

NATIONAL ENVIRONMENTAL MANAGEMENT ACT NO. 107 OF 1998

[\[View Regulation\]](#)

[ASSENTED TO 19 NOVEMBER, 1998]
[DATE OF COMMENCEMENT: 29 JANUARY, 1999]

(English text signed by the President)

This Act has been updated to <i>Government Gazette</i> 32580 dated 18 September, 2009.
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as amended by

Mineral and Petroleum Resources Development Act, [No. 28 of 2002](#)
[with effect from 1 May, 2004]

National Environmental Management Amendment Act, [No. 56 of 2002](#)

National Environmental Management Amendment Act, [No. 46 of 2003](#)

National Environmental Management Amendment Act, [No. 8 of 2004](#)

National Environment Laws Amendment Act, [No. 44 of 2008](#)

National Environment Management Amendment Act, [No. 62 of 2008](#)

National Environment Laws Amendment Act, [No. 14 of 2009](#)

GENERAL NOTE

This Act has been amended by the National Environmental Management Amendment Act, [No. 62 of 2008](#), which comes into operation on 1 May, 2009. [Section 14 \(2\) of Act No. 62 of 2008](#) specifies that any provisions relating to prospecting, mining, exploration and production and related activities comes into operation on a date 18 months after the date of commencement of [section 2](#) or the Mineral and Petroleum Resources Development Amendment Act, [No. 49 of 2008](#), whichever date is the later. The date of commencement of [Act No. 49 of 2008](#) is still to be proclaimed.

ACT

To provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote cooperative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects of the administration and enforcement of other environmental management laws; and to provide for matters connected therewith.

[Long title amended by [s. 3](#) of [Act No. 56 of 2002](#) and substituted by [s. 13](#) of [Act No. 46 of 2003](#).]

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:

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1. Definitions.—(1) In this Act, unless the context requires otherwise—

“**activities**”, when used in [Chapter 5](#), means policies, programmes, processes, plans and projects;

[Definition of “[activities](#)” substituted by [s. 1](#) of [Act No. 56 of 2002](#) and by [s. 1 \(a\)](#) of [Act No. 62 of 2008](#).]

[Wording of Sections](#)

“**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;

[Definition of “[aircraft](#)” inserted by [s. 1 \(a\)](#) of [Act No. 46 of 2003](#).]

“**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;

[Definition of “[applicant](#)” inserted by [s. 1 \(b\)](#) of [Act No. 62 of 2008](#).]

“**assessment**”, when used in [Chapter 5](#), means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to decision-making;

[Definition of “[assessment](#)” inserted by [s. 1 \(a\)](#) of [Act No. 8 of 2004](#).]

“**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;

[Definition of "[commence](#)" inserted by [s. 1 \(b\) of Act No. 8 of 2004](#) and substituted by [s. 1 \(c\) of Act No. 62 of 2008](#).]

[Wording of Sections](#)

"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;

"Committee"

[Definition of "[Committee](#)" deleted by [s. 4 \(a\) of Act No. 14 of 2009](#).]

[Wording of Sections](#)

"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;

(Editorial Note: Wording of [Para. \(b\)](#) as per original *Government Gazette*.)

[Definition of "[community](#)" substituted by [s. 1 \(d\) of Act No. 62 of 2008](#).]

[Wording of Sections](#)

"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;

[Definition of "[competent authority](#)" inserted by [s. 1 \(c\) of Act No. 8 of 2004](#).]

"Constitution" means [the Constitution](#) of the Republic of South Africa, 1996 ([Act No. 108 of 1996](#));

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

[Definition of "[delegation](#)" inserted by [s. 1 \(b\) of Act No. 46 of 2003](#).]

"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;

[Definition of "[development footprint](#)" inserted by [s. 1 \(e\) of Act No. 62 of 2008](#).]

"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;

[Definition of [“environmental assessment practitioner”](#) inserted by [s. 1 \(d\)](#) of [Act No. 8 of 2004](#).]

“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;

[Definition of [“environmental authorisation”](#) inserted by [s. 1 \(d\)](#) of [Act No. 8 of 2004](#) and substituted by [s. 1 \(f\)](#) of [Act No. 62 of 2008](#).]

Wording of Sections

“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](#);

[Definition of [“environmental management inspector”](#) inserted by [s. 1 \(c\)](#) of [Act No. 46 of 2003](#).]

“environmental management plan” means a management plan referred to in [section 11](#);

“environmental management programme” means a programme required in terms of [section 24](#);

[Definition of [“environmental management programme”](#) inserted by [s. 1 \(g\)](#) of [Act No. 62 of 2008](#).]

“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;

[Definition of [“evaluation”](#) inserted by [s. 1 \(e\)](#) of [Act No. 8 of 2004](#).]

“exploration area” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of [“exploration area”](#) inserted by [s. 1 \(h\)](#) of [Act No. 62 of 2008](#).]

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

“Forum”

[Definition of [“Forum”](#) deleted by [s. 4 \(b\)](#) of [Act No. 14 of 2009](#).]

Wording of Sections

“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;

[Definition of [“holder”](#) inserted by [s. 1 \(j\)](#) of [Act No. 62 of 2008](#).]

“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;

[Definition of “holder of an old order right” inserted by [s. 1 \(j\)](#) of [Act No. 62 of 2008](#).]

“integrated environmental authorisation” means an authorisation granted in terms of [section 24L](#);

[Definition of "[integrated environmental authorisation](#)" inserted by [s. 1 \(j\)](#) of [Act No. 62 of 2008](#).]

"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;

[Definition of "[interested and affected party](#)" inserted by [s. 1 \(j\)](#) of [Act No. 62 of 2008](#).]

"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 [\(d\)](#);

[Definition of "[listed activity](#)" inserted by [s. 1 \(f\)](#) of [Act No. 8 of 2004](#).]

"listed area", when used in [Chapter 5](#), means a geographical area identified in terms of [section 24 \(2\) \(b\)](#) and [\(c\)](#);

[Definition of "[listed area](#)" inserted by [s. 1 \(f\)](#) of [Act No. 8 of 2004](#).]

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

[Definition of "[MEC](#)" substituted by [s. 1 \(g\)](#) of [Act No. 8 of 2004](#).]

[Wording of Sections](#)

"mine" has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of "[mine](#)" inserted by [s. 1 \(j\)](#) of [Act No. 62 of 2008](#).]

"Mineral and Petroleum Resources Development Act, 2002" means the Mineral and Petroleum Resources Development Act, 2002 ([Act No. 28 of 2002](#));

[Definition of "[Mineral and Petroleum Resources Development Act, 2002](#)" inserted by [s. 1 \(j\)](#) of [Act No. 62 of 2008](#).]

"mining area" has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of "[mining area](#)" inserted by [s. 1 \(j\)](#) of [Act No. 62 of 2008](#).]

"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;

[Definition of "[Minister](#)" substituted by [s. 1 \(k\)](#) of [Act No. 62 of 2008](#).]

[Wording of Sections](#)

"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;

[Definition of "Minister of Minerals and Energy" inserted by [s. 1 \(l\)](#) of [Act No. 62 of 2008](#).]

"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 \(10\)](#);

[Definition of "[norms and standards](#)" inserted by [s. 1 \(n\)](#) of [Act No. 62 of 2008](#).]

"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 No. 29 of 1996](#));
[Definition of “owner of works” inserted by [s. 1 \(m\)](#) of [Act No. 62 of 2008](#).]

“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;
[Definition of “[production area](#)” inserted by [s. 1 \(o\)](#) of [Act No. 62 of 2008](#).]

“prospecting area” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;
[Definition of “[prospecting area](#)” inserted by [s. 1 \(o\)](#) of [Act No. 62 of 2008](#).]

“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;

[Definition of “[public participation process](#)” inserted by [s. 1 \(p\)](#) of [Act No. 62 of 2008](#).]

“Regional Mining Development and Environmental Committee” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;
[Definition of “[Regional Mining Development and Environmental Committee](#)” inserted by [s. 1 \(p\)](#) of [Act No. 62 of 2008](#).]

“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;
[Definition of “[residue deposit](#)” inserted by [s. 1 \(q\)](#) of [Act No. 62 of 2008](#).]

“residue stockpile” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;
[Definition of “[residue stockpile](#)” inserted by [s. 1 \(q\)](#) of [Act No. 62 of 2008](#).]

“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;

[Definition of “[review](#)” inserted by [s. 1 \(h\)](#) of [Act No. 8 of 2004](#).]

“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;

[Definition of “[spatial development tool](#)” inserted by [s. 1 \(r\)](#) of [Act No. 62 of 2008](#).]

“specific environmental management Act” means—

- (a) the Environment Conservation Act, 1989 ([Act No. 73 of 1989](#));
- (b) the National Water Act, 1998 ([Act No. 36 of 1998](#));
- (c) the National Environmental Management: Protected Areas Act, 2003 ([Act No. 57 of 2003](#));
- (d) the National Environmental Management: Biodiversity Act, 2004 ([Act No. 10 of 2004](#)); or
- (e) the National Environmental Management: Air Quality Act, 2004 ([Act No. 39 of 2004](#)),

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

[Definition of [“specific environmental management Act”](#) inserted by [s. 1 \(h\)](#) of [Act No. 8 of 2004](#) and substituted by [s. 3 \(b\)](#) of [Act No. 44 of 2008](#).]

[Wording of Sections](#)

“specific environmental management Acts”.

[Definition of [“specific environmental management Acts”](#) inserted by [s. 1 \(d\)](#) of [Act No. 46 of 2003](#) and deleted by [s. 3 \(a\)](#) of [Act No. 44 of 2008](#).]

[Wording of Sections](#)

“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 [\(c\)](#);

[Definition of [“specified activity”](#) inserted by [s. 1 \(h\)](#) of [Act No. 8 of 2004](#).]

“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.

[Definition of [“vessel”](#) inserted by [s. 1 \(e\)](#) of [Act No. 46 of 2003](#).]

(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 No. 3 of 2000](#)), unless otherwise provided for in this Act.

[[Sub-s. \(5\)](#) added by [s. 1 \(s\)](#) of [Act No. 62 of 2008](#).]

CHAPTER 1
NATIONAL ENVIRONMENTAL MANAGEMENT PRINCIPLES

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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

Part 1:

[Part 1 repealed by [s. 5](#) of [Act No. 14 of 2009](#).]

3.

[[S. 3](#) repealed by [s. 5](#) of [Act No. 14 of 2009](#).]

Wording of Sections

Wording of Sections	x
s 3 of Act 107 of 1998 prior to amendment by Act 14 of 2009	

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.

[S. 3A inserted by s. 6 of Act No. 14 of 2009.]

4.

[S. 4 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections

Wording of Sections	x
s 4 of Act 107 of 1998 prior to amendment by Act 14 of 2009	

5.

[S. 5 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections

Wording of Sections	x
s 5 of Act 107 of 1998 prior to amendment by Act 14 of 2009	

6.

[S. 6 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections

Part 2:

[Part 2 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections	x
s 6 of Act 107 of 1998 prior to amendment by Act 14 of 2009	

7.

[S. 7 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections

Wording of Sections	x
s 7 of Act 107 of 1998 prior to amendment by Act 14 of 2009	

8.

[S. 8 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections

Wording of Sections	x
s 8 of Act 107 of 1998 prior to amendment by Act 14 of 2009	

9.

[S. 9 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections

Wording of Sections	x
s 9 of Act 107 of 1998 prior to amendment by Act 14 of 2009	

10.

[S. 10 repealed by s. 5 of Act No. 14 of 2009.]

Wording of Sections

CHAPTER 3
PROCEDURES FOR CO-OPERATIVE GOVERNANCE

Wording of Sections

x

s 10 of Act 107 of 1998 prior to amendment by Act 14 of 2009

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](#).

[[Para. \(b\)](#) substituted by s. 7 of Act No. 14 of 2009.]

Wording of Sections

(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.

Wording of Sections

x

s 11(5)(b) of Act 107 of 1998 prior to amendment by Act 14 of 2009

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 [\(c\)](#).

[[Sub-s. \(2\)](#) substituted by [s. 8 of Act No. 14 of 2009](#).]

[Wording of Sections](#)

Wording of Sections	
s 13(2) of Act 107 of 1998 prior to amendment by Act 14 of 2009	✕

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-a 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.

[[Sub-s. \(1\)](#) substituted by [s. 9 \(a\) of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(2)

[[Sub-s. \(2\)](#) deleted by [s. 9 \(b\) of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(3)

[[Sub-s. \(3\)](#) deleted by [s. 9 \(b\) of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(4)

[[Sub-s. \(4\)](#) deleted by [s. 9 \(b\) of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(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;

(b)

[[Para. \(b\)](#) deleted by [s. 9 \(c\) of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(c)

[[Para. \(c\)](#) deleted by [s. 9 \(c\) of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

- (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.

Wording of Sections	x
s 15(1) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 15(2) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 15(3) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 15(4) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 15(6)(b) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 15(6)(c) of Act 107 of 1998 prior to amendment by Act 14 of 2009	

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.

(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.

[[Sub-s. \(1\)](#) substituted by [s. 10 of Act No. 14 of 2009](#).]

