the Minerals Act 50 of 1991. The 2002 Act guarantees equitable access to, and sustainable development of, the nation's mineral and petroleum resources in order to eradicate all forms of discriminatory practices in the mineral and petroleum industries. The Act further emphasises the need to create an internationally competitive and efficient administrative and regulatory regime.

Further reading:

1. Strydom and King (eds) *Environmental Management in South Africa* (2009)
2. Kidd *Environmental Law* (2008)
3. Paterson & Kotze *Environmental Compliance and Enforcement in South Africa* (2009)
4. Kotze, Du Plessis, Feris, Olivier *South African Environmental Law through the Cases* (2008)
5. Glazewski *Environmental Law in South Africa* (2005)
6. M van der Linde & E Basson *Environment (chapter 50)* in 'Constitutional Law of South Africa' edited by Woolman *et al*
7. I Sampson & M van der Linde *The Guide to Environmental Auditing in South Africa* (2008) as updated – service issue 9

8. H Thompson *Water law: a practical approach to resource management & the provisions of services* (2006)
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2.2.4.2.5 Mineral and Petroleum Resources Development Act

Description: The Mineral and Petroleum Resources Development Act of 2002 guarantees equitable access to, and sustainable development of, the nation's mineral and petroleum resources and provides for matters related thereto. (Refer to page 508 for this Act)

2.3 Table of Relevant Cases²

CASE	KEYWORD
<i>All the Best Trading CC t/a Parkville Motors, and Others v S N Nayagar Property Development and Construction CC and Others</i> 2005 (3) SA 396 (TPD)	Protection of the environment Environmental right Commercial interest Environmental interest Locus standi
<i>Hangklip/Kleinmond Federation of Ratepayers Associations v The Minister for Environmental Planning and Economic Development: Western Cape</i> (4009/2008) Western Cape High Court (unreported)	Integrated environmental management Administrative justice
<i>Bareki NO and Another v Gencor Ltd and Others</i> 2006 (1) SA 432 (TPD)	Mining Law Rehabilitation Polluter pays principle Interpretation of statutes Retrospective application of legislation Strict liability
<i>Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs</i> 2004 (4) SA 490 (CC)	Marine living resources Fishing quotas Administrative justice
<i>BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs</i> 2004 (5) SA 124 (W)	Environmental impact assessment Environmental right
<i>Director: Mineral Development, Gauteng Region v Save the Vaal Environment</i> 1999 2 All SA 381 (A)	Environmental right Locus standi Mining rights
<i>Earthlife Africa (Cape Town) v Director-General: Department of Environmental Affairs and Tourism and Another</i> 2005 (3) SA 156 (C)	Administrative law Audi alteram partem Environmental impact assessment Record of Decision Right to access to information
<i>Fuel Retailers Association of SA (Pty) Ltd v Director-General Environmental Management Mpumalanga and Others</i> 2007 (10) BCLR 1059 (CC)	Environmental right Filling station Environmental impact assessment Socio-economic considerations Land use planning Zoning
<i>Harmony Gold Mining Co Ltd v Regional Director: Free State, Department Water Affairs and Forestry And Another</i> [2006] JOL 17506 (SCA)	Water pollution Liability Directives
<i>Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products, and Others</i> 2004 (2) SA 393 (ECD)	Atmospheric pollution Registration certificate Duty of care
<i>Khabisi NO and another v Aquarella Investment 83 (Pty) Ltd and others</i> [2007] 4 All SA 1439 (T)	Compliance notices Directives Environmental right Property right
<i>Kranspoort Community, In re</i> 2000 (2) SA 124 (LCC)	Land reform Land use Feasibility of restoration Restitution of rights in land Sustainable development
<i>Mazibuko and Others v City of Johannesburg and Others</i> 2009 ZACC 28	Right to access to water

² Note this is not an exhaustive list of cases, but provides an overview of some of the key environmental law cases.

