

DEPARTMENT OF ENVIRONMENTAL AFFAIRS**NOTICE 245 OF 2017****EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS
AMENDMENT BILL, 2017**

The Minister of Environmental Affairs intends introducing the National Environmental Management Laws Amendment Bill, 2017 in Parliament during April 2017. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

A copy of the draft Bill can also be obtained from Mr Sibusiso Shabalala.

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MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2016

1. PURPOSE OF BILL

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

2. OBJECTS OF BILL

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

- National Environmental Management Act, 1998, so as to correct the citation to the definition of "Constitution"; to correct the definition of "environmental mineral resources inspector"; to provide clarity to the definition of "financial provision"; to add a new environmental management principle promoting diversity in sector; to provide clarity pertaining to the regulations that can be made for the procedure for the preparation, evaluation and adoption of environmental management instruments; to provide for a register of all environmental management

instruments adopted in terms of the Act; to provide clarity that the Minister responsible for mineral resources is responsible for activities that are directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to provide for simultaneous submission of the National Environmental Management Act and the specific Environment Management Act applications for purposes of one environmental system; to provide for simultaneous submission of National Environmental Management Act and specific environmental management Act applications in order to enable integrated environmental authorisation; to provide for a trigger for the simultaneous submission of a National Environmental Management Act or specific environmental management Act applications after acceptance of mining right; to provide clarity that a successor in title or person who controls the land may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to empower the Minister to prescribe the information that must be contained in environmental management programme; to provide clarity on consultation to be undertaken by an environmental assessment practitioner on application for environmental authorisation; to provide clarity that an applicant or holder of an environmental authorisation relating to mining activities must set aside financial provision for progressive rehabilitation, mitigation, mine closure and the management of post closure environmental impacts; to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to empower Director-General of the Department responsible for mineral resources and municipalities to issue section 28(4)

directives; to provide clarity that section 28 is applicable to anticipatory costs as well as remedial measures; to provide for joint and several liability in respect of the responsible persons listed under section 28(8); to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from staff within the Department responsible for mineral resources or an organ of state, by agreement; to empower the Member of Executive Council to designate environmental management inspectors to undertake compliance and enforce in respect of provincial environmental legislation; to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors; to provide clarity that an environmental mineral and petroleum inspector must also undergo approved training before designation; to provide clarity on functions and general powers of environmental management inspectors when conducting investigations; to provide clarity that the conducting of a "search" is not the primary purpose of an environmental management inspector undertaking a routine inspection; to provide clarity that an environmental management inspector may detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide clarity that the Minister's power to develop regulations on admission of guilt fines contextualizes the related provisions of the Criminal Procedure Act, 1977; to empower the Minister responsible for mineral resources; Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act; to provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority; to provide clarity on circumstances that an appeal against a directive does not automatically

- suspend it; to provide clarity that an appeal against a directive must be lodged at the appropriate appeal authority; to correct references and cross references to offences and penalties and to update list of offences and penalties; to update the list of offences to Schedule 3;
- National Environmental Management: Protected Areas Act, 2003 so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the board; to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences;
 - National Environmental Management: Biodiversity Act, 2004, so as to provide clarity on definition of "control" and to insert a definition of "eradicate"; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the board; to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species; to ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act;
 - National Environmental Management: Air Quality Act, 2004, so as to provide the Minister with discretion to establish the National Air Quality Advisory Committee; to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial department responsible for environmental affairs is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality; to provide for textual amendment to section 36(5)(d); to

ensure alignment with respect to the implementation of one appeal process under National Environmental Management Act; to provide clarity that the Minister has a discretion to grant or refuse an exemption; to provide clarity that an exemption may be granted subject to conditions;

- National Environmental Management: Integrated Coastal Management Act, 2008, so as to allow for the removal of structures erected prior to commencement of the Act; to provide clarity that an appeal against a decision issued by delegated official must be lodged at the appropriate sphere of government and appeal authority;
- National Environmental Management: Waste Act, 2008, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of "residue deposits" and "residue stockpiles" and "waste"; to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act; to provide for the Waste Management Bureau to be established as a public entity; to provide for the simultaneous submission of the site assessment report and remediation plan relating to a contaminated land; to provide clarity that the Minister must keep a national register of all contaminated land; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of processing fee for the variation of a waste management licence; to increase the fines that could be imposed in terms of regulations made under the Act; to provide clarity that there will be no

exemptions provided from obtaining a waste management licence; to substitute Schedule 3 with new Schedule; to provide for transitional provisions in respect of the Waste Management Bureau;

