



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

A

Enquiries: Mrs L Garlipp/ Mr S Shabalala
Telephone: 012 310 3313/ 3449

CHAIRPERSON OF THE SELECT COMMITTEE ON LAND ENVIRONMENTAL AFFAIRS

WRITTEN RESPONSES TO THE SELECT COMMITTEE RELATING TO WESTERN CAPE STANDING COMMITTEE ON AGRICULTURE AND ENVIRONMENTAL PLANNINGS' OF ISSUES CLARITY REGARDING THE PROPOSED AMENDMENTS IN THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS FIRST AMENDMENT BILL [B 13B—2012]

1. PURPOSE

The purpose of this submission is to provide the Select Committee with written responses on the issues of concern regarding a proposal to define the terms "domestic use or subsistence purposes" as well as whether the Minister of National Treasury consent has been obtained for the proposed amendment to convert the Bioprospecting Trust Fund to a Bioprospecting Fund in the National Environmental Management Laws First Amendment Bill [B 13B—2012] (First Amendment Bill).

2. BACKGROUND AND DISCUSSION

- 2.1. The Select Committee held a meeting on 23 April to consider the negotiating mandates of all Provinces on the First Amendment Bill.
- 2.2. In the meeting two issues were raised requiring the Department's written responses, namely, a proposal to define the terms "domestic use or subsistence purposes" as used in clause 21 of the First Amendment Bill, and whether National Treasury consent has been obtained to change the Bioprospecting Trust Fund to Bioprospecting Fund in terms of section 13(3) of the Public Finance Management Act.

Definitions for "domestic use or subsistence purposes"

- 2.3. The Department is of the view that these words can be defined in an Exemption Notice to be published by the Minister in terms of section 86(1) of the National Environmental Management: Biodiversity Act, 2004. In the Notice the Minister will be able to identify those activities exempted for domestic use or subsistence purposes. The Minister, in the same Notice, can also define "domestic use or subsistence purposes". It is the Department's view that this approach will also allow for easier review and amendment of the definitions as communities' ways of livelihood evolve from time to time. In this regard, the approach will also allow for the review and amendment of the definitions by Notice as and when required.

National Treasury Consent to Change the Bioprospecting Trust Fund to a Bioprospecting Fund

- 2.4. In 2008, after the entry into force of the Bioprospecting, Access and Benefit Sharing Regulations, 2008 giving effect to Chapter 6 of National Environmental Management: Biodiversity Act, 2004 (Bioprospecting, Access and Benefit-Sharing provisions) which includes section 85 (Establishment of Bioprospecting Trust Fund), the Department engaged with the Director-General of the Department of National Treasury regarding the need to replace the Bioprospecting Trust Fund with a Bioprospecting Fund. In support of this proposal, National Treasury approved an interim arrangement to utilise a Bioprospecting Fund within a suspense account to receive money from the permit holders and make payment to the identified beneficiaries until such time that the National Environmental Management: Biodiversity Act, 2004 is amended to accommodate the Bioprospecting Fund within its provisions.

The Department is of the view that the concern raised by the Western Cape is a valid concern, but that the Department merely wishes to continue the agreed interim arrangement with National Treasury of utilising a bioprospecting fund within a departmental suspense account, NOT establish a new fund. Should the Committee however not be comfortable with the proposed amendment, it is recommended that the provision be deleted.

3. RECOMMENDATION

To recommend to the Select Committee to note the Department's written responses on the above issues.