Wording of Sections

(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

Wording of Sections

x

[s 16\(1\)](#) of Act 107 of 1998 prior to amendment by [Act 14 of 2009](#)

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—

must if he, she or it considers conciliation appropriate either— (i)

- (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 No. 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 No. 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 No. 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 No. 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 No. 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)
[[Para. \(a\)](#) deleted by [s. 11](#) of [Act No. 14 of 2009](#).]
[Wording of Sections](#)

(b)
[[Para. \(b\)](#) deleted by [s. 11](#) of [Act No. 14 of 2009](#).]
[Wording of Sections](#)

(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.

s 22(2)(a) of Act 107 of 1998 prior to amendment by [Act 14 of 2009](#)

Wording of Sections

x

s 22(2)(b) of Act 107 of 1998 prior to amendment by [Act 14 of 2009](#)

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, socio-economic 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 No. 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;

(iv)
applications to the competent authority by any person to be exempted from the provisions of any regulation in respect of a specific activity;

(Editorial note: Numbering as per *Government Gazette*.)

(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..

[[S. 24](#) substituted by [s. 2](#) of [Act No. 8 of 2004](#) and by [s. 2](#) of [Act No. 62 of 2008](#).]

Wording of Sections

Wording of Sections		x
s 24 of Act 107 of 1998 prior to amendment by Act 8 of 2004		
s 24 of Act 107 of 1998 prior to amendment by Act 62 of 2008		

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.

[S. 24A inserted by s. 3 of Act No. 8 of 2004.]

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.

[S. 24B inserted by s. 3 of Act No. 8 of 2004.]

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.

[[S. 24C](#) inserted by [s. 3](#) of [Act No. 8 of 2004](#) and substituted by [s. 3](#) of [Act No. 62 of 2008](#).]

Wording of Sections

Wording of Sections	
s 24C of Act 107 of 1998 prior to amendment by Act 62 of 2008	✕

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.

[[S. 24D](#) inserted by [s. 3](#) of [Act No. 8 of 2004](#) and substituted by [s. 4](#) of [Act No. 62 of 2008](#).]

Wording of Sections

Wording of Sections	
s 24D of Act 107 of 1998 prior to amendment by Act 62 of 2008	✕

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.

[[S. 24E](#) inserted by [s. 3](#) of [Act No. 8 of 2004](#).]

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.

[[Sub-s. \(1\)](#) substituted by [s. 5](#) of [Act No. 62 of 2008](#).]

[Wording of Sections](#)

(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.

[[Sub-s. \(2\)](#) substituted by [s. 5](#) of [Act No. 62 of 2008](#).]

[Wording of Sections](#)

(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.

[[S. 24F](#) inserted by [s. 3](#) of [Act No. 8 of 2004](#).]

Wording of Sections	x
s 24F(1) of Act 107 of 1998 prior to amendment by Act 62 of 2008	
Wording of Sections	x
s 24F(2) of Act 107 of 1998 prior to amendment by Act 62 of 2008	

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 \(4\)](#).

[[S. 24G](#) inserted by [s. 3](#) of [Act No. 8 of 2004](#) and substituted by [s. 6](#) of [Act No. 62 of 2008](#).]

Wording of Sections

Wording of Sections

✕

[s 24G](#) of Act 107 of 1998 prior to amendment by [Act 62 of 2008](#)

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.

[S. 24H inserted by s. 3 of Act No. 8 of 2004. Sub-s. (6) added by s. 7 of Act No. 62 of 2008.]

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 decision-making or whether it requires amendment.

[S. 24I inserted by s. 3 of Act No. 8 of 2004.]

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 \(5\)](#).

[S. 24J inserted by s. 8 of Act No. 62 of 2008.]

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.

[[S. 24K](#) inserted by [s. 8](#) of Act [No. 62 of 2008](#).]

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.

[[S. 24L](#) inserted by [s. 8](#) of Act [No. 62 of 2008](#).]

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.

[S. 24M inserted by s. 8 of Act No. 62 of 2008.]

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 [section 24 \(1A\)](#), including environmental impacts or objectives in respect of—

planning and design; (i)

pre-construction and construction activities; (ii)

the operation or undertaking of the activity in question; (iii)

the rehabilitation of the environment; and (iv)

closure, if applicable; (v)

- (b) details of—

the person who prepared the environmental management programme; and (i)

the expertise of that person to prepare an environmental management programme; (ii)

- (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.

[S. 24N inserted by s. 8 of Act No. 62 of 2008.]

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.

[[S. 240](#) inserted by [s. 8](#) of Act [No. 62 of 2008](#).]

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 No. 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.

[[S. 24P](#) inserted by [s. 8](#) of Act [No. 62 of 2008](#).]

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.

[[S. 24Q](#) inserted by [s. 8](#) of Act [No. 62 of 2008](#).]

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.

[[S. 24R](#) inserted by [s. 8](#) of Act No.62 of 2008.]

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

[Heading substituted by [s. 2 of Act No. 46 of 2003.](#)]

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.

[[Sub-s. \(1A\)](#) inserted by [s. 12 \(a\) of Act No. 14 of 2009.](#)]

(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.

[[Sub-s. \(7\)](#) substituted by [s. 12 \(b\)](#) of [Act No. 14 of 2009](#).]

Wording of Sections

(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 \(1\)](#).

[[Sub-s. \(8\)](#) amended by [s. 12 \(c\)](#) of [Act No. 14 of 2009](#).]

Wording of Sections

(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.

[Sub-s. (14) added by s. 12 (d) of Act No. 14 of 2009.]

(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.

[Sub-s. (15) added by s. 12 (d) of Act No. 14 of 2009.]

Wording of Sections	x
s 28(7) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 28(8) of Act 107 of 1998 prior to amendment by Act 14 of 2009	

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;

the Director-General; (iii)

any other Director-General of a national department. (iv)

(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—

the Director-General; (i)

the South African Police Services and the relevant fire prevention service; (ii)

the relevant provincial head of department or municipality; and (iii)

all persons whose health may be affected by the incident. (iv)

(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 clean-up 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 clean-up procedures; and
- (iii) remedy the effects of the incident.

(9) A relevant authority may claim re-imbusement 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.

[[Sub-s. \(11\)](#) added by [s. 13 of Act No. 14 of 2009.](#)]

.....

[Heading deleted by [s. 3 of Act No. 46 of 2003.](#)]

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

(1)

[[Sub-s. \(1\)](#) deleted by [s. 14 of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(2)

[[Sub-s. \(2\)](#) deleted by [s. 14 of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(3)

[[Sub-s. \(3\)](#) deleted by [s. 14 of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(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

[Part 2 inserted by [s. 4](#) of [Act No. 46 of 2003](#). Heading substituted by [s. 15](#) of [Act No. 14 of 2009](#).]

Wording of Sections	x
s 31(1) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 31(2) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 31(3) of Act 107 of 1998 prior to amendment by Act 14 of 2009	

31A. Application.—(1) This Part applies to the enforcement of this Act and any specific environmental management Act.

[[Sub-s. \(1\)](#) substituted by [s. 16](#) of [Act No. 14 of 2009](#).]

Wording of Sections

(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 No. 51 of 1977](#)), is deemed to include an offence committed in terms of this Act or a specific environmental management Act.

[[S. 31A](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

Wording of Sections	
s 31A(1) of Act 107 of 1998 prior to amendment by Act 14 of 2009	X

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.

[[S. 31B](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

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.

[[S. 31BA](#) inserted by [s. 4](#) of [Act No. 44 of 2008](#).]

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;

any other provincial organ of state; or (ii)

any municipality in the province; and (iii)

(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.

[[S. 31C](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

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.

[[S. 31D](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#) and substituted by [s. 5](#) of [Act No. 44 of 2008](#).]

Wording of Sections

Wording of Sections	✕
s 31D of Act 107 of 1998 prior to amendment by Act 44 of 2008	

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.

[[S. 31E](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

31F. Proof of designation.—(1) A prescribed identity card must be issued to each person designated as an environmental management inspector.

(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 \(1\)](#).

[[S. 31F](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#). [Sub-s. \(2\)](#) substituted by [s. 17](#) of [Act No. 14 of 2009](#).]

Wording of Sections

Wording of Sections	x
s 31F(2) of Act 107 of 1998 prior to amendment by Act 14 of 2009	

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.

[[S. 31G](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

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;
[\[Para. \(g\) substituted by s. 18 of Act No. 14 of 2009.\]](#)
Wording of Sections
- (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 No. 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.

[[S. 31H](#) inserted by [s. 4 of Act No. 46 of 2003](#). [Sub-s. \(5\)](#) substituted by [s. 6 of Act No. 44 of 2008](#).]

Wording of Sections

Wording of Sections	✘
s 31H(1)(g) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	✘
s 31H(5) of Act 107 of 1998 prior to amendment by Act 44 of 2008	

31I. 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.

[[S. 31I](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

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 No. 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.

[[S. 31](#)] inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

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.

[[Sub-s. \(1\)](#) amended by [s. 19 \(a\)](#) of [Act No. 14 of 2009](#).]

[Wording of Sections](#)

(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.

[[Sub-s. \(5\)](#) substituted by [s. 19 \(b\)](#) of [Act No. 14 of 2009](#).]

[Wording of Sections](#)

(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](#).

[[S. 31K](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#). [Sub-s. \(7\)](#) substituted by [s. 19 \(c\)](#) of [Act No. 14 of 2009](#).]

[Wording of Sections](#)

Wording of Sections	x
s 31K(1) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 31K(5) of Act 107 of 1998 prior to amendment by Act 14 of 2009	
Wording of Sections	x
s 31K(7) of Act 107 of 1998 prior to amendment by Act 14 of 2009	

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.

[S. 31L inserted by s. 4 of [Act No. 46 of 2003](#).]

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.

[S. 31M inserted by s. 4 of Act No. 46 of 2003.]

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.
- (c)

[Para. (c) deleted by s. 20 of Act No. 14 of 2009.]

Wording of Sections

(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.

[S. 31N inserted by s. 4 of Act No. 46 of 2003. Sub-s. (3) added by s. 7 of Act No. 44 of 2008.]

Wording of Sections		✕
s 31N(2)(c) of Act 107 of 1998 prior to amendment by Act 14 of 2009		

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](#).

[S. 31O inserted by s. 4 of Act No. 46 of 2003.]

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.

[S. 31P inserted by s. 4 of Act No. 46 of 2003.]

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.

[[Sub-s. \(1A\)](#) inserted by [s. 21](#) of [Act No. 14 of 2009](#).]

(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.

[[S. 31Q](#) inserted by [s. 4](#) of [Act No. 46 of 2003](#).]

Part 3:
Judicial matters

[Heading inserted by [s. 5](#) of [Act No. 46 of 2003](#).]

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.

[[Sub-s. \(1\)](#) amended by [s. 6 \(a\)](#) of [Act No. 46 of 2003](#).]

Wording of Sections

(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.

[[Sub-s. \(2\)](#) substituted by [s. 6 \(b\)](#) of [Act No. 46 of 2003](#).]

Wording of Sections

(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 pay to the person or group concerned any reasonable costs incurred by such person or group in the investigation of the matter and its preparation for the proceedings.

[Sub-s. (3) amended by s. 6 (c) of Act No. 46 of 2003.]

Wording of Sections

Wording of Sections	x
s 32(1) of Act 107 of 1998 prior to amendment by Act 46 of 2003	
Wording of Sections	x
s 32(2) of Act 107 of 1998 prior to amendment by Act 46 of 2003	
Wording of Sections	x
s 32(3) of Act 107 of 1998 prior to amendment by Act 46 of 2003	

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 No. 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.

[[Sub-s. \(3\)](#) substituted by [s. 22 of Act No. 14 of 2009.](#)]
[Wording of Sections](#)

(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.

Wording of Sections		X
s 34(3) of Act 107 of 1998 prior to amendment by Act 14 of 2009		

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.

[[S. 34A](#) inserted by [s. 7](#) of [Act No. 46 of 2003](#).]

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.

[[S. 34B](#) inserted by [s. 7](#) of [Act No. 46 of 2003](#).]

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 \(b\)](#).

[[S. 34C](#) inserted by [s. 7](#) of [Act No. 46 of 2003](#).]

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.

[[Sub-s. \(1\)](#) substituted by [s. 23](#) of [Act No. 14 of 2009](#).]

Wording of Sections

(2) The provisions of [section 35](#) of the Criminal Procedure Act, 1977 ([Act No. 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.

[[S. 34D](#) inserted by [s. 7](#) of [Act No. 46 of 2003](#).]

Wording of Sections	
s 34D(1) of Act 107 of 1998 prior to amendment by Act 14 of 2009	X

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.

[[S. 34E](#) inserted by [s. 7](#) of [Act No. 46 of 2003](#).]

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.

[S. 34F inserted by s. 7 of Act No. 46 of 2003.]

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 No. 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.

[S. 34G inserted by s. 7 of Act No. 46 of 2003.]

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.

[S. 34H inserted by s. 24 of Act No. 14 of 2009.]

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

[Heading substituted by [s. 8 of Act No. 46 of 2003.](#)]

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.

[[Sub-s. \(1\)](#) amended by [s. 110 of Act No. 28 of 2002.](#)]

[Wording of Sections](#)

(2) The Expropriation Act, 1975 ([Act No. 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.

Wording of Sections



s 36(1) of Act 107 of 1998 prior to amendment by [Act 28 of 2002](#)

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.

[S. 42 substituted by s. 9 of Act No. 46 of 2003.]