<i>MEC: Department of Agriculture, Conservation and Environment and another HTF Developers (Pty) Limited</i> 2008 (4) BCLR 417 (CC)	Environmental Impact assessment Sustainable development Directives Liability for environmental damage
<i>Minister of Health and Welfare v Woodcarb (Pty) Ltd and Another</i> 1996 (3) SA 155 (NPD)	Pollution Atmospheric pollution Scheduled processes Interdict <i>Locus standi</i> Environmental right
<i>Mostert And Another V The State</i> (338/2009) [2009] ZASCA 171	Water Water use Criminal offences
<i>Nature's Choice Properties (Alrode) (Pty) Ltd v Ekurhuleni Metropolitan Municipality</i> [2010] 1 All SA 12 (SCA)	Air pollution Smoke control regulations
<i>Oudekraal Estates (Pty) Ltd v The City of Cape Town and Others</i> 2004 (6) SA 222 (SCA)	National heritage Land-use
<i>Petro Props(Pty) Ltd v Barlow and Another</i> 2006 (5) SA 160 (W)	Environmental Impact assessment Environment right Right to Freedom of Expression
<i>South Durban Community Environmental Alliance v Head of Department: Department of Agriculture and Environmental Affairs, KwaZulu-Natal and Others</i> 2003 (6) SA 631 (D)	Environmental impact assessment Exemptions Review
<i>Trustees for the time being of the Biowatch Trust v Registrar, Genetic Resources & others</i> [2009] JOL 23693 (CC)	Genetically modified organisms Access to information Costs orders
<i>Verstappen v Port Edward Town Board and Others</i> 1994 (3) SA 569 (D)	Waste disposal permit Disposal site Interdict <i>Locus standi</i>
<i>Wildlife Society of Southern Africa and Others v Minister of Environmental Affairs and Tourism of the Republic of South Africa and Others</i> 1996 (3) SA 1095 (T)	Environmental conservation <i>Mandamus</i> <i>Locus standi</i>

3 MULTILATERAL ENVIRONMENTAL AGREEMENTS WHICH SOUTH AFRICA HAS RATIFIED/ACCEDED TO

Environmental law is a broad field within the South African legal system and is concerned with a large number of legal problems, both at a domestic and at an international level. The role of international law and its application within South Africa are contained in section 39 and chapter 14 of the 1996 Constitution.

The development of international environmental law norms and standards has grown into one of the fastest developing areas of international law and has gained the recognition of a distinct branch of international law. There exists an interdependence between domestic environmental laws and international environmental laws.

The section below highlights some of the most important multi-lateral environmental agreements at global, regional and sub-regional level to which South Africa is a party. Where available, reference is made to both the status of ratification and enabling legislation at a national level. Website addresses have been included for those conventions or their secretariats that have websites.

3.1 Selected Global Multilateral Environmental Agreements: United Nations and other Treaties as well as Soft Law Instruments

1. The International Convention for the Regulation of Whaling (1946)

Description: The Convention was established in order to provide for the proper conservation of whale stocks and the sustainable development of the whaling industry.

Ratified: 1946

Enabling legislation: No enabling legislation

2. The Antarctic Treaty (1959)

Description: This Convention stipulates that Antarctica shall be used for peaceful purposes through the development of co-operation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year Accords, in the interests of science and the progress of all mankind.

Signed: 1 December 1959

Ratified: 21 June 1960

Enabling legislation: The Antarctic Treaties Act 60 of 1996

3. Agreed Measures for the Conservation of Antarctic Fauna and Flora (1964)

Description: These measures provide for special conservation areas and prohibit the killing capturing and disturbance of nature, mammals or birds without a permit. State parties are obliged to mitigate interference with Antarctic living conditions and protect biological communities within specially designated areas.

Signed: South Africa is a party to these Measures

Enabling legislation: No enabling legislation

4. The International Convention on Load Lines (1966)

Description: This Convention provides for determining the freeboard of tankers by subdivision and damage stability calculations.

Signed: 14 December 1966

Acceded: 21 July 1968

Enabling legislation: South African Maritime Safety Authority Act 5 of 1998

5. The Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil thereof (1971)

Description: The Convention aims to exclude the Seabed, Ocean Floor and the Subsoil thereof from the arms race as a step towards disarmament and the reduction of international tension and the maintenance of world peace.

Ratified: 14 November 1973

Enabling legislation: Non-proliferation of Weapons of Mass Destruction Act 87 of 1993

6. The Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (1972)

Description: The Convention on Wetlands of International Importance (Ramsar Convention) was adopted on 2 February 1971. The Ramsar Convention provides for the conservation and sustainable use of wetlands through national and international co-operation as a means of achieving sustainable development throughout the world.