- National Environmental Management Amendment Act, 2008, so as to clarify that an environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014 is valid under National Environmental Management Act; to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act;
- To provide for the transitional provisions regarding environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014; to clarify that environmental regulations developed under the Mineral and Petroleum Resources Development Act continued until the development and publication of such regulations under the National Environmental Management Act and the National Environmental Management: Waste Act; to provide for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the National Environmental Management: Waste Act, 2008; to provide for transitional provisions regarding the continuation of the Waste Management Bureau and to provide for matters connected therewith.

3. LEGISLATIVE ANALYSIS

3.1. National Environmental Management Act, 1998

3.1.1 Clause 1

Clause 1 of the Bill seeks to amend the definitions of the "Constitution" to correct the citation of the Act and "environmental mineral resource inspector" to include "petroleum" in the designation. The clause also amends the definition of "financial provision" in section 1 of the NEMA to clarify that the definition applies to an applicant for environmental authorisation, a holder of an environmental authorisation or a holder of a right or permit granted in terms of the Mineral and Petroleum Resources Development Act.

3.1.2 Clause 2

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

3.1.3 Clause 3

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

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

The clause amends section 24(5)(bA), (bB) and inserts a new subsection (5A) in NEMA to provide clarity that the Minister responsible for environmental affairs or an MEC may develop regulations setting out the procedure to be followed for the preparation, evaluation, adoption and review of prescribed environmental management instruments, including any minimum requirements for information and any conditions set in such instrument. The clause also requires the Minister responsible for environmental affairs to keep a national register of all environmental management instruments adopted in terms of the NEMA.

3.1.4 Clause 4

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

The clause also inserts new subsections to provide for the simultaneous submission of environmental authorisation application and any other related licence or permit required under any of the specific environmental management Act. Where the competent authority or licensing authority is the same authority for the NEMA and specific environmental management Act (SEMA) applications, an integrated decision must be issued. This can still take the form of multiple decisions, but it will force the process of reaching that decision to be consolidated and used to its full extent, namely using one process for information gathering to inform all decisions related to that proposed development.

3.1.5 Clause 5

Section 24G of the NEMA provides for consequences of unlawful commencement of listed or specified activities. However, there is currently no provision to enable a person who has taken ownership or control of property on which an unlawful structure or development has been built to have such structure or development legalised and also for a person who has commenced, undertaken or conducted a waste management activity without a waste management licence. This clause amends section 24G of the NEMA to allow a successor in title or person in control of the land to lodge a section 24G application for such structure or development. The clause further provides for textual amendment.

3.1.6 Clause 6

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

3.1.7 Clause 7

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

3.1.8 Clause 8

Clause 8 seeks to amend section 24P to provide clarify that an applicant and a holder of an environmental authorisation relating to mining activities must set aside financial provision for progressive rehabilitation, mitigation, remediation, mine closure and the management of post closure environmental impacts. The section has been amended to clarify that the provision also applies to a holder of a right issued or a permit granted in terms of the Mineral and Petroleum Resources Act, 2002. Section 24P(3) has been amended to clarify that the environmental liability must be assessed annually, but that the audit report only needs to be submitted to the Minister responsible for environmental affairs every three years. Section 24P(5) has been amended to stipulate that the requirement to maintain and retain the financial provision remains in force until a closure certificate is issued and that the portion of financial provision as may be required to rehabilitate latent, residual or any other environmental impacts of the closed mine must be ceded to the Minister responsible for mineral resources and hat the Minister responsible for mineral resources must retain such portion in perpetuity . This amendment will also require an amendment to the current section 37A of the Income Tax Act and had been discussed with National Treasury and the Mineral and Petroleum Resources Amendment Bill, which is currently in Parliament, if that Bill is signed into law. These provision will not been brought into effect, until such time that the other Acts have been amended.

3.1.9 Clause 9

Section 24R(2) of the NEMA allows the Minister responsible for mineral resources to retain such portion of the funds set aside for any latent and or residual environmental

impact that may become known in the future. A similar provision is also contained in section 24P(5) of the NEMA. This clause repeals section 24R(2).

3.1.10 Clause 10

Clause 10 of the Bill repeals section 24S of the NEMA which provides that residue stockpiles and residue deposits must be managed in terms of the provisions of the NEMA.