Wording of Sections

Wording of Sections	x
s 42 of Act 107 of 1998 prior to amendment by Act 46 of 2003	

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.

[S. 42A inserted by s. 10 of Act No. 46 of 2003.]

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.

[S. 42B inserted by s. 9 of Act No. 62 of 2008.]

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.

(1A) Any person may appeal to the Minister against a decision taken by the Minister of Minerals and Energy in respect of an environmental management programme or environmental authorisation.

(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.

[[S. 43](#) substituted by [s. 4](#) of [Act No. 8 of 2004](#) and by [s. 10](#) of [Act No. 62 of 2008](#).]

Wording of Sections

Wording of Sections		x
s 43 of Act 107 of 1998 prior to amendment by Act 8 of 2004		
s 43 of Act 107 of 1998 prior to amendment by Act 62 of 2008		

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
[[Para. \(aA\)](#) inserted by [s. 2](#) of [Act No. 56 of 2002](#).]
- (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.

[[Sub-s. \(3\)](#) deleted by [s. 5](#) of [Act No. 8 of 2004](#) and inserted by [s. 11](#) of [Act No. 62 of 2008](#).]

Wording of Sections

- (4) [Sub-s. (4) deleted by s. 5 of Act No. 8 of 2004.]
Wording of Sections
- (5) [Sub-s. (5) deleted by s. 5 of Act No. 8 of 2004.]
Wording of Sections
- (6) [Sub-s. (6) deleted by s. 5 of Act No. 8 of 2004.]
Wording of Sections

Wording of Sections	x
s 47(3) of Act 107 of 1998 prior to amendment by Act 8 of 2004	
Wording of Sections	x
s 47(4) of Act 107 of 1998 prior to amendment by Act 8 of 2004	
Wording of Sections	x
s 47(5) of Act 107 of 1998 prior to amendment by Act 8 of 2004	
Wording of Sections	x
s 47(6) of Act 107 of 1998 prior to amendment by Act 8 of 2004	

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.

[S. 47A inserted by s. 11 of Act No. 46 of 2003.]

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.

[S. 47B inserted by s. 11 of Act No. 46 of 2003.]

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.

[S. 47C inserted by s. 11 of Act No. 46 of 2003.]

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.

[S. 47D inserted by s. 11 of Act No. 46 of 2003.]

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.

[S. 49 substituted by s. 12 of Act No. 46 of 2003.]

Wording of Sections

Wording of Sections	x
s 49 of Act 107 of 1998 prior to amendment by Act 46 of 2003	

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 No. 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 No. 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.

[[Sub-s. \(3\)](#) added by [s. 6](#) of [Act No. 8 of 2004](#).]

(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 No. 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.

[[Sub-s. \(4\)](#) added by [s. 6](#) of [Act No. 8 of 2004](#).]

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)

[Schedule 3 amended by s. 8 of Act No. 8 of 2004 and by s. 25 of Act No. 14 of 2009.]

Wording of Sections

Part (a): National Legislation

<i>No. and year of law</i>	<i>Short title</i>	<i>Relevant provisions</i>
Act No. 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947	Section 18 (1) (i) in so far as it relates to contraventions of sections 7 and 7bis
Act No. 71 of 1962	Animals Protection Act, 1962	Sections 2 (1) and 2A
Act No. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	Section 9
Act No. 63 of 1970	Mountain Catchment Areas Act, 1970	Section 14 in so far as it relates to contraventions of section 3
Act No. 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 No. 63 of 1977	Health Act, 1977	Section 27
Act No. 73 of 1980	Dumping at Sea Control Act, 1980	Section 2 (1) (a) and (b)
Act No. 6 of 1981	Marine Pollution (Control and Civil Liability) Act, 1981	Section 2 (1)
Act No. 43 of 1983	Conservation of Agricultural Resources Act, 1983	Sections 6 and 7
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	Section 3A
Act No. 73 of 1989	Environment Conservation Act, 1989	Section 29 (2) (a) and (4)
Act No. 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 No. 36 of 1998	National Water Act, 1998	Section 151 (i) and (j)
Act No. 84 of	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),

1998		24 (8) , 63 (1) (a), (d), (e) and (f), 63 (2) (a) and (b), 63 (3) to (5), 64 (1) and (2)
Act No. 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 No. 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 No. 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 No. 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 No. 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 No. 39 of 2004	National Environmental Management: Air Quality Act	Sections 51 (10) (a) to (h), 51 (2) and (3)

Part (b): Provincial Legislation

<i>No. and year of law</i>	<i>Short title</i>	<i>Relevant provisions</i>
Ordinance No. 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 No. 9 of 1969	Orange Free State Townships	Section 40 (1) (a) (ii)
Ordinance No. 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 No. 19 of 1974	Cape Nature and Environmental Conservation	Section 86 (1) in so far as it relates to contraventions of sections 26 , 41 (1) (b) (ii) and (c)(e), 52 (a), 57 (a), 58 (h) and 62 (1)
Ordinance No. 12 of 1983	Transvaal Nature Conservation	Sections 16A, 42 , 84, 96 and 98
Ordinance No. 15 of 1985	Cape Land Use Planning	Section 46 (1) in so far as it relates to sections 23 (1) and 39 (2)
Ordinance No. 15 of 1986	Transvaal Town Planning and Townships	Sections 42 , 93 and 115
Act No. 29 of 1992	KwaZulu 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 No. 5 of 1998	KwaZulu Natal Planning and Development	Section 48

Wording of Sections

x

[sch 3](#) of Act 107 of 1998 prior to amendment by [Act 8 of 2004](#)
[sch 3](#) of Act 107 of 1998 prior to amendment by [Act 14 of 2009](#)

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT NO. 28 OF 2002

[\[View Regulation\]](#)

[ASSENTED TO 3 OCTOBER, 2002]
[DATE OF COMMENCEMENT: 1 MAY, 2004]

(English text signed by the President)

This Act has been updated to *Government Gazette* 32151 dated 21 April, 2009.

as amended by

Minerals and Energy Laws Amendment Act, [No. 11 of 2005](#)

proposed amendments by

Mineral and Petroleum Resources Development Amendment Act, [No. 49 of 2008](#)

(provisions not yet proclaimed)

Mineral and Petroleum Resources Development Amendment Act, No. 49 of 2008 (provisions not yet proclaimed)	
<i>Proposed amendments by</i>	<i>Sections to be amended</i>
S. 1 of Act No. 49 of 2008	S. 1 of Act No. 28 of 2002
S. 2 of Act No. 49 of 2008	S. 2 of Act No. 28 of 2002
S. 3 of Act No. 49 of 2008	S. 3 of Act No. 28 of 2002
S. 4 of Act No. 49 of 2008	S. 5 of Act No. 28 of 2002
S. 5 of Act No. 49 of 2008	S. 5A in Act No. 28 of 2002
S. 6 of Act No. 49 of 2008	S. 9 of Act No. 28 of 2002
S. 7 of Act No. 49 of 2008	S. 10 of Act No. 28 of 2002
S. 8 of Act No. 49 of 2008	S. 11 of Act No. 28 of 2002
S. 9 of Act No. 49 of 2008	S. 13 of Act No. 28 of 2002
S. 10 of Act No. 49 of 2008	S. 14 of Act No. 28 of 2002
S. 11 of Act No. 49 of 2008	S. 15 of Act No. 28 of 2002
S. 12 of Act No. 49 of 2008	S. 16 of Act No. 28 of 2002
S. 13 of Act No. 49 of 2008	S. 17 of Act No. 28 of 2002
S. 14 of Act No. 49 of 2008	S. 18 of Act No. 28 of 2002
S. 15 of Act No. 49 of 2008	S. 19 of Act No. 28 of 2002
S. 16 of Act No. 49 of 2008	S. 20 of Act No. 28 of 2002
S. 17 of Act No. 49 of 2008	S. 21 of Act No. 28 of 2002
S. 18 of Act No. 49 of 2008	S. 22 of Act No. 28 of 2002
S. 19 of Act No. 49 of 2008	S. 23 of Act No. 28 of 2002
S. 20 of Act No. 49 of 2008	S. 24 of Act No. 28 of 2002

S. 21 of Act No. 49 of 2008	S. 25 of Act No. 28 of 2002
S. 22 of Act No. 49 of 2008	S. 26 of Act No. 28 of 2002
S. 23 of Act No. 49 of 2008	S. 27 of Act No. 28 of 2002
S. 24 of Act No. 49 of 2008	S. 28 of Act No. 28 of 2002
S. 25 of Act No. 49 of 2008	S. 30 of Act No. 28 of 2002
S. 26 of Act No. 49 of 2008	S. 31 of Act No. 28 of 2002
S. 27 of Act No. 49 of 2008	S. 32 of Act No. 28 of 2002
S. 28 of Act No. 49 of 2008	S. 33 of Act No. 28 of 2002
S. 29 of Act No. 49 of 2008	S. 35 of Act No. 28 of 2002
S. 30 of Act No. 49 of 2008	S. 37 of Act No. 28 of 2002
S. 31 of Act No. 49 of 2008	S. 38 of Act No. 28 of 2002
S. 32 of Act No. 49 of 2008	Inserts s. 38A and 38B in Act No. 28 of 2002
S. 33 of Act No. 49 of 2008	Ss. 39, 40, 41 and 42 of Act No. 28 of 2002
S. 34 of Act No. 49 of 2008	S. 43 of Act No. 28 of 2002
S. 35 of Act No. 49 of 2008	S. 44 of Act No. 28 of 2002
S. 36 of Act No. 49 of 2008	S. 45 of Act No. 28 of 2002
S. 37 of Act No. 49 of 2008	S. 46 of Act No. 28 of 2002
S. 38 of Act No. 49 of 2008	S. 47 of Act No. 28 of 2002
S. 39 of Act No. 49 of 2008	S. 48 of Act No. 28 of 2002
S. 40 of Act No. 49 of 2008	S. 49 of Act No. 28 of 2002
S. 41 of Act No. 49 of 2008	S. 52 of Act No. 28 of 2002
S. 42 of Act No. 49 of 2008	S. 53 of Act No. 28 of 2002
S. 43 of Act No. 49 of 2008	S. 56 of Act No. 28 of 2002
S. 44 of Act No. 49 of 2008	Heading to Chapter 5 of Act No. 28 of 2002
S. 45 of Act No. 49 of 2008	S. 57 of Act No. 28 of 2002
S. 46 of Act No. 49 of 2008	S. 58 of Act No. 28 of 2002
S. 47 of Act No. 49 of 2008	S. 59 of Act No. 28 of 2002
S. 48 of Act No. 49 of 2008	S. 61 of Act No. 28 of 2002
S. 49 of Act No. 49 of 2008	S. 63 of Act No. 28 of 2002
S. 50 of Act No. 49 of 2008	S. 69 of Act No. 28 of 2002
S. 51 of Act No. 49 of 2008	S. 71 of Act No. 28 of 2002
S. 52 of Act No. 49 of 2008	S. 73 of Act No. 28 of 2002
S. 53 of Act No. 49 of 2008	S. 74 of Act No. 28 of 2002
S. 54 of Act No. 49 of 2008	S. 75 of Act No. 28 of 2002
S. 55 of Act No. 49 of 2008	S. 76 of Act No. 28 of 2002
S. 56 of Act No. 49 of 2008	S. 78 of Act No. 28 of 2002
S. 57 of Act No. 49 of 2008	S. 79 of Act No. 28 of 2002
S. 58 of Act No. 49 of 2008	S. 80 of Act No. 28 of 2002
S. 59 of Act No. 49 of 2008	S. 81 of Act No. 28 of 2002
S. 60 of Act No. 49 of 2008	S. 82 of Act No. 28 of 2002
S. 61 of Act No. 49 of 2008	S. 83 of Act No. 28 of 2002

S. 62 of Act No. 49 of 2008	S. 84 of Act No. 28 of 2002
S. 63 of Act No. 49 of 2008	S. 85 of Act No. 28 of 2002
S. 64 of Act No. 49 of 2008	S. 86 of Act No. 28 of 2002
S. 65 of Act No. 49 of 2008	S. 88 of Act No. 28 of 2002
S. 66 of Act No. 49 of 2008	S. 92 of Act No. 28 of 2002
S. 67 of Act No. 49 of 2008	S. 93 of Act No. 28 of 2002
S. 68 of Act No. 49 of 2008	S. 96 of Act No. 28 of 2002
S. 69 of Act No. 49 of 2008	S. 98 of Act No. 28 of 2002
S. 70 of Act No. 49 of 2008	S. 100 of Act No. 28 of 2002
S. 71 of Act No. 49 of 2008	S. 101 of Act No. 28 of 2002
S. 72 of Act No. 49 of 2008	S. 102 of Act No. 28 of 2002
S. 73 of Act No. 49 of 2008	S. 103 of Act No. 28 of 2002
S. 74 of Act No. 49 of 2008	S. 104 of Act No. 28 of 2002
S. 75 of Act No. 49 of 2008	S. 105 of Act No. 28 of 2002
S. 76 of Act No. 49 of 2008	S. 106 of Act No. 28 of 2002
S. 77 of Act No. 49 of 2008	S. 107 of Act No. 28 of 2002
S. 78 of Act No. 49 of 2008	Item 1 of Sch. II of Act No. 28 of 2002
S. 79 of Act No. 49 of 2008	Item 3 of Sch. II of Act No. 28 of 2002
S. 80 of Act No. 49 of 2008	Item 4 of Sch. II of Act No. 28 of 2002
S. 81 of Act No. 49 of 2008	Item 5 of Sch. II of Act No. 28 of 2002
S. 82 of Act No. 49 of 2008	Item 6 of Sch. II of Act No. 28 of 2002
S. 83 of Act No. 49 of 2008	Item 7 of Sch. II of Act No. 28 of 2002
S. 84 of Act No. 49 of 2008	Item 8 of Sch. II of Act No. 28 of 2002
S. 85 of Act No. 49 of 2008	Item 9 of Sch. II of Act No. 28 of 2002
S. 86 of Act No. 49 of 2008	Item 10 of Sch. II of Act No. 28 of 2002
S. 87 of Act No. 49 of 2008	Item 10A of Sch. II in Act No. 28 of 2002
S.88 of Act No. 49 of 2008	Item 12 of Sch. II of Act No. 28 of 2002
S. 89 of Act No. 49 of 2008	Table 2 of Sch. II of Act No. 28 of 2002
S. 93 of Act No. 49 of 2008	Table 3 of Sch. II of Act No. 28 of 2002

ACT

To make provision for equitable access to and sustainable development of the nation's mineral and petroleum resources; and to provide for matters connected therewith.