Signed: 12 March 1975

Ratified: 12 March 1975

Enabling legislation: National Environmental Management: Biodiversity Act 10 of 2004

Website: www.ramsar.org

7. The Convention for the Conservation of Antarctic Seals (1972)

Description: This Convention prohibits the hunting of fur, elephant and Ross seals and provides for annual quotas for the exploitation of crab-eater, leopard and Weddel seals.

Signed: 9 June 1972

Ratified: 15 August 1972

Enabling legislation: The Antarctic Treaties Act 60 of 1996

8. The Convention on the International Regulations for Preventing Collisions at Sea (1972)

Description: One of the most important innovations in the 1972 COLREGs was the recognition given to traffic separation schemes - Rule 10 gives guidance in determining safe speed, the risk of collision and the conduct of vessels operating in or near traffic separation schemes.

Signed: 30 December 1976

Acceded: 15 July 1977

Enabling legislation: South African Maritime Safety Authority Act 5 of 1998

9. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction (1972)

Description: Also known as the Biological and Toxin Weapons Convention or BWC prohibit the development, production, stockpiling and acquisition of these weapons. The BWC thus supplements the prohibitions on use of biological weapons contain in the 1925 Geneva Protocol.

Signed: 10 April 1972

Ratified: 3 November 1975

Enabling legislation: Non-proliferation of Weapons of Mass Destruction Act 87 of 1993

10. The World Heritage Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)

Description: The Convention aims to promote cooperation among nations in order to protect natural and cultural heritage.

Signed: 16 November 1977

Ratified: 10 July 1997

Enabling legislation: World Heritage Convention Act 49 of 1999

11. The International Convention for the Prevention of Pollution from Ships (1973)

Description: This Convention deals specifically with pollution from vessels and aims to prevent deliberate operational discharges.

Signed: 28 November 1984

Acceded: 28 February 1985

Enabling legislation: Marine Pollution (Prevention of Pollution from Ships) Act 2 of 1986 (The MARPOL Act); Marine Pollution (Intervention) Act 64 of 1987; Marine Pollution (Control and Civil Liability) Act 6 of 1981; Dumping at Sea Control Act 73 of 1980; Wreck and Salvage Act 94 of 1996; International Convention for the Prevention of Pollution from Ships Amendment Act 66 of 1996; Hazardous Substances Act 15 of 1973; Marine Living Resources Act 18 of 1998; the National Environmental Management Act 107 of 1998; the National Environmental Management Integrated Coastal Management Act 24 of 2008

12. The International Convention for the Safety of Life at Sea (1974)

Description: This Convention represents a considerable step forward in modernizing regulations and in keeping pace with technical developments in the shipping industry. The intention was to keep the Convention up to date through periodic amendments but in practice the amendments procedure incorporated proved to be very slow. It has become impossible to secure the entry into force of amendments within a reasonable period of time.

Signed: 23 May 1980

Acceded: 25 May 1980

Enabling legislation: South African Maritime Safety Authority Act 5 of 1998; Merchant Shipping Act 57 of 1951

13. The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (1975)

Description: The Convention aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

Signed: 3 March 1973

Ratified: 15 July 1975

Enabling legislation: South Africa has not enacted specific legislation, but relies on enforcement through the respective provincial Nature Conservation Ordinances. Also see National Environmental Management Biodiversity Act 10 of 2004

Eastern Cape: Nature Conservation Act 10 of 1987 (Ciskei)

Free State: Ordinance 8 of 1969, Free State Environmental Conservation Bill.

Gauteng: Nature Conservation Ordinance 12 of 1983 (Transvaal)

Kwa-Zulu Natal: Kwa-Zulu Natal Nature Conservation Management Act 9 of 1997

Mpumalanga: Mpumalanga Nature Conservation Act 10 of 1998

Northern Cape: Cape Nature and Environmental Conservation Ordinance 19 of 1974

Limpopo: N/A

North West: North West Parks and Tourism Board Act 3 of 1997

Western Cape: Western Cape Nature Conservation Board Act 15 of 1998

Website: www.cites.org

14. The Convention on the Conservation of Migratory Species of Wild Animals (1979)

Description: The Convention was a response to the need to cooperate in the conservation of animals that migrate across national borders. These include terrestrial mammals, reptiles, marine species and birds. Special attention is given to the protection of endangered species.