3.1.11 Clause 11

Clause 6 of the Bill amends section 28 of the NEMA.

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

The clause also amends section 28 to empower a municipal manager of a municipality to also issue a section 28(4) directive. The clause further insert a new subsection (4A) to ensure that the person to be issued with a section 28(4) directive

is consulted and provided with an opportunity to make any representation before a final section 28(4) directive is issued.

In addition, section 28 places a duty of care on a wide range of responsible persons, including every person who causes, has caused or may cause significant pollution or degradation; and 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. It further empowers the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department to issue a directive on each category of responsible persons, thus making them independently liable for the undertaking of reasonable measures. However, section 28(11) currently limits the powers of environmental authorities to recover the costs for remedial measures undertaken or to be undertaken by the State proportionally according to the degree to which each was responsible for the harm. Firstly, this is not in line with the duty of care provisions that place an independent and autonomous duty of each and every responsible person. In addition, it may be impossible to determine exactly the degree to which each was responsible for the harm; thereby impeding effective cost recovery by the State. Finally, it is not in line with the liability regime provided for in other pieces of legislation, such as section 19(5) of the National Water Act, 1998.

This clause further amends sections 28(9) and (11) to provide for joint and several liability in respect of the responsible persons listed in section 28(8).

3.1.12 Clause 12

Section 31BB of the NEMA only empowers the Minister responsible for mineral resources to designate as an environmental mineral and petroleum inspector, any staff member of the Department of Mineral Resources. This clause amends section 31BB to further empower the Minister responsible for mineral resources to designate as an environmental mineral and petroleum inspector any staff member of the Department of Mineral Resources or any organ of state, subject to the conclusion of an agreement between the Minister and the relevant organ of state.

3.1.13 Clause 13

Section 31D of the NEMA requires environmental management inspectors as well as environmental mineral resource inspectors to perform their powers within their respective mandates. This clause amends section 31D to empower environmental management inspectors to monitor compliance and enforce any provincial environmental management legislation. The clause also insert a new subsection (3A) to provide clarity that environmental management inspectors and environmental mineral resource inspectors must exercise their respective powers in accordance with any applicable duty.

3.1.14 Clause 14

Clause 14 amends section 31E of the NEMA, which sets out the regulatory power of the Minister to approve training for environmental management inspectors before designation. The current provisions do not cater for same with respect to environmental mineral and petroleum inspectors. This clause amends section 31E to ensure that the environmental mineral and petroleum inspectors will receive the

same standard of approved training as is received by the environmental management inspectors before designation. The clause also add subsection (3) to empower the Minister responsible for environmental affairs to prescribe through regulations the Code of Conduct applicable to environmental management inspectors and environmental mineral and petroleum inspectors.

3.1.15 Clause 15

Clause 15 clarifies that environmental management inspectors who exercise powers and perform duties in terms of the NEMA are issued, and on request produce, identity cards as proof of their designation. The amendment seeks to include environmental mineral and petroleum inspectors as well as provincial legislation in the exercise of powers and performance of duties.

3.1.16 Clause 16

Section 31G(1)(a) of the NEMA deals with the functions of the environmental management inspectors. The section currently allows the environmental management inspectors to initiate an investigation only if there is a reasonable suspicion of an offence. The practical challenge is that environmental management inspectors who receive a complaint alleging non-compliance are often required to gather further information that will turn a mere suspicion into a reasonable suspicion. The amendment to section 31G(1)(a) allows them to do so.

3.1.17 Clause 17

Section 31H of the NEMA deals with the general powers of the environmental management inspectors. This clause amends section 31H(1)(a) to allow the environmental management inspectors to question persons without the requirement

of a reasonable suspicion. This is required in order to allow the inspectors to gather information of an alleged non-compliance through the asking of relevant questions prior to a reasonable suspicion being formed. The clause also amends section 31H(1)(c)(ii) to ensure that environmental management inspectors are also empowered to monitor compliance and enforce not only national pieces of environmental legislation, but also any provincial environmental management legislation. The clause further amends section 31H to empower environmental management inspectors to issue lawful instructions.

3.1.18 Clause 18

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

Clause 18 is a consequential amendments to ensure that environmental management inspectors allow them to issue lawful instructions, rather than mere requests, in accordance with the provisions of the NEMA.

3.1.19 Clause 19

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

Clause 19 is a consequential amendment to ensure that environmental management inspectors are also empowered to monitor compliance and enforce any provincial environmental management legislation.