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,

ARRANGEMENT OF ACT

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CHAPTER 2 FUNDAMENTAL PRINCIPLES

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3. Custodianship of nation's mineral and petroleum resources
4. Interpretation of Act
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19. Rights and obligations of holder of prospecting right
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21. Information and data in respect of reconnaissance and prospecting
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25. Rights and obligations of holder of mining right
26. Mineral beneficiation
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29. Minister's power to direct submission of specified information or data

- [30.](#) Disclosure of information
- [31.](#) Application for retention permit
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BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1 DEFINITIONS

1. Definitions.—In this Act, unless the context indicates otherwise—

“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 the supplying of 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 No. 29 of 1996](#));

“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;

“contractual royalties” means any royalties or payment agreed to between parties in a mining or production operation;

“day” means a calendar day 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, unless the last day falls on a Saturday, a Sunday or any public holiday, in which case the number of days must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday;

“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;

“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 No. 107 of 1998](#));

“environmental management plan” means a plan to manage and rehabilitate the environmental impact as a result of prospecting, reconnaissance, exploration or mining operations conducted under the authority of a reconnaissance permission, prospecting right, reconnaissance permit, exploration right or mining permit, as the case may be;

“environmental management programme” means an approved environmental management programme contemplated in [section 39](#);

“exclusionary act” means any act or practice which impedes or prevents any person from entering the mineral and mining industry, or from entering any market connected with that industry, 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;

“financial provision” means the insurance, bank guarantee, trust fund or cash that applicants for or holders of a right or permit must provide in terms of [sections 41](#) and [89](#) guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the prospecting, mining, reconnaissance, exploration or production areas, as the case may be;

“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) any juristic person other than an association, in which persons contemplated in [paragraph \(a\)](#) own and control a majority of the issued capital or members’ interest and are able to control a majority of the members’ votes;

“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”, when used as a verb, means any operation or activity for the purposes of winning any mineral on, 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;

“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”—

(i)
in relation to a mining right or a mining permit, means the area for which that right or permit is granted;

(ii)
in relation to any environmental, health, social and labour matter and any latent or other impact thereto, includes—

(a) any adjacent or non-adjacent surface of land on which the extraction of any mineral and petroleum has not been authorised in terms of this Act but upon which related or incidental operations are being undertaken and, including—

(i)
any area connected to such an area by means of any road, railway line, power line, pipeline, cable way or conveyor belt; and

(ii)
any surface of land on which such road, railway line, power line, pipeline or cable way is located; and

(b) all buildings, structures, machinery, mine dumps or objects situated on or in that area which are used for the purpose of mining on the land in question;

“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” means the Mining Titles Office contemplated in [section 2](#) of the Mining Titles Registration Act, 1967 ([Act No. 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;

“officer” means any officer of the Department appointed under the Public Service Act, 1994 ([Proclamation No. 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;

“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 photogeological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation;

"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 or production 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 or production 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](#);

“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 No. 21 of 1935](#)), and within—

- (a) the territorial waters as contemplated in [section 4](#) of the Maritime Zones Act, 1994 ([Act No. 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 No. 15 of 1994](#)); and
- (c) the continental shelf as contemplated in [section 8](#) of the Maritime Zones Act, 1994 ([Act No. 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, to enter 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;
- (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, determine and levy, any fee or consideration payable in terms of any relevant Act of Parliament.

(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. 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 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 may 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 purposes 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;
- (d) subject to the National Water Act, 1998 ([Act No. 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.

(4) 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 approved environmental management programme or approved environmental management plan, as the case may be;
- (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) notifying and consulting with the land owner or lawful occupier of the land in question.

6. Principles of administrative justice.—(1) Subject to the Promotion of Administrative Justice Act, 2000 ([Act No. 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 No. 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 No. 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 dates must be dealt with in order of receipt.

(2) When the Minister considers applications received on the same date 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 received 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 a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of change of controlling interest in listed companies.

(2) The consent referred to in [subsection \(1\)](#) must be granted if the cessionary, transferee, lessee, sublessee, 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 No. 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 No. 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 registration at the Mining Titles Office within 30 days of the relevant action.

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 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 notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.

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, in writing notify the applicant of the decision.

(4) The reconnaissance permission is valid for two years 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, on production of the reconnaissance permission and after consulting the land owner or lawful occupier thereof, 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 the land in question; or

(b) any exclusive right to apply for or be granted a prospecting right or mining right.

16. Application for prospecting right.—(1) Any person who wishes to apply to the Minister for 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) The Regional Manager must accept an application for a prospecting right if—

(a) the requirements contemplated in [subsection \(1\)](#) are met; and

(b) no other 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 notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.

(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 an environmental management plan; and

(b) to notify in writing and consult with the land owner or lawful occupier and any other affected party and submit the result of the consultation within 30 days from the date of the notice.

(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.

(6) The Minister may by notice in the *Gazette* invite applications for prospecting rights in respect of any 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 rights may be granted.

17. Granting and duration of prospecting right.—(1) Subject to [subsection \(4\)](#), the Minister must 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;
- (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 ([Act No. 29 of 1996](#)); and
- (e) the applicant is not in contravention of any relevant provision of this Act.

(2) The Minister must refuse to grant a prospecting right if—

- (a) the application does not meet all the requirements referred to in subsection (i);
- (b) the granting of such right will—
 - (i) result in an exclusionary act;
 - (ii) prevent fair competition; or
 - (iii) result in the concentration of the mineral resources in question under the control of the applicant.

(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 \(d\)](#).

(5) The granting of a prospecting right in terms of [subsection \(1\)](#) becomes effective on the date on which the environmental management programme is approved in terms of [section 39](#).

(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 requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and
 - (d) include a detailed prospecting work programme for the renewal period.

(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) requirements of the approved environmental management plan.

(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 Mining Titles Office within 30 days of the date on which the right—

(i)

becomes effective in terms of [section 17 \(5\)](#); or

(ii)

is renewed in terms of [section 18 \(3\)](#);

- (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 terms and conditions of the prospecting right, relevant provisions of this Act and any other relevant law;
- (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](#), pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations.

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 bulk samples of any minerals found by such holder in the course of prospecting operations conducted pursuant to such prospecting right.

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 its registered office or place of business, of 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.

(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 the written directions of the relevant Regional Manager.

22. Application for mining right.—(1) Any person who wishes to apply to the Minister for 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) The Regional Manager must accept an application for a mining right if—

- (a) the requirements contemplated in [subsection \(1\)](#) are met; and
- (b) no other 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 notify the applicant in writing of that fact within 14 days of the receipt of the application and return the application to the applicant.

(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 conduct an environmental impact assessment and submit an environmental management programme for approval in terms of [section 39](#); and
- (b) to notify and consult with interested and affected parties within 180 days from the date of the notice.

(5) The Minister may by notice in the *Gazette* invite applications for mining rights in respect of any 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 rights may be granted.

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;
- (e) the applicant has provided financially and otherwise 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 No. 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](#).

(3) The Minister must refuse to grant a mining right if the application does not meet all 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 date on which the environmental management programme is approved in terms of [section 39 \(4\)](#).

(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 requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; 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;

(c) requirements of the prescribed social and labour plan; and

(d) requirements of the approved environmental management programme.

(4) A mining right may be renewed for further periods, each of which may not exceed 30 years at 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 Mining Titles Office within 30 days of the date on which the right—
 - (i) becomes effective in terms of [section 23 \(5\)](#); or
 - (ii) is renewed in terms of [section 24 \(3\)](#);
- (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 requirements of the approved environmental management programme;
- (f) comply with the requirements of the prescribed social and labour plan;
- (g) 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 prescribe incentives to 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.

(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 1,5 hectares in extent.

(2) Any person who wishes to apply to the Minister for a mining permit 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.

(4) 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 and return the application to the applicant.

(5) 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 an environmental management plan; and

(b) to notify in writing and consult with the land owner and lawful occupier and any other affected parties and submit the result of the said consultation within 30 days from the date of the notice.

(6) The Minister must issue a mining permit if—

(a) the requirements contemplated in [subsection \(1\)](#) are satisfied; and

(b) the applicant has submitted the environmental management plan.

(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 No. 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; and

(c) 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.

(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, 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 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 21](#), [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.

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) must lodge the application at the office of the Regional Manager in whose region the land is situated;
- (b) must lodge the application in the prescribed manner;
- (c) must 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 environmental management programme approved 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—
 - (i) result in an exclusionary act;
 - (ii) prevent fair competition; or
 - (iii) result in the concentration of mineral in the hands of the applicant.

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 approved environmental management programme 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 over 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.

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 No. 107 of 1998](#))—

- (a) apply to all prospecting and mining operations, as the case may be, and any matter 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. Integrated environmental management and responsibility to remedy.—(1) The holder of a reconnaissance permission, prospecting right, mining right, mining permit or retention permit—

- (a) must at all times give effect to the general objectives of integrated environmental management laid down in [Chapter 5](#) of the National Environmental Management Act, 1998 ([Act No. 107 of 1998](#));
- (b) must consider, investigate, assess and communicate the impact of his or her prospecting or mining on the environment as contemplated in [section 24 \(7\)](#) of the National Environmental Management Act, 1998 ([Act No. 107 of 1998](#));
- (c) must manage all environmental impacts—
 - (i) in accordance with his or her environmental management plan or approved environmental management programme, where appropriate; and
 - (ii) as an integral part of the reconnaissance, prospecting or mining operation, unless the Minister directs otherwise;
- (d) must as far as it 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
- (e) is responsible for any environmental damage, pollution or ecological degradation as a result of his or her reconnaissance prospecting or mining operations and which may occur inside and outside the boundaries of the area to which such right, permit or permission relates.

(2) Notwithstanding the Companies Act, 1973 ([Act No. 61 of 1973](#)), or the Close Corporations Act, 1984 ([Act No. 69 of 1984](#)), the directors of a company or members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company or close corporation which they represent or represented.

39. Environmental management programme and environmental management plan.—(1) Every person who has applied for a mining right in terms of [section 22](#) must conduct

an environmental impact assessment and submit an environmental management programme within 180 days of the date on which he or she is notified by the Regional Manager to do so.

(2) Any person who applies for a reconnaissance permission prospecting right or mining permit must submit an environmental management plan as prescribed.

(3) An applicant who prepares an environmental management programme or an environmental management plan must—

(a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;

(b) investigate, assess and evaluate the impact of his or her proposed prospecting or mining operations on—

the environment, (i)

the socio-economic conditions of any person who might be directly affected by the prospecting or mining operation; and (ii)

any national estate referred to in [section 3 \(2\)](#) of the National Heritage Resources Act, 1999 ([Act No. 25 of 1999](#)), with the exception of the national estate contemplated in section 3 (2) (i) (vi) and (vii) of that Act; (iii)

(c) develop an environmental awareness plan describing the manner in which the applicant intends to inform his or her employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or the degradation of the environment; and

(d) describe the manner in which he or she intends to—

modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation; (i)

contain or remedy the cause of pollution or degradation and migration of pollutants; and (ii)

comply with any prescribed waste standard or management standards or practices. (iii)

(4) (a) Subject to [paragraph \(b\)](#), the Minister must, within 120 days from the lodgement of the environmental management programme or the environmental management plan, approve the same, if—

it complies with the requirements of [subsection \(3\)](#); (i)

the applicant has complied with [section 41 \(1\)](#); and (ii)

the applicant has the capacity, or has provided for the capacity, to rehabilitate and manage negative impacts on the environment. (iii)

(b) The Minister may not approve the environmental management programme or the environmental management plan unless he or she has considered—

(i)
any recommendation by the Regional Mining Development and Environmental Committee; and

(ii)
the comments of any State department charged with the administration of any law which relates to matters affecting the environment.

(5) The Minister may call for additional information from the person contemplated in [subsection \(1\)](#) or [\(2\)](#) and may direct that the environmental management programme or environmental management plan in question be adjusted in such way as the Minister may require.

(6) (a) The Minister may at any time after he or she has approved an environmental management programme or environmental management plan and after consultation with the holder of the reconnaissance permission, prospecting right, mining right or mining permit concerned, approve an amended environmental management plan or environmental management programme;

(b) For the purposes of [paragraph \(a\)](#), [subsection \(4\)](#) applies with the necessary changes.