Signed: 23 June 1979

Acceded: 1 December 1991

Enabling legislation: World Heritage Convention Act 49 of 1999

15. The Convention on the Conservation of Antarctic Marine Living Resources (1980)

Description: The objective of this Convention is the conservation of Antarctic living marine resources. This Convention was one of the first major conventions to adopt an 'ecosystem' approach in the management of marine resources and provides for the conservation of marine ecosystems rather than that of a particular species.

Signed: 11 September 1980

Ratified: 23 August 1981

Enabling legislation: The Antarctic Treaties Act 60 of 1996

16. The Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean (1982)

Description: The main objective of this Convention is to ensure the long-term conservation and sustainable use of fish stocks other than highly migratory stocks found in areas of the South East Atlantic beyond the limits of national jurisdiction.

Signed: 20 April 2001

Enabling legislation: No legislation has been enacted. South Africa needs to implement legislation in order to implement Port State and Flag State responsibilities with respect to the SEAFO system of observation, inspection, compliance and enforcement

17. The United Nations Law of the Sea Convention (1982)

Description: The convention is a comprehensive codification of the law of the sea.

Ratified: 20 August 1997

Acceded: December 1982

Enabling legislation: No enabling legislation

Website: www.un.org/depts/los/index.htm

18. The Regulations on Safe Transport for Radioactive Material (1984)

Description: The Regulations deal with the safe transportation of radioactive material in general (not only by sea).

Enabling legislation: The Merchant Shipping (Dangerous goods) Regulations, R574 (Gov Gaz No 17921 dated 18 April 1997 in terms of the Merchant Shipping Act 57 of 1951)

19. The Vienna Convention for the Protection of the Ozone Layer (1985)

Description: This Convention was initiated by UNEP in response to scientific evidence that ozone depletion was a serious enough problem to warrant international regulation.

Acceded: 15 January 1990

Ratified: January 1995

Enabling legislation: National Environmental Management Act: Air Quality Act 39 of 2002

20. The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986)

Description: To facilitate the prompt provision of assistance in the event of a nuclear accident or radiological emergency and co-operation between the parties and with the International Atomic Energy Agency (IAEA).

Signed: 10 August 1987

Ratified: 10 September 1987

Enabling legislation: No enabling legislation

21. The Convention on Early Notification of Nuclear Accidents (1986)

Description: The Convention provides that information on nuclear accidents be made available as early as possible in order that transboundary radiological consequences are minimised. Parties are required to notify states which may be affected directly or through the International Atomic Energy Agency (IAEA).

Signed: 26 September 1986

Ratified: 10 August 1987

Enabling legislation: Non-proliferation of Weapons of Mass Destruction Act 87 of 1993

22. The Montreal Protocol on Substances that Deplete the Ozone Layer (1987)

Description: This Protocol was adopted due to the need for more specific control measures than those suggested in the Vienna Convention. Central features include the rejection of the excuse of inadequate scientific knowledge for delaying action; co-operation between scientists and policy-makers so that new scientific evidence can lead to the introduction of new controls, and an agreement concerning the use of trade measures to entice non-members into joining the Multilateral Environmental Agreement.

Acceded: 15 January 1990

Enabling legislation: National Environmental Management Act: Air Quality Act 39 of 2002

23. The Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) (1989)

Description: The Basel Convention regulates the international transport and disposal of hazardous and toxic waste.

Ratified: May 1994

Acceded: 5 April 1994

Enabling legislation: National Environmental Management Act 107 of 1998; National Water Act 36 of 1998; Health Act 63 of 1977; Hazardous Substances Act 15 of 1973; International Health Regulations Act 28 of 1974; Nuclear Energy Act 46 of 1999; Nuclear Regulator Act 47 of 1999; Conservation of Agricultural Resources Act 43 of 1983; Fertilisers, Farm Feeds, Agricultural Remedies Act 36 of 1947; Agricultural Pests Act 30 of 1983; Occupational Health and Safety Act 85 of 1993; Advertising on Roads and Ribbon Development Act 21 of 1940; National Building Regulations and Building Standards Act 103 of 1977; National Environmental Management: Waste Act 59 of 2008

Website: www.basel.int

24. The Convention on Biological Diversity (1992)

Description: The Convention has three main goals:

- (i) the conservation of biological diversity;
- (ii) the sustainable use of its components; and
- (iii) the fair and equitable sharing of the benefits from the use of genetic resources.