3.1.20 Clause 20

Clause 20 amends section 31K of the NEMA, which provides for routine inspections, without a warrant, by environmental management inspectors, and certain powers

that may be executed during routine inspections. The clause amends section 31K to provide clarity that the conducting of a "search" is not the primary purpose of undertaking a routine inspection, but rather the entry onto certain premises for the purposes of ascertaining compliance.

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

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

3.1.21 Clause 21

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

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

3.1.22 Clause 22

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

Clause 22 is a consequential amendment to clarify that a person who wants to object to a compliance notice may do so, by making representations, to the relevant appeal authority, namely, the Minister responsible for environmental affairs, the Minister responsible for mineral resources, the Minister responsible for water affairs or a municipal council.

3.1.23 Clause 23

Section 31O of the NEMA provides the members of the South African Police Services' routine inspection powers in terms of section 31K of the NEMA.

Clause 23 is a consequential amendment to ensure that the members of the South African Police Services are also empowered to monitor compliance and enforce any provincial environmental management legislation.

3.1.24 Clause 24

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

Clause 24 amends section 31P to clarify that such a person must produce such documents on the lawful instruction by the environmental management inspector and an environmental mineral and petroleum inspector. The documentations include those issued in terms of provincial environmental management legislation.

3.1.25 Clause 25

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

Clause 25 is a consequential amendment to clarify that the confidentiality is also applicable to provincial environmental management legislation.

3.1.26 Clause 26

Section 34E of the NEMA deals with the treatment of seized live specimens. Clause 26 amends section 34E to provide that live specimens "may", instead of "must", be deposited with a suitable institution, rescue centre or facility; as the circumstances require. It further provides clarity that seized live specimens may be disposed of in terms of section 30(a) of the Criminal Procedure Act, 1977. The latter section of the Criminal Procedure Act provides legal mechanisms on how to dispose of a seized perishable item.

3.1.27 Clause 27

Clause 27 of the Bill amends section 34G of the NEMA, which sets out regulatory power of the Minister responsible for environmental affairs to specify offences and prescribe the amount for purposes of admission of guilt fines. The clause amends section 34G to ensure that Minister's regulatory power contextualizes section 57(5) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

3.1.28 Clause 28

Section 42B of the NEMA deals with the delegation by Minister of mineral resources. Clause 28 amends section 42B to provide clarity that the Minister of mineral resources may also delegate to his or her powers under NEMA to an organ of state subject to an agreement between the Minister responsible for environmental affairs

and the organ of state. The clause further provides clarity that the delegation may be subdelegated and also withdrawn.

3.1.29 Clause 29

Clause 29 of the Bill inserts new sections 42C and 42D to the NEMA. These new sections empower the Minister responsible for water affairs and municipal manager of a municipality to delegate his or her powers under the NEMA to an official in the Department responsible for water affairs or municipality, respectively.

3.1.30 Clause 30

Clause 30 of the Bill amends section 43 of the NEMA, which allows any person to appeal against an environmental decision issued by national or provincial departments responsible for environmental affairs. Section 43 do not appear to allow for a person to lodge an appeal in a situation where the power to issue a section 28(4) directive was delegated by the Director General or head of department to an official within their respective departments. This clause amends section 43 to ensure that a person may also appeal a section 28(4) directive issued by a delegated official. The amendment further clarifies that the submission of an appeal will not automatically suspend a section 28(4) directive, unless there is good cause shown to the satisfaction of the Minister.

3.1.31 Clause 31

Section 47(2) and (2A) of the NEMA require the Minister responsible for environmental affairs or MEC to table all regulations developed in terms of the Act in Parliament or relevant provincial legislature. In terms of section 17 of the

Interpretation Act, 1957 also require the Minister to table all subordinate legislation to Parliament. Clause 31 repeals section 47(2) and (2A) of the NEMA to avoid duplication of legal requirements.

3.1.32 Clause 32

This clause provides that where a norm and standard specifically provides for a provision to be an offence, then those specific provisions will be considered to be offences, rather than the generic clause current provided in section 49A(1)(b). In terms of section 49A(1)(p) of NEMA, it is a criminal offence not to comply with a request of an environmental management inspector. However, the dictionary meaning of a request is "*an instance of asking for something, especially in a polite or formal manner*" – this implies that being requested has a discretion whether or not to meet the request. The dictionary definition of "instruction" on the other hand means "*A making known to a person what he is required to do; a direction, an order, a mandate*". In the context of Chapter 7 of NEMA and the powers of environmental management inspectors, section 49A(1)(o) and (p) meant to refer to instruction rather than a request.