(7) The provisions of [subsection \(3\) \(b\) \(ii\)](#) and the [subsection \(3\) \(c\)](#) do not apply to the applications for reconnaissance permissions, prospecting rights or mining permits.

40. Consultation with State departments.—(1) When considering an environmental management plan or environmental management programme in terms of [section 39](#), the Minister must consult with any State department which administers any law relating to matters affecting the environment.

(2) The Minister must request the head of a department being consulted, in writing, to submit the comments of that department within 60 days from the date of the request.

41. Financial provision for remediation of environmental damage.—(1) An applicant for a prospecting right, mining right or mining permit must, before the Minister approves the environmental management plan or environmental management programme in terms of [section 39 \(4\)](#), make the prescribed financial provision for the rehabilitation or management of negative environmental impacts.

(2) If the holder of a prospecting right, mining right or mining permit fails to rehabilitate or manage, or is unable to undertake such rehabilitation or to manage any negative impact on the environment, the Minister may, upon written notice to such holder, use all or part of the financial provision contemplated in [subsection \(1\)](#) to rehabilitate or manage the negative environmental impact in question.

(3) The holder of a prospecting right, mining right or mining permit must annually assess his or her environmental liability and increase his or her financial provision to the satisfaction of the Minister.

(4) If the Minister is not satisfied with the assessment and financial provision contemplated in this section, the Minister may appoint an independent assessor to conduct the assessment and determine the financial provision.

(5) The requirement to maintain and retain the financial provision remains in force until the Minister issues a certificate in terms of [section 43](#) to such holder, but the Minister 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.

42. Management of residue stockpiles and residue deposits.—(1) Residue stockpiles and residue deposits must be managed in the prescribed manner on any site demarcated for that purpose in the environmental management plan or environmental management programme in question.

(2) No person may temporarily or permanently deposit any residue stockpile or residue deposit on any site other than on a site contemplated in [subsection \(1\)](#).

43. Issuing of a closure certificate.—(1) The holder of a prospecting right, mining right, retention permit or mining permit remains responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Minister has issued a closure certificate to the holder concerned.

(2) On written application by the holder of a prospecting right, mining right or mining permit in the prescribed manner, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management plan or the environmental management programme 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 or mining permit 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 prescribed environmental risk report.

(5) No closure certificate may be issued unless the Chief Inspector and the Department of Water Affairs and Forestry have confirmed in writing that the provisions pertaining to health and safety and management of potential pollution to water resources have been addressed.

(6) When the Minister issues a certificate he or she must return such portion of the financial provision contemplated in [section 41](#) as the Minister may deem appropriate to the holder of the prospecting right, mining right, retention permit or mining permit in question but may retain any portion of such financial provision for latent and or residual environmental impact which may become known in the future.

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 comes to an end 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 *bona fide* mining equipment which may be removed.

45. Minister's power to recover costs in event of urgent remedial measures.—(1) If any prospecting, mining, reconnaissance or production operations cause or result in ecological degradation, pollution or environmental damage which may be harmful to the health or well-being

of anyone and requires urgent remedial measures the Minister may direct the holder of the relevant right, permit or permission to—

- (a) investigate evaluate, assess and report on the impact of any pollution or ecological degradation;
- (b) take such measures as may be specified in such directive; 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 or to rehabilitate dangerous occurrences but establishes that the holder of the relevant reconnaissance permission, prospecting right, mining right, retention permit or mining permit, 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 may instruct the Regional Manager concerned to take the necessary measures to prevent further pollution or degradation, or to make the area safe.

(2) The measures contemplated in [subsection \(1\)](#) must be funded from the financial provision made by the holder of the relevant reconnaissance permission prospecting right mining right, retention permit or mining permit in terms of [section 41](#), where appropriate, or if there is no such provision or if it is inadequate, from money appropriated by Parliament for that 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 or retention permit if the holder 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 the approved environmental management programme; or

(d) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act.

(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 mortgagor, 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 20 of the National Parks Act, 1976 ([Act No. 57 of 1976](#)), and [subsection \(2\)](#), no reconnaissance permission, prospecting right, mining right or mining permit may 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 and the need to promote the sustainable development of the nation's mineral resources, 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.

(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.

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 No. 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 (1) (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 Board 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.

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 of his or her own volition 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 endeavor 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 No. 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 No. 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, permission and licence.—Any right, permit, permission or licence 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 MINING DEVELOPMENT BOARD

57. Establishment of Minerals and Mining Development Board.—The Minerals and Mining Development 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 resources;
 - (iii) the transformation and downscaling of the minerals and mining industry; and
 - (iv) dispute resolution;
- (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 14 and no more than 18 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; and
- (h) at least two other persons with appropriate experience, expertise or skill to enhance the Board's capability of performing its functions more effectively.

(3) The members of the Board must elect a deputy chairperson from amongst their number 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 No. 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 meetings 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 number 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, 23, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51](#) and [52](#), 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

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 approval of environmental management plans environmental management programmes, development programmes 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 \(1\)](#).

(3) The designated agency must inform the Minister about an application within 7 days of the receipt thereof.

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 accept an application for a reconnaissance permit if—

- (a) the requirements contemplated in [subsection \(1\)](#) are met; and
- (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area.

(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application, provide reasons and return the application.

(4) If the designated agency accepts the application the designated agency must, within 14 days from the date of acceptance notify the applicant in writing—

- (a) to submit an environmental management plan in accordance with [section 39](#) within a period of 30 days from the date of the notice; and
- (b) to notify and consult with any affected party.

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 survey;
- (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;
- (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 ([Act No. 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; and
- (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area.

(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application and return the application.

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; and
- (b) comply with the terms and conditions of the technical co-operation permit, the relevant provisions of this Act and any other law.

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 accept an application for an exploration right if—

- (a) the requirements contemplated in [subsection \(1\)](#) are met; and
- (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area.

(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application and the reasons therefor, and must return the application.

(4) If the designated agency accepts the application, the designated agency must, within 14 days from the date of acceptance, notify the applicant in writing—

(a) to notify and consult with any affected party; and

(b) to submit an environmental management programme in terms of [section 39](#) 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 application 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 approved the environmental management programme in terms of [section 39 \(4\)](#);

(d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 ([Act No. 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 after taking into account the need for and extent of exploration the project may request that the applicant gives effect to [section 2 \(d\)](#).

(3) The Minister must 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.

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 requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; 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) requirements of the approved environmental management programme.

(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 for registration at the Mining Titles Office within 30 days of the date on which the right—
 - (i) becomes effective; or
 - (ii) is renewed in terms of [section 81 \(3\)](#);

- (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 accept an application for a production right if—

- (a) the requirements contemplated in [subsection \(1\)](#) are met; and
- (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.

(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application, and return the application.

(4) If the designated agency accepts the application, the designated agency must, within 14 days from the date of acceptance, notify the applicant in writing to—

- (a) notify and consult with interested and affected parties;
- (b) conduct an environmental impact assessment and submit an environmental management programme for approval within 180 days from the date of the notice in terms of [section 39](#).

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 No. 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 land and labour plan.

(2) The Minister must 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 in writing notify the applicant of the decision and the reasons therefor.

(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 \(1\)](#) comes into effect on the date on which the environmental management programme is approved in terms of [section 39 \(4\)](#).

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 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 dispute its expiry date, remains 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 Mining Titles Office within 30 days of the date on which the right—
 - (i) becomes effective; or
 - (ii) is renewed in terms of [section 85 \(3\)](#);
- (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 only other law;
- (d) comply with the requirements of the approved environmental management programme and the prescribed social labour plan;
- (e) pay the State royalties;
- (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; and

- (g) comply with the environmental management programme and the social and labour plan.

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.

(2) Subject to the Promotion of Access to Information Act, 2002 ([Act No. 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 during office hours, 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 or 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) term or condition of any right, permit or permission or any other law granted or issued or any environmental management programme or environmental management plan approved terms of this Act, 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 No. 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 in the prescribed manner to—

- (a) the Director-General, if it is an administrative decision by a Regional Manager or an officer; or
- (b) the Minister, if it is an administrative decision by the Director-General or the designated agency.

(2) 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.

(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 No. 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 \(4\), 20 \(2\), 19 or 28](#);
 - (ii) [section 92, 94 or 95](#);
 - (iii) [section 38 \(1\) \(c\)](#);
 - (iv) [section 42 \(1\) or \(2\)](#);
 - (v) [section 44](#);

- (vi)
- any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act;
- (vii)
- any direction contemplated in [section 29](#); or
- (viii)
- 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 provide a written notice or consult with 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 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-targets and timetable for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and 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 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.—A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right and production right work programme, mining work programme, environmental management programme, and environmental management plan may not be amended or varied (including by extension of the area covered by it or by the addition of minerals or a share or shares or seams, mineralised bodies, or strata, which are not at the time the subject thereof) without the written consent of the Minister.

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.

(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 lodge such application to the Minister.

(2) The Minister must grant such preferent right if the community can prove that—

(a) the right shall be used to contribute towards the development and the social upliftment of the community concerned;

(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
- (d) the community has access to technical and financial resources to exercise such right.

(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) If the applicant for a right, permit or permission, who must notify and consult with the landowner or lawful occupier of the land to which the application relates in, terms of the relevant provisions of this Act, notify the Regional Manager that, the landowner or lawful occupier of the land concerned—

- (a) cannot be readily traced; or
- (b) is deceased and no successor entitled 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 an environmental management programme for approval in terms of [section 39 \(4\)](#).

(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 in [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, utilization 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 have 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 have 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

(1) 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.

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
1 May, 2004	The whole Act	R.25	26264	23 April, 2004

Schedule I REPEAL OR AMENDMENT OF LAWS

[[Schedule I](#) amended by [s. 2](#) of [Act No. 11 of 2005](#).]

[Wording of Sections](#)

([Section 110](#))

<i>No. and year of Act</i>	<i>Short Title</i>	<i>Extent of repeal or amendment</i>
.....	1. 2. 3. 4.
[The expression " Act No. 47 of 1937 " in the first column, and the related information in the second and third column deleted by s. 2 of Act No. 11 of 2005 .]		
Act No. 50 of 1956	General Laws Amendment Act, 1956	Repeals sections 3 and 4 .
Act No. 96 of 1969	Expropriation of Mineral Rights (Township) Act, 1969	Repeals the whole.
Act No. 29 of 1996	Mine Health and Safety Act, 1996	1. Amends section 102 by substituting the definition of " mining area ".

Act No. 57 of 1976	National Parks Act, 1976	Deletes any reference to mineral right in sections 2A, 2C, 2D, 3 and 3A.
Act No. 39 of 1979	Bophuthatswana Land Control Act, 1979	The deletion of section 16 (1) .
Act No. 6 of 1986	Venda Land Control Act, 1986	The deletion of section 16 (1) .
Act No. 50 of 1991	Minerals Act, 1991	Repeals the whole, except for the definitions of "precious metals" and "unwrought precious metal" in section 1 and Chapter XVI of the Mining Rights Act, 1967 and except the definition of "Sunday" and section 9 of the Mines and Works Act, 1956.
Act No. 47 of 1994	Mineral and Energy Laws Rationalisation Act, 1994	Repeals the whole.
Act No. 3 of 1996	Land Reform (Labour Tenant's) Act, 1996	Amends section 2 (3) by deleting the reference to mineral rights.
Act No. 94 of 1998	Transformation of Certain Rural Areas Act, 1998	Repeals section 6 .
Act No. 107 of 1998	National Environmental Management Act, 1998	Amends section 36 (1) by deleting the proviso.
Act No. 8 of 1997	Land Survey Act, 1997	1. Amends section 1 as follows:— paragraph (a) deletes paragraph (d) of the definition of "owner"; and paragraph (b) substitutes the definition of "share".
		2. Amends section 29 (2) as follows:— paragraph (a) substitutes paragraph (c) ; paragraph (b) substitutes paragraph (ii) of the proviso to paragraph (d) ; and paragraph (c) deletes paragraph (iii) of the proviso to paragraph (d) .
		3. Amends section 34 (2) by substituting the proviso to paragraph (b) .

Wording of Sections	x
sch I of Act 28 of 2002 prior to amendment by Act 11 of 2005	
Repealed Act	x
Act 96 of 1969 has been repealed by s 110 of Act 28 of 2002	
Repealed Act	x
Act 50 of 1991 has been repealed by s 110 of Act 28 of 2002	
Repealed Act	x
Act 47 of 1994 has been repealed by s 110 of Act 28 of 2002	

Schedule II 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 No. 50 of 1991](#));

"old order mining right" means any mining lease, 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 the mining lease granted to Mossgas (Pty) Ltd under clause 22 of the OP26 prospecting lease;

“OP26 sublease” means any prospecting sublease, acquired in terms of clause 15.1 of the prospecting lease granted to Soekor (Pty) Ltd in terms of [section 14 \(1\) \(b\)](#) of the Mining Rights Act, 1967 ([Act No. 20 of 1967](#)), and registered at the Mining Titles Office on 5 July 1967 under No. OP26 including any amendments thereof which continued in force in terms of section 44 (1) (a) (ii) of the Minerals Act;

“OP26 right” means an OP26 sublease or an OP26 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 with 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 Mining Titles Office for registration and simultaneously at the Deeds office or the Mining Titles Office for deregistration of the OP26 sub-lease 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 Mining Titles 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 Mining Titles Office for registration and simultaneously at the Deeds office or for the Mining Titles Office for deregistration OP26 lease, as the case may be.