Signed: 4 June 1993

Ratified: 2 November 1995

Acceded: 14 August 2003

Enabling legislation: Natural Environmental Management: Biodiversity Act 10 of 2004

25. The UN Framework Convention on Climate Changes (1992)

Description: The purpose of this Convention is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

Ratified: 29 August 1997

Acceded: 27 August 1997

Enabling legislation: National Environmental Management: Air Quality Act 39 of 2004

Website: www.unfccc.international

26. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (1993)

Description: The Convention aims to achieve effective progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction.

Signed: 14 January 1993

Ratified: 13 September 1995

Enabling legislation: Non-proliferation of Weapons of Mass Destruction Act 87 of 1993

27. The Convention to Combat Desertification (1994)

Description: It is the first and only internationally legally binding framework convention set up to address the problem of desertification. The Convention is based on the principles of participation, partnership and decentralization - the backbone of Good Governance.

Signed: 9 January 1995

Ratified: 30 September 1997

Enabling legislation: The Department of Environmental Affairs and Tourism has embarked on a national action plan to combat desertification. No legislation has been enacted to deal with desertification
Website: www.unccd.int

28. The Code of Conduct for Responsible Fisheries (1995)

Description: The Code takes cognisance of the state of world fisheries and aquaculture, and proposes actions towards implementing fundamental changes within the fisheries sector to encourage the rational and sustainable utilisation of fisheries and aquaculture. It prescribes principles and standards for the conservation and management of all fisheries, and addresses the capture, processing and trade in fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.

Signed/ Ratified/Acceded: The Code is a voluntary instrument rather than a legally binding international agreement. It was approved by Cabinet on 23 January 2002 (decision no 31). Parliamentary submission has been prepared. Need to conduct process of public consultation (via *Government Gazette*)

Enabling legislation: No enabling legislation

29. The International Maritime Goods Code (1996)

Description: The Code was developed to control the transport of hazardous substances by sea.

Enabling legislation: Marine Pollution (Prevention of Pollution from ships) Act 2 of 1986; The Merchant Shipping (Dangerous goods) Regulations, R574 (*Government Gazette* No 17921, 18 April 1997, in terms of the Merchant Shipping Act 57 of 1951)

Website: www.imo.org

30. The Convention on the Prevention of Marine Pollution by dumping of Wastes and Other Matter (1972) (The London Convention) and the 1996 Protocol

Description: The 1996 Protocol replaces the 1972 London Convention. The Protocol regulates the use of the sea as a depository for waste materials.

Ratified: 1978 (The 1972 London Convention)

Acceded: 1978 (The 1972 London Convention); 1998 (The 1996 Protocol)

Enabling legislation: Dumping at Sea Control Act 73 of 1980; National Environmental Management: Integrated Coastal Management Act 24 of 2008

Website: www.londonconvention.org

United Nations Framework Convention on Climate Change

Signed: 15 June 1993, 27 August 1997

Ratified: 29 August 1997

31. The Kyoto Protocol (1997)

Description: The Protocol specifies principles for both developed and developing countries to reduce emissions of greenhouse gases. The various principles include the designing, adaptation and implementation of measures to mitigate climate change. States are also required to co-operate in the development and transfer of climate friendly technologies.

Signed: December 1997

Acceded: 31 July 2002

Enabling Legislation: No enabling legislation

Website: www.unfccc.int

32. The Convention on Prior Informed Consent (1998)

Description: The Convention represents an important step towards ensuring the protection of citizens and the environment from the possible dangers resulting from trade in highly dangerous pesticides and chemicals. The Convention establishes a first line of defence against potential tragedies by preventing unwanted imports of dangerous chemicals, particularly in developing countries. By extending to all countries the ability to protect themselves against the risks of toxic substances, it will have 'levelled the playing field' and raised global standards for the protection of human health and the environment. The Convention gives importing countries the power to decide which chemicals they want to receive and to exclude those they cannot manage safely. If trade does take place, labelling and the provision of information on potential health and environmental effects are required.

Signed: 10 September 1998

Acceded: 4 September 2002

Enabling legislation: No enabling legislation

Website: www.pfc.int

33. Stockholm Convention on Persistent Organic Pollutants (POPs) (2001)

Description: The objective of the Convention is to protect human health and the environment from the effects of chemical pollutants commonly known as persistent organic pollutants (POPs). 12 persistent organic pollutants (POPs) have been targeted for immediate action in the POPs finalised text and were selected on the basis of irrefutable evidence that these chemicals are capable of doing enormous harm to humans, wildlife and the environment.