3.1.33 Clause 33

Section 49B(3) of NEMA provides that a person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment. The fact that the monetary penalty is not specified makes the provision subject to the Adjustment of Fines Act, which in effect provides for a ratio of 1 year of imprisonment to R20 000. Some of the offences could be serious, for example,

failing to comply with a condition of an exemption, hindering or interfering with an EMI in the execution of their duties etc. It is therefore proposed that the maximum monetary penalty for these offences be specified as R1 million, as is the standard ratio in NEMA and SEMAs.

3.1.34 Clause 34

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

3.2 National Environmental Management: Protected Areas Act, 2003

3.2.1 Clause 35

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

3.2.2 Clause 36

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

3.3. National Environmental Management: Biodiversity Act, 2004

3.3.1 Clause 37

This clause amends the definition of "control", and inserts a new definition of "eradicate" in order to provide clarity on the actions, measures or methods to be undertaken when dealing with listed invasive species.

3.3.2 Clause 38

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

3.3.3 Clause 39

Clause 39 amends section 3 which provides for the State's trusteeship of biological diversity. In terms of common law, all wild animals are regarded as *res nullius*, meaning it belongs to everybody but belongs to nobody in particular. The implication

of this common law principle is that, once a wild animal escapes from the land on which it occurred, the owner of such land loses ownership of the wild animal that has escaped. The Game Theft Act, 1991 (Act No. 105 of 1991), changed the common law status of wild animals, in that it makes provision for a person to retain ownership of a wild animal that escapes from land that it adequately fenced, and in respect of which a certificate of adequate enclosure has been issued by the Premier of the province in which the land is situated. However, the provisions of the Game Theft Act only apply to land where game is kept for hunting or commercial purposes – it does not apply to land where wild animals are kept for conservation purposes. The implication is that where wild animals escape from state-owned land, the state is no longer the custodian of those animals.

The proposed amendment to section 3 seeks to address this anomaly and clarify that in order for the state to give full effect to section 24 of the Constitution of the Republic of South Africa, the state must be in a position to remain the custodian of wild animals that escape from land under its control. The proposed amendment also gives effect to the judgement in *Eastern Cape and Tourism Agency v Medbury (Pty) t/a Crown River Safari and Another (1466/2012) [2016] ZAECGHC 26*, in which the High Court held that this issue must be legislated and not be relied on by developing the common law by way of jurisprudence.

3.3.4 Clause 40

Currently, section 13 of the NEMBA only allows for the Chief Executive Officer of the South African National Biodiversity Institute to be on its Board. However, in line with the recommendations of King III, the Chief Financial Officer should also be on the

board. The amendment to section 13 is intended to provide clarity that the Chief Financial Officer must be a member of the board.

3.3.5 Clauses 41 and 42

Clauses 41 and 42 of the Bill amend sections 73 and 75 of the NEMBA, respectively. Read together, the clauses empower the Minister to develop regulations on the steps to be undertaken to control or eradicate listed invasive species.

3.3.6 Clauses 43

Clause 43 amends section 97 which provides for the power of the Minister for Environmental Affairs to make regulations. The proposed amendment extends the power of the Minister to provide that the Minister may make regulations in relation to the protection of the well-being of a faunal biological resource during the carrying out a restricted activity involving faunal biological resource.

3.3.7 Clauses 44 and 45

Clauses 44 and 45 of the Bill amend sections 99 and 100 of the NEMBA, respectively. These clauses provide clarity that the MEC for environmental affairs in each province must also follow the consultative process set out in sections 99 and 100 of the NEMBA when exercising a power under the Act.

3.4. National Environmental Management: Air Quality Act, 2004

3.4.1 Clause 46

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

3.4.2 Clause 47

Clause 47 of the Bill amends section 22A of the NEMAQA. This clause substitute section 22A to provide for the consequences of unlawful conducting of listed activities. The clause will address two scenarios, namely, to provide for those activities that were operated without the registration certificate under the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965), and those activities that have an environmental authorisation under the Environmental Impact Assessment Regulations, 2014, but no atmospheric emission licence under NEMAQA. This clause provides for the process and procedures to be followed in addressing the non-compliance with the law.