(6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#)), or the Mining Titles Registration Act, 1967 ([Act No. 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 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 sublease 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) a 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 Mining Titles Office for registration and simultaneously at the Deeds Office or at the Mining Titles 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 No. 47 of 1937](#)), or the Mining Titles Act, 1967 ([Act No. 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 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)

a 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 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 Mining Titles 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) an undertaking that, and 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.

(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 Mining Titles Office for registration and simultaneously at the Deeds Office or for the Mining Titles 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 No. 47 of 1937](#)), or the Mining Titles Act, 1967 ([Act No. 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.

(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 No. 35 of 1908) of the Transvaal;
- (b) in terms of [section 126 \(2\)](#) of the Precious Stones Act, 1964 ([Act No. 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 No. 20 of 1967](#));
- (d) in terms of section 127, 128 or 129 read with [section 130](#) of the Mining Rights Act, 1967 ([Act No. 20 of 1967](#)); or
- (e) by virtue of a reservation under [section 158](#) of the Mining Rights Act, 1967 ([Act No. 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 Mining Titles Office within one year from the date on which this Act took effect.

(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 No. 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 mining right ceases the relevant prospecting or mining operation, the holder must apply for an closure certificate in terms of [section 43](#).

(5) [Section 38](#) 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) 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 in the prescribed manner.

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 No. 39 of 1979](#)), [section 16 \(1\)](#) of the Venda Land Control Act, 1986 ([Act No. 6 of](#)

1986), section 15 of the Lebowa Minerals Trust Act, 1987 ([Act No. 9 of 1987](#)), [section 51 \(1\)](#) of the Rural Areas Act (House of Representatives), 1987 ([Act No. 9 of 1987](#)), or [section 6](#) of the Transformation of Certain Rural Areas Act, 1998 ([Act No. 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 No. 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 mine or a claim licence 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 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 No. 39 of 1979](#)), section 16 (1) of the Venda Land Control Act, 1986 (Act No. 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 ([Act No. 9 of 1987](#)), [section 51 \(1\)](#) of the Rural Areas Act (House of Representatives), 1987 ([Act No. 9 of 1987](#)), or [section 6](#) of the Transformation of Certain Rural Areas Act, 1998 ([Act No. 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 No. 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 mine 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 by virtue of section 41 (1) (e) of the Minerals Act and 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 No. 39 of 1979](#)), section 16 (1) of the Venda Land Control Act, 1986 (Act No. 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 ([Act No. 9 of 1987](#)), [section 51 \(1\)](#) of the Rural Areas Act (House of Representatives), 1987 ([Act No. 9 of 1987](#)), or [section 6](#) of the Transformation of Certain Rural Areas Act, 1998 ([Act No. 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.

Repealed Act	x
Act 50 of 1991 has been repealed by s 110 of Act 28 of 2002	
Repealed Act	x

Act 20 of 1967 has been repealed by s 24 of Act 37 of 2005	
Repealed Act	x
Act 20 of 1967 has been repealed by s 24 of Act 37 of 2005	
Repealed Act	x
Act 20 of 1967 has been repealed by s 24 of Act 37 of 2005	
Repealed Act	x
Act 73 of 1964 has been repealed by s 68 of Act 50 of 1991	
Repealed Act	x
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Repealed Act	x
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Repealed Act	x
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Repealed Act	x
Act 50 of 1991 has been repealed by s 110 of Act 28 of 2002	
Repealed Act	x
Act 50 of 1991 has been repealed by s 110 of Act 28 of 2002	
Repealed Act	x
Act 50 of 1991 has been repealed by s 110 of Act 28 of 2002	
Repealed Act	x
Act 50 of 1991 has been repealed by s 110 of Act 28 of 2002	
Repealed Act	x

NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT ACT NO. 56 OF 2002

[ASSENTED TO 30 DECEMBER, 2002]
[DATE OF COMMENCEMENT: 29 JANUARY, 1999]

(English text signed by the President)

This Act was published in *Government Gazette* 24251 dated 15 January, 2003.

ACT

To amend the National Environmental Management Act, 1998, so as to substitute a definition; and to provide for the prohibition, restriction or control of activities which are likely to have a detrimental effect on the environment; and to provide for matters connected therewith.

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

1. Amends [section 1](#) of the National Environmental Management Act, [No. 107 of 1998](#), by substituting the definition of "activities".

2. Amends [section 44 \(1\)](#) of the National Environmental Management Act, [No. 107 of 1998](#), by deleting the word "and" at the end of paragraph (a); and inserting paragraph (aA).

3. Amends the long title of the National Environmental Management Act, [No. 107 of 1998](#), by inserting the phrase before the concluding phrase.

4. **Short title and commencement.**—This Act is called the National Environmental Management Amendment Act, 2002, and, subject to [section 35 \(3\) \(l\)](#) of [the Constitution](#), must be regarded as having taken effect on the date on which the principal Act took effect.

NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT ACT NO. 8 OF 2004

[ASSENTED TO 9 JULY, 2004]
[DATE OF COMMENCEMENT: 7 JANUARY, 2005]

(English text signed by the President)

This Act was published in <i>Government Gazette</i> 27161 dated 6 January, 2005.
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ACT

To amend the National Environmental Management Act, 1998, so as to insert certain definitions and substitute others; to make further provision regarding environmental authorisations; to make certain textual alterations; to provide for the registration of associations of environmental assessment practitioners; and to provide for incidental matters.

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

1. Amends [section 1](#) of the National Environmental Management Act, [No. 107 of 1998](#), as follows:—paragraph (a) inserts the definition of "assessment"; paragraph (b) inserts the definition of "commence"; paragraph (c) inserts the definition of "competent authority"; paragraph (d) inserts the definitions of "environmental assessment practitioner" and "environmental authorisation"; paragraph (e) inserts the definition of "evaluation"; paragraph (f) inserts the definitions of "listed activity" and "listed area"; paragraph (g) substitutes the definition of "MEC"; and paragraph (h) inserts the definitions of "review", "specific environmental management Act" and "specified activity".

2. Substitutes [section 24](#) of the National Environmental Management Act, [No. 107 of 1998](#).

3. Inserts [sections 24A](#) to [24I](#) inclusive in the National Environmental Management Act, [No. 107 of 1998](#).

4. Substitutes [section 43](#) of the National Environmental Management Act, [No. 107 of 1998](#).

5. Amends [section 47](#) of the National Environmental Management Act, [No. 107 of 1998](#), by deleting subsections (3), (4), (5) and (6).

6. Amends [section 50](#) of the National Environmental Management Act, [No. 107 of 1998](#), by adding subsections (3) and (4).

7. **Transitional provision.**—For a period of six months after the date on which this Act comes into operation, the provisions of section 24G of the principal Act apply, with the necessary

changes, in respect of any listed activity commenced or continued in contravention of a provision of the Environment Conservation Act, 1989 ([Act No. 73 of 1989](#)).

8. Amends [Schedule 3](#) of the National Environmental Management Act, [No. 107 of 1998](#), by substituting Part (a).

9. Short title and commencement.—This Act is called the National Environmental Management Amendment Act, 2004, and commences on a date determined by the President by proclamation in the *Gazette*.

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
7 January, 2005	The whole Act	R.1	27161	6 January, 2005

NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT ACT NO. 46 OF 2003

[ASSENTED TO 9 FEBRUARY, 2004]
[DATE OF COMMENCEMENT: 1 MAY, 2005]

(English text signed by the President)

This Act has been updated to *Government Gazette* 27539 dated 29 April, 2005.

ACT

To amend the National Environmental Management Act, 1998, so as to define certain expressions; to provide for the administration and enforcement of certain national environmental management laws; and to provide for matters connected therewith.

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

1. Amends [section 1](#) of the National Environmental Management Act, [No. 107 of 1998](#), as follows:—paragraph (a) inserts the definition of "aircraft"; paragraph (b) inserts the definition of "delegation"; paragraph (c) inserts the definition of "environmental management inspector"; paragraph (d) inserts the definition of "specific environmental management Acts"; and paragraph (e) inserts the definition of "vessel".

2. Substitutes the heading to Part 1 of [Chapter 7](#) of the National Environmental Management Act, [No. 107 of 1998](#).

3. Deletes the heading after [section 30](#) of the National Environmental Management Act, [No. 107 of 1998](#).

4. Inserts Part 2 in [Chapter 7](#) of the National Environmental Management Act, [No. 107 of 1998](#).

5. Inserts the heading before [section 32](#) of the National Environmental Management Act, [No. 107 of 1998](#).

6. Amends [section 32](#) of the National Environmental Management Act, [No. 107 of 1998](#), as follows:—paragraph (a) substitutes the words preceding subsection (1) (a); paragraph (b) substitutes subsection (2); and paragraph (c) substitutes the words preceding subsection (3) (a).

7. Inserts [sections 34A](#) to [34G](#) inclusive in the National Environmental Management Act, [No. 107 of 1998](#).

8. Substitutes the heading to [Chapter 9](#) of the National Environmental Management Act, [No. 107 of 1998](#).

9. Substitutes [section 42](#) of the National Environmental Management Act, [No. 107 of 1998](#).

10. Inserts [section 42A](#) in the National Environmental Management Act, [No. 107 of 1998](#).

11. Inserts [sections 47A](#) to [47D](#) inclusive in the National Environmental Management Act, [No. 107 of 1998](#).

12. Substitutes [section 49](#) of the National Environmental Management Act, [No. 107 of 1998](#).

13. Substitutes the long title of the National Environmental Management Act, [No. 107 of 1998](#).

14. Short title and commencement.—This Act is called the National Environmental Management Amendment Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
1 May, 2005	The whole Act	20	27539	29 April, 2005

NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT ACT NO. 62 OF 2008

[ASSENTED TO 5 JANUARY, 2008]
[DATE OF COMMENCEMENT: 1 MAY, 2009]

(English text signed by the President)

This Act has been updated to *Government Gazette* 32156 dated 24 April, 2009.

ACT

To amend the National Environmental Management Act, 1998, so as to insert certain definitions and to substitute others; to further regulate environmental authorisations; to empower the Minister of Minerals and Energy to implement environmental matters in terms of the National Environmental Management Act, 1998, in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area; to align environmental requirements in the Mineral and Petroleum Resources Development Act, 2002, with the National Environmental Management Act, 1998, by providing for the use of one environmental

system and by providing for environmental management programmes, consultation with State departments, exemptions from certain provisions of the National Environmental Management Act, 1998, financial provision for the remediation of environmental damage, the management of residue stockpiles and residue deposits, the recovering of cost in the event of urgent remedial measures and the issuing of closing certificates as it relates to the conditions of the environmental authorisation; and to effect certain textual alterations; and to provide for matters connected therewith.

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

- 1.** Amends [section 1](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#), as follows:—paragraph (a) substitutes the definition of “activities” in subsection (1); paragraph (b) inserts the definition of “applicant” in subsection (1); paragraph (c) substitutes the definition of “commerce” in subsection (1); paragraph (d) substitutes the definition of “community” in subsection (1); paragraph (e) inserts the definition of “development footprint” in subsection (1); paragraph (f) substitutes the definition of “environmental authorisation” in subsection (1); paragraph (g) inserts the definition of “environmental management programme” in subsection (1); paragraph (h) inserts the definition of “exploration area” in subsection (1); paragraph (i) inserts the definitions of “holder”, “holder of an old order right”, “integrated environmental authorisation” and “interested and affected party” in subsection (1); paragraph (j) inserts the definitions of “mine”, “Mineral and Petroleum Resources Development Act, 2002” and “mining area” in subsection (1); paragraph (k) substitutes the definition of “Minister” in subsection (1); paragraph (l) inserts the definition of “Minister of Minerals and Energy” in subsection (1); paragraph (m) inserts the definition “owner of works” in subsection (1); paragraph (n) inserts the definition of “norms and standards” in subsection (1); paragraph (o) inserts the definitions of “production area” and “prospecting area” in subsection (1); paragraph (p) inserts the definitions of “public participation process” and “Regional Mining Development and Environmental Committee” in subsection (1); paragraph (q) inserts the definitions of “residue deposit” and “residue stockpile” in subsection (1); paragraph (r) inserts the definition of “spatial development tool” in subsection (1); and paragraph (s) adds subsection (5).
- 2.** Substitutes [section 24](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#).
- 3.** Substitutes [section 24C](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#).
- 4.** Substitutes [section 24D](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#).
- 5.** Amends [section 24F](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#), by substituting subsections (1) and (2).
- 6.** Substitutes [section 24G](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#).
- 7.** Amends [section 24H](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#), by adding subsection (6).
- 8.** Inserts [sections 24J](#) to [24R](#) inclusive, in the National Environment Laws Amendment Act, [No. 107 of 1998](#).
- 9.** Inserts [section 42B](#) in the National Environment Laws Amendment Act, [No. 107 of 1998](#).
- 10.** Substitutes [section 43](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#).

11. Amends [section 47](#) of the National Environment Laws Amendment Act, [No. 107 of 1998](#), by inserting subsection (3).