Signed: 21 May 2001

Ratified: 4 September 2002

Enabling legislation: No enabling legislation

Website: www.pops.int

3.2 Regional Multilateral Environmental Agreements: African Union and SADC Treaties/Protocols

3.2.1 African Union**3.2.1.1 African Charter on Human and Peoples' Rights (1981)**

Description: The African Charter was adopted by the African Union in 1981 and entered into force in 1986. The Charter establishes a normative legal framework for the promotion, protection and fulfilment of human rights in Africa. Article 24 specifically deals with the environment and it was the first time that the right to a satisfactory environment was recognised and included in an international legally binding instrument.

Signed: 9 July 1996

Ratified: 9 July 1996

Enabling legislation: No enabling legislation

Website: www.africa-union.org

3.2.1.2 Treaty Establishing the African Economic Community (1991)

Description: The Treaty Establishing the African Economic Community (Abuja Treaty) aims to promote economic, social and cultural development as well as African economic integration. The Treaty contains numerous provisions dealing with the environment and its protection.

Signed: 10 October 1997

Ratified: 31 May 2001

Enabling legislation: No enabling legislation

Website: www.africa-union.org

3.2.1.3 Constitutive Act of the African Union (2000)

Description: The Constitutive Act is the founding Act of the African Union. The Act recognises and places strong emphasis on sound environmental protection, management, and sustainable development, be it from a regulatory or rights based approach.

Signed: 9 July 1996

Ratified: 9 July 1996

Enabling legislation: No enabling legislation

Website: www.africa-union.org

3.2.2 Southern African Development Community (SADC)

3.2.2.1 SADC Treaty (1992)

Description: The amended Treaty provides the foundation of SADC. The Treaty establishes the legal status of the organisation and provides for the principles, objectives and general undertakings of SADC. In addition, provision is also made for membership, institutions, principles of co-operation, relations with other states, regional and international organisations, the management of resources, funds and assets and other related matters.

Acceded: 29 August 1994

Enabling legislation: No enabling legislation

Website: www.sadc.international

3.2.2.2 SADC Protocol on Shared Watercourse Systems (1995)

Description: The protocol provides for the utilisation of a shared watercourse system for the purpose of agricultural, domestic and industrial use and navigation within the SADC region. The Protocol establishes river basin management institutions for shared watercourse systems and provides for all matters relating to the regulation of shared watercourse systems.

Signed: 28 August 1995

Ratified: 26 November 1997

Enabling legislation: No enabling legislation

Website: www.sadc.int

3.2.2.3 SADC Protocol on Energy (1996)

Description: The Protocol on Energy has been drafted to place an obligation on member states to use energy as a means of supporting economic growth and development, alleviating poverty and improving the standard and quality of life throughout the region. The Protocol ensures that the development and

use of energy are environmentally sound and creates an environment conducive for private sector participation in energy development in the region. The Protocol further provides for institutional mechanisms ensuring energy co-operation; reporting procedures and information exchange.

Signed: 24 August 1996

Ratified: 29 April 1999

Enabling legislation: No enabling legislation

Website: www.sadc.int

3.2.2.4 SADC Protocol on Mining (1997)

Description: Based upon the Lusaka Declaration of 1980 on Southern Africa economic liberation, the Lagos Plan of Action and the Final Act of Lagos of 1980, SADC is determined to ensure, through co-operation and collaboration, that the region's abundant mineral resources are developed to improve the living standards of people throughout the SADC region. The Protocol on Mining provides for general principles on mining such as the harmonising of national and regional policies, strategies and programmes related to the development and exploitation of mineral resources. Provision is made for, *inter alia*, the enhancement of technology capacity, the promotion of private sector participation and co-operation with other organisations.

Signed: 8 September 1997

Ratified: 29 April 1999

Enabling legislation: No enabling legislation

Website: www.sadc.int

3.2.2.5 SADC Protocol on Wildlife Conservation and Law Enforcement in the Southern African Development Community (1999)

Description: Article 5 of the SADC Treaty states that the sustainable use of natural resources and effective protection of the environment are key objectives of SADC. In order to implement article 5, the Protocol ensures *inter alia*, the conservation and sustainable use of wildlife resources under the jurisdiction of each member state through co-operation at national level among governmental authorities, non-governmental organisations, and the private sector and to take appropriate measures to ensure the conservation and sustainable use of wildlife.