3.4.3 Clause 48

The clause amends section 36 to provide clarity that a province must be regarded as a licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality. Section 36(5) identifies the Minister as the licensing authority, in five instances, to issue atmospheric emission licences for air quality activities. Section 36(5)(d) is intended to facilitate the issuing of an integrated environmental authorisation where the

Minister is also a competent authority for the environmental impact assessment activities, and licensing authority for the waste management activities. The current provision appears to suggest that the Minister will always be the licensing authority, whereas the intention is to provide that the Minister is only the licensing authority if the Minister is also identified as such in terms of NEMA and NEMWA. The clause amends section 36(5)(d) to provide for textual amendments to clarify that the Minister is only the licensing authority if the Minister is identified as such in terms of NEMA, NEMWA and NEMAQA. Section 36(8) has been amended to extend the scope to also allow for co-operative agreement to be reached between the Municipality, MEC and the Minister on who the licencing authority will be on any application.

3.4.4 Clause 49

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

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

3.5.1 Clause 50

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

3.5.2 Clause 51

Section 74(1) makes provision for an appeal to the Minister if the decision is taken by an MEC and to the MEC if the decision is taken by a municipality. This approach creates legal challenge for one sphere of government to reconsider the decision taken by another sphere of government. The clause amends section 74 to provide legal clarity that an appeal against a decision issued by delegated officials must be lodged at the appropriate sphere of government and appeal authority.

3.6. National Environmental Management: Waste Act, 2008

3.6.1 Clause 52

The clause inserts the definitions of "building and demolition waste", "business waste", "domestic waste", "general waste", "hazardous waste", "inert waste" that were contained in Schedule 3 to the Act. These definitions are removed from

Schedule 3 and inserted in section 1 of the Act. This clause also inserts new definitions of "primary processing", "residue deposit" and "residue stockpile" in alignment with NEMA and the Mineral and Petroleum Resources Development Act, 2002. The clause provides for textual amendments to the definition of "waste" so as to provide legal clarity on the interpretations and to prevent unintended consequences.

3.6.2 Clauses 53

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

3.6.3 Clause 54

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

3.6.4 Clause 55

Clause 53 substitutes section 34C of the NEMWA and sets out the Minister's supervisory powers.

3.6.5 Clause 56

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

members of the governing Board, term of office of members of the Board and conditions of appointment of members of the governing Board.

3.6.6 Clause 57

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

3.6.7 Clauses 58 and 59

These clauses amend sections 37 and 39 of the NEMWA to provide clarity that a site assessment report must be submitted together with a remediation plan.

3.6.8 Clauses 60

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

3.6.9 Clause 61

Section 43 of the NEMWA identifies the licensing authorities for different waste management licences. The Minister responsible for mineral resources is identified as one of the licensing authorities to issue waste management licences in so far as the waste management activities is directly related to prospecting or exploration of a mineral or petroleum resource and primary processing of a mineral or petroleum resource; or residue deposits and residue stockpiles. The clause must be read together with the definition of "primary processing". This clause amends subsection (1B) to ensure that the Minister responsible for mineral resources as the identified licensing authority is responsible for the implementation of the waste management

licensing system in so far as the waste management activities is directly related to prospecting or exploration of a mineral or petroleum resource; extraction and primary processing of a mineral or petroleum resource. The clause also amends subsection (3) to facilitate an agreement between the licensing authorities on the implementation of the licensing system. The amendment also seeks to add new subsection (4) to section 43. The addition propose that in instances where the MEC responsible for environmental affairs fails to take a decision to issue a waste management licence within prescribed timeframes, an applicant may request the Minister to take the decision. The intention of this amendment is therefore to make provision for exceptional circumstance in instances where the MEC unreasonably fails to take a decision within the prescribed timeframes. When considering this amendment the Department was mindful of sections 125(2)(b) of the Constitution of the Republic of South Africa, 1996, which provides that the Premier, together with other members of the Executive Council has the power to implement all national legislation within the functional areas listed in Schedule 4 or 5 of the Constitution, except where the Constitution or an Act of Parliament provides otherwise.

3.6.10 Clause 62

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

3.6.11 Clause 63

The NEMWA was amended to include the Minister responsible for mineral resources as one of the licensing authorities. The term licensing authority, collectively, include

the Minister, Minister responsible for mineral resources and MECs. This clause provides for the consequential textual amendment in section 52(5).