12. Transitional provisions.—(1) Anything done or deemed to have been done under a provision repealed or amended by this Act—

- (a) remains valid to the extent that it is consistent with the principal Act as amended by this Act until anything done under the principal Act as amended by this Act overrides it; and
- (b) subject to [paragraph \(a\)](#), is considered to be an action under the corresponding provision of the principal Act as amended by this Act.

(2) An application for authorisation of an activity that is submitted in terms of Chapter 5 of the principal Act and that is pending when this Act takes effect must, despite the amendment of the principal Act by this Act, be dispensed with in terms of Chapter 5 of the principal Act as if Chapter 5 had not been amended.

(3) Section 24G of the principal Act applies with the changes required by the context in respect of any activity undertaken in contravention of [section 22](#) of the Environment Conservation Act, 1989 ([Act No. 73 of 1989](#)), if such activity is a listed activity under the principal Act.

(4) An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 ([Act No. 28 of 2002](#)); immediately before the date on which this Act came into operation must be regarded as having been approved in terms of the principal Act as amended by this Act.

(5) (a) Notwithstanding subsection (4), the Minister of Minerals and Energy may direct any holder or any holder of an old order right, if he or she is of the opinion that the prospecting, mining, exploration or production operations in question are likely to result in unacceptable pollution, ecological degradation or damage to the environment, to take such action to upgrade the environmental management plan or programme to address the deficiencies in the plan or programme as the Minister may direct in terms of the principal Act as amended by this Act.

(b) For the purposes of this subsection, “Minister of Minerals and Energy”, “holder” and “holder of an old order right” have the meanings assigned to them in section 1 of the principal Act as amended by this Act.

13. Amendment of principal Act in order to transfer to Minister of Environmental Affairs and Tourism power in respect of environmental matters in so far as it relates to mining.—The principal Act as amended by this Act is amended to the extent specified in [the Schedule](#) with effect from a date 18 months after the date on which the provisions relating to prospecting, mining, exploration and production and related activities comes into operation in terms of [section 14 \(2\)](#) of this Act.

(Date of commencement of [s. 13](#) to be proclaimed.)

14. Short title and commencement.—(1) This Act is called the National Environmental Management Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Notwithstanding [subsection \(1\)](#), any provision relating to prospecting, mining, exploration and production and related activities comes into operation on a date 18 months after the date of commencement of—

- (a) [section 2](#); or
- (b) the Mineral and Petroleum Resources Development Amendment Act, 2008,

whichever date is the later.

"SCHEDULE
(Section 13)

1. Amendment of [section 1](#) of [Act 107 of 1998](#).—Section 1 of the principal Act is hereby amended—

- (a) by the substitution for the definition of 'Minister' of the following definition:
`**"Minister"** means the Minister of Environmental Affairs and Tourism;';
and
- (b) by the deletion of the definition of 'Minister of Minerals and Energy'.

2. Amendment of [section 24C](#) of [Act 107 of 1998](#).—Section 24C of the principal Act is hereby amended by the deletion of subsection (2A).

3. Amendment of [section 24M](#) of [Act 107 of 1998](#).—Section 24M of the principal Act is hereby amended by the deletion of [subsection \(2\)](#).

4. Amendment of [section 24R](#) of [Act 107 of 1998](#).—Section 24R of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

`(4) The Minister may, after 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. Repeal of [section 42B](#) of [Act 107 of 1998](#).—Section 42B of the principal Act is hereby repealed.

6. Amendment of [section 43](#) of [Act 107 of 1998](#).—Section 43 of the principal Act is hereby amended—

- (a) by the deletion of subsections (1A) and (1B); and
- (b) by the substitution for subsection (4) of the following subsection:
` (4) An appeal under [subsection \(1\)](#) or [\(2\)](#) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.'.

7. Amendment or substitution of certain expressions.—The principal Act is hereby amended—

- (a) by the deletion of the expression "or the Minister of Minerals and Energy, as the case may be," wherever it appears in section 24 (1), section 24F (1) (a) and section 24G (1);
- (b) by the deletion of the expression ', Minister of Minerals and Energy' wherever it appears in section 24M (4);
- (c) by the deletion of the expression ', the Minister of Minerals and Energy,' wherever it appears in section 24N (1), (1A), (5) and (6) and section 24O (1) and (2); and
- (d) by the substitution for the expression 'Minister of Minerals and Energy', wherever it appears in section 24N (4) and (7), section 24O (4) and (5), section 24P (1), (2), (3), (4) and (5) and section 24R (1) and (2), of the word 'Minister'."

(Date of commencement of the Schedule ([section 13](#)) to be proclaimed.)

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>

1 May, 2009	The whole Act, except s. 13	N.27	32156	24 April, 2009
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[GNR.660 of 13 June 2008](#)

Second amendment draft to Listing Notice 1 of the List of Activities and Competent
Authorities indentified in terms of Sections 24 (2) and 24D of the National

Environmental Management Act
(*Government Gazette* No. 31144)

[GNR.661 of 13 June 2008](#)

Second amendment draft to Listing notice 2 of the List of Activities and Competent Authorities indentified in terms of sections 24 (2) and 24D of the National Environmental Management Act
(*Government Gazette* No. 31144)

[GNR.662 of 13 June 2008](#)

Draft addendum to the List of Activities and Competent Authorities Indentified in terms of Sections 24 (2) and 24D of the National Environmental Management Act
(*Government Gazette* No. 31144)

[GN 165 of 13 February 2008](#)

Draft Environmental Impact Assessment Regulations: For public comment
(*Government Gazette* No. 31885)

[GN 166 of 13 February 2008](#)

Listing Notice 1: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 31885)

[GN 167 of 13 February 2008](#)

Listing Notice 2: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 31885)

[GN 168 of 13 February 2008](#)

Listing Notice 3: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 31885)

[GNR.75 of 12 February 2010](#)

Admission of Guilt Fines Regulations
(*Government Gazette* No. 32935)

[GN 162 of 24 February 2010](#)

National guidelines on environmental impact assessments: For public comments
(*Government Gazette* No. 32970)

[GN 603 of 18 June 2010](#)

Publication of Implementation Guidelines for comment
(*Government Gazette* No. 33308)

[GN 654 of 29 June 2010](#)

Publication of Implementation Guidelines: For general public comments
(*Government Gazette* No. 33333)

REGULATIONS

[GN 920 of 15 September 2000](#)

Consolidated Environmental Implementation And Management Plan

[GN 249 of 16 February 2001](#)

Environmental Implementation Plans and Environmental Management Plans under [section 15 \(1\)](#) of the National Environmental Management Act, 1998
(Act [No. 107 of 1998](#))

[GN 435 of 23 February 2001](#)

Publication of Environmental Management Plan under section 15(2) (b) of the

National Environmental Management Act, 1998 (Act [No. 107 of 1998](#))

[GN 621 of 16 March 2001](#)

First Edition Environmental Implementation Plan (EIP)

[GN 1399 of 21 December 2001](#)

Control of vehicles in the coastal zone

[GN 659 of 17 May 2002](#)

First Edition Environmental Implementation Plan (EIP)
National Department of Agriculture

[GNR.552 of 27 May 2002](#)

Environmental Management Plan developed for the Department of Labour

[GNR.1426 of 7 December 2004](#)

Guidelines on the Implementation of Regulations pertaining to the Control of Vehicles
in the Coastal Zone

[GNR.619 of 1 July 2005](#)

Regulations relating to identification of environmental management inspectors

[GNR.721 of 22 July 2005](#)

Regulations for the Establishment of a designated National Authority for the Clean
Development Mechanism

[GNR.385 of 21 April 2006](#)

Regulations in terms of Chapter 5

[GN 514 of 21 June 2007](#)

National Environmental Advisory Forum Constitution

[GN 798 of 16 July 2008](#)

Publication of the Second Edition Environmental Management Plan under section
15 (2) (b)
(*Government Gazette* No. 31188)

[GN 1138 of 15 September 2008](#)

Second Edition Environmental Implementation and Management Plan (EIMP)
(*Government Gazette* No. 31415)

[GN 328 of 3 April 2009](#)

Second Edition Environmental Implementation Plan (EIP)
(*Government Gazette* No. 32056)

[GN 1025 of 30 October 2009](#)

Environmental Management Plan: Second Edition
(*Government Gazette* No. 32667)

[GN 1479 of 25 November 2009](#)

Environmental Management Plan: Second Edition
(*Government Gazette* No. 32693)

[GN 1613 of 11 December 2009](#)

Environmental Implementation Plan: Second Edition
(*Government Gazette* No. 32795)

[GNR.547 of 18 June 2010](#)

Environmental Management Framework Regulations, 2010
(*Government Gazette* No. 33306)

GNR.543 of 18 June 2010

Environmental Impact Assessment Regulations, 2010
(*Government Gazette* No. 33306)

GN 579 of 2 July 2010

Model Air Quality Management By-law
(*Government Gazette* No. 33342)

WHITE PAPER DISCUSSION

GNR.749 of 15 May 1998

White paper on environmental management policy for South Africa

NOTICES

GN 474 of 18 April 2008

The Environmental Implementation Plan for the Department of Trade and Industry for the period April 2005 – March 2009:
As required in terms of section 11 of the Act
(*Government Gazette* No. 30984)

GN 620 of 6 June 2008

Delegation of Regulation 3 (2) of the threatened or Protected Species Regulations, 2007
(*Government Gazette* No. 31107)

GN 897 of 22 August 2008

Environmental implementation plans and environmental management plans under section 15 (1)
(*Government Gazette* No. 31354)

GN 40 of 23 January 2009

Second Edition Environmental Implementation and Management Plan in terms of Chapter 3 of the National Environmental Management Act, 1998 (Act No. 107 of 1998)
(*Government Gazette* No. 31806)

GN 201 of 8 March 2010

Text for Multilateral Environmental Agreements for Chemicals Management
(*Government Gazette* No. 33005)

GN 400 of 14 May 2010

Delegation of powers under regulation 3 (3) of the CITES Regulation, 2010
(*Government Gazette* No. 33186)

GNR.544 of 18 June 2010

Listing Notice 1: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 33306)

GNR.545 of 18 June 2010

Listing Notice 2: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 33306)

GNR.546 of 18 June 2010

Listing Notice 3: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 33306)

GN 596 of 7 July 2010

Delegation of Powers in Regulation 6 (1) of the Bio-prospecting, Access and Benefit Sharing Regulations, 2008
(Government Gazette No. 33361)

GNR.661 of 30 July 2010

Listing Notice 1: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(Government Gazette No. 33411)

GNR.662 of 30 July 2010

Listing Notice 2: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(Government Gazette No. 33411)

GNR.663 of 30 July 2010

Listing Notice 3: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(Government Gazette No. 33411)

GNR.664 of 30 July 2010

Commencement: Environmental Impact Regulations, 2010
(Government Gazette No. 33411)

GNR.665 of 30 July 2010

Environmental Management Framework Regulations, 2010
(Government Gazette No. 33411)

TABLE OF REPEALS

The following notices have hereby been repealed:

Repealed Notices	As repealed by
GNR.385 of 21 April 2006 Regulations in terms of Chapter 5	<u>GNR.543 of 18 June 2010</u> Environmental Impact Assessment Regulations, 2010 (Government Gazette No. 33306)
GNR.386 of 21 April 2006 List of activities and competent authorities identified in terms of sections 24 and 24D	<u>GNR.544 of 18 June 2010</u> Listing Notice 1: List of activities and competent authorities identified in terms of <u>sections 24 (2)</u> and <u>24D</u> (Government Gazette No. 33306)
GNR.387 of 21 April 2006 List of activities and competent authorities identified in terms of sections 24 and 24D	<u>GNR.545 of 18 June 2010</u> Listing Notice 2: List of activities and competent authorities identified in terms of <u>sections 24 (2)</u> and <u>24D</u> (Government Gazette No. 33306)

PROPOSED REGULATIONS

GN 1424 of 12 August 2005: Regulations
(Government Gazette 27903)

GN 657 of 19 May 2006: Proposed guidelines as part of the implementation of Environmental Impact Assessment Regulations in terms of section 24 (5)
(Government Gazette No. 28854)

GN 856 of 25 August 2006: Extension of the submission date of the Second Edition of Environmental Implementation and Management Plans (EIPs/EMPs)
(*Government Gazette* No. 29133)

GN 1469 of 20 October 2006: Proposed guidelines as part of the implementation of Environmental Impact Assessment Regulations in terms of [section 24 \(5\)](#) of the Act, as amended
(*Government Gazette* No. 29310)

GN 393 of 4 May 2007: National Environmental Management Environmental Impact Assessment Regulations, 2006: Draft amendment
(*Government Gazette* No. 29862)

GN 394 of 4 May 2007: Amendment to the List of Activities and Competent Authorities Identified in terms of [section 24 \(2\)](#) and [24D](#)
(*Government Gazette* No. 29862)

GN 395 of 4 May 2007: Amendment to the List of Activities and Competent Authorities Identified in terms of [section 24 \(2\)](#) and [24D](#)
(*Government Gazette* No. 29862)

GNR.658 of 13 June 2008: Second amendment draft to the National Environmental Management Environmental Impact Assessment Regulations, 2006: For written comments and inputs by interested parties and the general public
(*Government Gazette* No. 31144)

GNR.659 of 13 June 2008: Amendment of regulations in terms of Chapter 5 of the Act
(*Government Gazette* No. 31144)

GNR.660 of 13 June 2008: Second amendment draft to Listing Notice 1 of the List of Activities and Competent Authorities identified in terms of Sections 24 (2) and 24D of the National Environmental Management Act
(*Government Gazette* No. 31144)

GNR.661 of 13 June 2008: Second amendment draft to Listing notice 2 of the List of Activities and Competent Authorities identified in terms of sections 24 (2) and 24D of the National Environmental Management Act
(*Government Gazette* No. 31144)

GNR.662 of 13 June 2008: Draft addendum to the List of Activities and Competent Authorities Identified in terms of Sections 24 (2) and 24D of the National Environmental Management Act
(*Government Gazette* No. 31144)

GN 165 of 13 February 2008
Draft Environmental Impact Assessment Regulations: For public comment
(*Government Gazette* No. 31885)

GN 166 of 13 February 2008
Listing Notice 1: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 31885)

GN 167 of 13 February 2008
Listing Notice 2: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 31885)

GN 168 of 13 February 2008
Listing Notice 3: List of activities and competent authorities identified in terms of sections 24 (2) and 24D
(*Government Gazette* No. 31885)

**GNR.75 of 12 February 2010: Admission of Guilt Fines Regulations
(Government Gazette No. 32935)**

**GN 162 of 24 February 2010: National guidelines on environmental impact
assessments: For public comments
(Government Gazette No. 32970)**

**GN 603 of 18 June 2010: Publication of Implementation Guidelines for comment
(Government Gazette No. 33308)**

**GN 654 of 29 June 2010: Publication of Implementation Guidelines: For general public
comments
(Government Gazette No. 33333)**

REGULATIONS

**GN 920 of 15 September 2000: Consolidated Environmental Implementation And
Management Plan**

DEPARTMENT OF LAND AFFAIRS

The Department of Land Affairs' *First Edition Consolidated Environmental Implementation and Management Plan* is hereby published for public information.