Signed: 18 August 1999

Ratified: October 2003

Enabling legislation: No enabling legislation

Website: www.sadc.int

3.2.2.6 SADC Protocol on Fisheries (2001)

Description: The Protocol emphasises the important role of fisheries in the social and economic well-being and livelihood of the people of the region in ensuring food security and the alleviation of poverty with the ultimate objective of its eradication. The Protocol on Fisheries promotes responsible and sustainable use of the living aquatic resources and aquatic ecosystems.

Signed: 14 August 2001

Ratified: 24 July 2003

Enabling legislation: No enabling legislation

Website: www.sadc.int

3.2.2.7 SADC Protocol on Forestry (2002)

Description: The Protocol on Forestry finds application through all activities relating to development, conservation, sustainable management and utilisation of all types of forests and trees, as well as trade in forest products. In the execution of the guiding principles of the Protocol, State parties must co-operate in good faith and be guided by the principles and approaches set out in article 4.1. The Protocol further provides for the tenure and ownership of state-owned forests, national forest policies. The Protocol provides programmes and the introduction and implementation of national legal and administrative measures to promote sustainable forest management.

Signed: 3 October 2002

Enabling legislation: No enabling legislation

Website: www.sadc.int

3.3 Other regional agreements

Transfrontier Conservation Areas Initiatives

Ai-|Ais/Richtersveld Treaty

Signed and ratified: 1 August 2003

Kgalagadi Transfrontier Park Agreement

Signed and ratified: 12 May 2000

Greater Limpopo Transfrontier Park Treaty

Signed and ratified: 9 December 2002

Lubombo Transfrontier and Resource Area (Lubombo Protocol)

Signed and ratified: 22 June 2000

4 USEFUL WEBSITES DEALING WITH ENVIRONMENTAL LAW

United Nations Agencies

UNCCD (UN Convention to Combat Desertification)

<http://www.unccd.int>

UNDP (UN Development Programme)

<http://www.undp.org>

UNECE (UN Economic Commission for Europe)

<http://www.unece.org>

UNEP (UN Environment Programme)

<http://www.unep.org>

UNFCCC (UN Framework Convention on Climate Change)

<http://www.unfccc.int>

UNFF (UN Forum on Forest)

<http://www.un.org/esa/forests>

UNFPA (UN Population Fund)

<http://www.unfpa.org>

Specialised Agencies and Autonomous Organisations

IAEA (International Atomic Energy Agency)

<http://www.iaea.or.at>

IFAD (International Fund for Agricultural Development)

<http://www.ifad.org>

ILO (International Labor Organisation)

<http://www.ilo.org>

IMO (International Maritime Organisation)

<http://www.imo.org>

WIPO (World Intellectual Property Organisation)

<http://www.wipo.org>

WB (World Bank)

<http://www.worldbank.org>

WTO (World Trade Organisation)

<http://www.wto.org>

WHO (World Health Organisation)

<http://www.who.int>

WMO (World Meteorological Organisation)

<http://www.wmo.ch/>

Regional Organisations

AU (African Union)

<http://www.african-union.org>

EU (European Union)

<http://europa.eu>

ECHR (European Court of Human Rights)

<http://www.echr.coe.int>

OAS (Organisation of American States)

<http://www.oas.org>

National Governmental Departments

South African Government online

<http://www.gov.za>

The Constitutional Court

<http://www.constitutionalcourt.org.za>

Department of Environmental Affairs

<http://www.environment.gov.za>

Department of Land Affairs

<http://land.pwv.gov.za>

Department of Agriculture, Forestry and Fisheries

<http://www.daff.gov.za>

Department of Health

<http://www.doh.gov.za>

Department of Labour

<http://www.labour.gov.za>

Department of Minerals and Energy

<http://www.dme.gov.za>

Department of Water Affairs

<http://www.dwaf.gov.za>

Other Useful Websites

Ecolex

<http://www.ecolex.org/>

Environmental Law Association

<http://www.elesa.co.za>

Institute of Marine and Environmental Law

<http://web.uct.ac.za/faculties/law/research/marine.htm>

Law and Policy online

<http://www.polity.org.za>

The Centre for Human Rights

<http://www.chr.up.ac.za>