3.6.12 Clause 64

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

3.6.13 Clause 65

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

3.6.14 Clause 66

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

3.6.15 Clause 67

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

3.6.16 Clause 68

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

3.6.17 Clauses 69, 70, 71 and 72

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

Clauses 69, 70, 71 and 72 amend sections 74, 75, 76 and 77 provide for the consequential textual amendment empowering the Minister responsible for mineral resources to issue an exemption in so far such an exemption relate to a provision administered by the Minister responsible for mineral resources. The clauses also provide clarity that there will be no exemptions provided from obtaining a waste management licence.

3.6.18 Clause 73

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

3.6.19 Clause 74

This clause replaces Schedule 3 with a new Schedule on sources of waste. This Schedule is read with the definition of "waste" contained in section 1 of the Act.

3.7 National Environmental Management Amendment Act, 2008

Clause 75

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

and Petroleum Resources Development Act, regardless whether the decision was made before or after 8 December 2014.

3.8 Clause 76

3.8.1 Clause 76 provides for transitional provisions. In terms of the One Environmental System the Minister responsible for mineral resources is the licensing authority for environmental authorisations in so far as the listed activities are directly related to prospecting or exploration of a mineral or petroleum resource and primary processing of a mineral or petroleum resource.

3.8.2 This clause inserts a new section to provide clarity that an environmental management plan or programme issued and approved in terms of the Mineral and Petroleum Resources Development Act, before or after 8 December 2014, is deemed to have been approved and an environmental authorisation issued in terms of NEMA, excluding ancillary activities not authorised in terms of the NEMA or NEMWA.

3.8.3 The clause empowers the Minister responsible for mineral resources to instruct a holder of a right or permit to take action to upgrade any deficiencies in the environmental management plan or programme.

3.8.4 The clause also provides clarity that all pending applications and appeals lodged in terms of the Mineral and Petroleum Resources Development Act, before 8 December 2014 must be processed in terms of the relevant provisions of the Mineral

and Petroleum Resources Development Act, and any ancillary activities must be processed in terms of NEMA or NEMWA.

3.8.5 The clause further provides for the continuation of the environmental regulations (regulations pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, mining or production operations and regulations pertaining to the management and control of residue stockpiles and residue deposits from a prospecting, mining, exploration or production operation) developed under the Mineral and Petroleum Resources Development Act, until such time that similar regulations are developed under NEMA or NEMWA.

3.10 Clause 77

3.10.1 Clause 77 provides for transitional provisions regarding residue stockpiles and residue deposits approvals issued in terms of the National Environmental Management: Waste Act, 2008. The clause provides for clarity that the residue stockpiles and residue deposits approvals or waste management licences issued in terms of the National Environmental Management: Waste Act, 2008, remain valid until they lapse or are replaced under National Environmental Management Act, 1998.

3.10.2 The clause further provide clarity that the regulations pertaining to the management and control of residue stockpiles and residue deposits from a prospecting, mining, exploration or production operation developed under the

National Environmental Management: Waste Act, 2008 remain valid and regarded as being developed under NEMA.

3.11 Clause 78

Clause 78 provides for transitional provisions for the Waste Management Bureau. The clause provides clarity that anything done by the Waste Management Bureau under the repealed Part 7A of the National Environmental Management: Waste Act, 2008 remains valid until any subsequent new provisions overrides it.

4. DEPARTMENTS CONSULTED

The following national and provincial Departments were consulted:

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

5. FINANCIAL IMPLICATIONS FOR STATE

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

6. PARLIAMENTARY PROCEDURE

6.1 The Constitution prescribes the procedure for the classification of Bills. Therefore a Bill must be correctly classified otherwise it will be constitutionally out of order.

6.2 The State Law Advisers have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

6.3 The established test for the classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content.

6.4 Therefore the issue to be determined is whether the proposed amendments of the various Acts of Parliament, contained in the Bill, in substantial measure, fall within a functional area listed in schedule 4 to the Constitution.

6.5 The stated general purpose of the Bill is to address practical challenges which have been identified in the application of the various Acts that are sought to be amended. In this respect the Bill seeks to amend the following Acts of Parliament—

- National Environmental Management Act, 1998, so as to correct the citation to the definition of "Constitution"; to correct the definition of "environmental mineral resources inspector"; to provide clarity to the definition of "financial provision"; to add a new environmental management principle promoting diversity in sector; to provide clarity pertaining to the regulations that can be made for the procedure for the preparation, evaluation and adoption of environmental management instruments; to provide for a register of all environmental management instruments adopted in terms of the Act; to provide clarity that the Minister responsible for mineral resources is responsible for activities that are directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to provide for simultaneous submission of the National Environmental Management Act and the specific Environment Management Act applications for purposes of one environmental system; to provide for simultaneous submission of National Environmental Management Act and specific environmental management Act applications in order to enable integrated environmental authorisation; to provide for a trigger for the simultaneous submission of a National Environmental Management Act or specific environmental management Act applications after acceptance of mining right; to provide clarity that a successor in title or person who controls the land may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to empower the Minister to prescribe the information that must be contained in environmental management programme; to provide clarity on

consultation to be undertaken by an environmental assessment practitioner on application for environmental authorisation; to provide clarity that an applicant or holder of an environmental authorisation relating to mining activities must set aside financial provision for progressive rehabilitation, mitigation, mine closure and the management of post closure environmental impacts; to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to empower Director-General of the Department responsible for mineral resources and municipalities to issue section 28(4) directives; to provide clarity that section 28 is applicable to anticipatory costs as well as remedial measures; to provide for joint and several liability in respect of the responsible persons listed under section 28(8); to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from staff within the Department responsible for mineral resources or an organ of state, by agreement; to empower the Member of Executive Council to designate environmental management inspectors to undertake compliance and enforce in respect of provincial environmental legislation; to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors; to provide clarity that an environmental mineral and petroleum inspector must also undergo approved training before designation; to provide clarity on functions and general powers of environmental management inspectors when conducting investigations; to provide clarity that the conducting of a "search" is not the primary purpose of an environmental management inspector

undertaking a routine inspection; to provide clarity that an environmental management inspector may detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide clarity that the Minister's power to develop regulations on admission of guilt fines contextualizes the related provisions of the Criminal Procedure Act, 1977; to empower the Minister responsible for mineral resources; Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act; to provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority; to provide clarity on circumstances that an appeal against a directive does not automatically suspend it; to provide clarity that an appeal against a directive must be lodged at the appropriate appeal authority; to correct references and cross references to offences and penalties and to update list of offences and penalties; to update the list of offences to Schedule 3;

- National Environmental Management: Protected Areas Act, 2003 so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the board; to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences;
- National Environmental Management: Biodiversity Act, 2004, so as to provide clarity on definition of "control" and to insert a definition of "eradicate"; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the board; to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species; to

ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act;

- National Environmental Management: Air Quality Act, 2004, so as to provide the Minister with discretion to establish the National Air Quality Advisory Committee; to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial department responsible for environmental affairs is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality; to provide for textual amendment to section 36(5)(d); to ensure alignment with respect to the implementation of one appeal process under National Environmental Management Act; to provide clarity that the Minister has a discretion to grant or refuse an exemption; to provide clarity that an exemption may be granted subject to conditions;
- National Environmental Management: Integrated Coastal Management Act, 2008, so as to allow for the removal of structures erected prior to commencement of the Act; to provide clarity that an appeal against a decision issued by delegated official must be lodged at the appropriate sphere of government and appeal authority;
- National Environmental Management: Waste Act, 2008, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of "residue deposits" and "residue stockpiles" and "waste"; to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act; to provide for the Waste Management Bureau to be established as a public entity; to provide for the simultaneous submission of the site assessment

- report and remediation plan relating to a contaminated land; to provide clarity that the Minister must keep a national register of all contaminated land; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of processing fee for the variation of a waste management licence; to increase the fines that could be imposed in terms of regulations made under the Act; to provide clarity that there will be no exemptions provided from obtaining a waste management licence; to substitute Schedule 3 with new Schedule; to provide for transitional provisions in respect of the Waste Management Bureau;
- National Environmental Management Amendment Act, 2008, so as to clarify that an environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014 is valid under National Environmental Management Act; to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act;
 - To provide for the transitional provisions regarding environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014; to clarify that environmental regulations developed under the Mineral and Petroleum Resources Development Act continued until the development and publication of

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

6.6 Each of the proposed amendments that are contained in the various Acts have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

6.7 In our view the subject matter of the Bill falls within the functional areas listed in Schedule 4, namely "environment", and it affects provinces. We are therefore of the opinion that this Bill must be dealt with in accordance with the procedure set out in section 76 of the Constitution.

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