This report is the Department of Land Affairs' *First Edition Consolidated Environmental Implementation and Management Plan*, as required by the National Environmental Management Act (Act [107 of 1998](#)), [Chapter 3: Procedures for Cooperative Governance](#).

The Committee for Environmental Coordination adopted the Department of Land Affairs' *First Edition Consolidated Environmental Implementation and Management Plan* on 21 July 2000.

The First Edition Consolidated Environmental Implementation and Management Plan can be obtained from website: <http://land.pwv.gov.za>

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DEPARTMENT OF LAND AFFAIRS

Consolidated Environmental Implementation and Management Plan 2000

First Edition

June 2000

DLA CONSOLIDATED EI&MP

EXECUTIVE SUMMARY

Introduction

This report is the Department of Land Affairs' (DLA) *First Edition Consolidated Environmental Implementation and Management Plan (EI&MP)*, as required by the National Environmental Management Act (Act [107 of 1998](#)). Its main purpose is to "coordinate and harmonise the

environmental policies, plans and programmes” of DLA in order to minimise duplication and promote consistency in fulfilling functions with other organs of state.

In addressing sustainable development, land and developmental issues cannot be separated, especially when trying to achieve social equity and welfare. Improving the quality of life and achieving sustainable development in Land Reform involves all three spheres of government and various departments. Thus, coordination between spheres and departments is essential. This First Edition Consolidated EI&MP therefore represents the important first step in identifying areas of duplication, gaps and recommendations on addressing these issues. This achieved through a process of constructive engagement between DLA and other relevant organs of state.

As a result, this report focuses on DLA’s priority functional areas in terms of the environment, and highlights the processes that need to be initiated. It is not a comprehensive plan describing DLA’s existing policies, plans and programmes, and including targets (and monitoring indicators) for implementation, because these have yet to be developed. It must be re-emphasised that this is not a plan for integrated environmental management, but rather a plan to foster cooperative governance and align the exercising of DLA’s functions regarding the environment, with other relevant departments and organs of state. As such it concentrates on DLA’s policies, plans and programmes, indicating how these comply with the NEMA principles, rather than focusing on other departments policies (which will be addressed in the EIP and/or EMP of the relevant department or province).

It is important to note that the Department of Land Affairs is currently undergoing significant restructuring and policy revisions. Consequently, on the finalisation of the DLA processes the potentially revised and adapted provisions shall be made available and detailed in the Annual Reporting which is required by NEMA (section 16(1) (b)) prior to the Second Edition Report.

Mandate and Functions of the Department of Land Affairs

The DLA’s mission is to enact, establish and maintain an equitable and sustainable land dispensation in support of reconstruction, socio-economic growth and development. For the purposes of this report, the Land Reform and Spatial Planning functions are of primary interest.

Land Reform

The DLA is responsible for ensuring that Land Reform and land administration services are delivered effectively and speedily through accessible and efficient institutions. DLA has defined its Land Reform core business as “*the delivery of land rights*”, with DLA’s role officially ending upon transfer of the land. Land Reform “*functions which may affect the environment*”, are Land Restitution, Redistribution and Tenure.

Spatial Planning

Planning is constitutionally a responsibility of all three spheres of government, each playing a different role. The National Department of Land Affairs is responsible for policy and legislation on land development planning and land management, and to provide support to Provincial and Local government in their implementation of national policy and legislation. The National government is primarily responsible for setting policy norms and standards but is not responsible for implementation. Consequently this report will deal with the policy, plans and programmes.

Constitutionally provinces are responsible for provincial and regional planning, and municipalities are responsible for local planning. The DLA is therefore responsible for setting of national norms and standards however Provincial and Local Authorities are responsible for implementation and management. Due to planning being a Provincial competency land development applications are made with respect to provincial and local legislation and by the use of National norms and standards ([Chapter 1](#) Principles). This report will consequently deal with the national responsibility (policy and norms and standards) whereas implementation and management it is anticipated to be dealt with in the Provincial EIP reports. Similarly provincial planning acts and Local Authority ordinances will need to be covered by the relevant reports.

The DLA, as listed by NEMA, exercises both “*functions which may affect the environment*” and “*functions involving the management of the environment*”. Functions, which may affect the environment, are largely associated with Land Reform, while functions which involve the management of the environment have been categorised as those components dealing with Land

Development Facilitation, Spatial Planning and State Land Management. Other Departmental functions are not described in detail in this report, since they are not seen as having a potentially directly “significant” affect on the environment.

EIP Component (Land Reform)

DLA has numerous land reform policies, plans and products for each specific component of the Land Reform Programme, namely, Restitution, Redistribution and Tenure. The relevant Chapters and sections provide details as required by NEMA. The DLA’s role in Land Reform is to provide the necessary policies and mechanisms to redress legislation and policies that were racially discriminatory under the apartheid era. In brief:

- Tenure reform deals with land rights where people are living now.
- Restitution deals with land rights where people used to live in the past, often involving people choosing to return to their original tenure system.
- Redistribution deals with land rights where people will live after acquiring new land, involving people choosing a tenure system appropriate to their needs on their new land.

The implementation of Land Reform programme is based on a generic Project Cycle, which consists of four phases, namely: Project Identification; Feasibility Assessment and Project Business Planning; Approvals and Land Transfer and Development Support. Interdepartmental Committees are integral to the phases but are dependant on active participation of the members to address developmental issues. The DLA’s role ends once the land has been transferred to the land beneficiaries.

The following [table](#) summarises the DLA Land Reform policies, plans and programmes and partners. The specific departments and organs of state are particular to the specific Land Reform project and its location.

Land Reform Policies, Plans and Programmes

Land reform function	Relevant policies and Legislation	Plans and programmes (activities)	Partners
Restitution	Restitution of Land Rights Act 22 of 1994	6 Phased approached on page 33 DLA-DANCED project environmental interventions	All relevant Departments and Organs of state
Redistribution	Provision of Land and Assistance Act 126 of 1993	Commonages Farmer equity schemes Group Products Individual/family farms Settlement DLA-DANCED project environmental interventions	All relevant Departments and Organs of state
Tenure	Extension of Security of Tenure Act of 1998	Tenure Security	National, Provincial and Local Authorities
	Interim Protection of Informal Rights Act 31 of 1996	Tenure Security	National, Provincial and Local Authorities
	Upgrading of Land Tenure Rights Act of 1991	Tenure Security	National, Provincial and Local Authorities
	Land Reform Labour Tenants Act of 1996	Tenure Security	National, Provincial and Local Authorities

The following [table](#) summarises DLA functions and activities and information contained within the report related to the Land Reform Programme, which address the NEMA Principles.

Compliance with NEMA Principles

NEMA Principles	DLA Functions		
	Restitution	Redistribution	Tenure
Sustainable development	Feasibility studies Linkages to LDO Design of Development Plans	Feasibility studies Linkages to LDO Design of Development Plans	Tenure integral to sustainable development Design of Development Plans
Integration into decision making	Design of Development Plans Linkages to LDO	Design of Development Plans Linkages to LDO	Land ownership and title deeds are key to decision making
Participation	Participation is integral to all of DLA functions DLA-DANCED project conducts capacity building	Participation is integral to all of DLA functions DLA-DANCED project conducts capacity building	Participation is integral to all of DLA functions DLA-DANCED project conducts capacity building
Environ. Justice and equity	Land Reform policy is key to equity and justice issues	Land Reform policy is key to equity and justice issues DLA Food Safety net programme	Land Reform policy is key to equity and justice issues
Ecological integrity	Conduct Natural Resource Base Assessment studies	Conduct Natural Resource Base Assessment studies	
International	Partner to internal convention programmes Inter-governmental coordination and cooperation is key to DLA	Partner to internal convention programmes Inter-governmental coordination and cooperation is key to DLA	Partner to internal convention programmes Inter-governmental coordination and cooperation is key to DLA

Monitoring

The formulation of sustainable development indicators by DLA for Land Reform is problematic, because DLA is only responsible for the planning and transfer of land. Therefore, the indicators that may be used should reflect the incorporation of sustainable development principles in the planning (and decision making) process, rather than the actual use of the land. This latter component is a joint responsibility of Local Government, Provincial Government and National Government line function departments, and should therefore be reflected in the relevant EIPs. For purposes of this report sustainable development indicators have been provided in [Annexure A](#), however, these are limited due to the above reasons. The DLA-DANCED project will be drafting an environmental policy which will be available in March 2001 from which it may be possible to design sustainable development indicators for future use in the DLA Consolidated EI&MP reporting process. These will be made available in the annual reporting process to the CEC.

Nevertheless, DLA is developing Quality of Life indicators to assess the Land Reform process, and some of these may be included as indicators for the DLA Consolidated EI&MP. However, it is premature to identify particular indicators for this edition of the plan as they are only in the process of being designed for environmental purposes.

EMP Component (Spatial Planning and State Land Management)

This report highlights that the DLA is responsible only for formulating national policy and legislation for land development, while provincial government and local authorities are primarily responsible for implementation of proactive spatial planning and land development management. The DFA introduced an interim planning system for South Africa, which is policy led and normative in nature. This system forms the basis on which Provinces can develop their own planning laws. The DFA and the Green Paper on Development and Planning currently provide the legislative framework, including norms and standards for spatial planning (proactive planning), which provincial government may use to develop land development legislation and regulations. Planning and management of land development in South Africa must be in accordance with the [Chapter 1](#) Principles of the DFA: Principles for Land Development.

The DFA addresses land development planning at a local authority level by requiring the compilation of LDOs. LDOs set out the qualitative and quantitative objectives of the relevant authority in terms of the access to and standard of services for land development (land development management), the growth and form of the area and associated development strategies. LDOs are concerned with promoting equity, efficiency, protecting the public good, ensuring the appropriate use of scarce resources and protecting the environment, which are all consistent with the NEMA Integrated Environmental Management (IEM) principles. The DLA however does not currently play an evaluation or monitoring role, which will be addressed in the forthcoming White paper on Development and Planning. It is important to note that the Green Paper on Development and Planning specifies that the spatial planning function includes both proactive strategic planning and land development management.

The State is the biggest landowner in South Africa, details of which are contained within the report. The DLA in partnership with other government agencies is responsible to ensure the release of state land as a resource for sustainable development. DLA functions with respect to active monitoring or management of state land, once leases or servitudes have been granted, is very limited. There is further also a lack of clarity around the active management of state land particularly when communities who are the *de facto* "owners" of the land beneficially occupy it. The DLA is, as a matter of urgency, addressing its management role and is seeking to resolve the required institutional arrangements with various National and Provincial departments.

The following [table](#) provides a summary of the DLA land authorisations and the decision making authority.

Summary [Table](#) of DLA Land authorisations

Name of Act	Nature of authorisation	Decision making authority
Physical Planning Act, 1991	Land use decisions	Decision making power assigned to Provinces
Development Facilitation Act, 1995	Land development decision	Development Tribunals
Provision of Land and Assistance Act, 1993	Designation (land use)	Minister of Land Affairs
Extension of Security of Tenure Act, 1998	Land use (off farm settlements)	Minister of Land Affairs

The following [table](#) summarises the EMP functions as performed by DLA.

[Table](#) describing Policies, Plans and Programmes

DLA Function	Relevant Policies and Legislation	Plans and Programmes (activities)	Partners
Spatial Planning	Development Facilitation Act 67 of 1995	Land Development Objectives	All relevant Departments and Organs of state
	Green Paper on Development and Planning	DFA Principles	All relevant Departments and Organs of state
Land Development	Development Facilitation Act 67 of 1995	Land Development Objectives DFA Principles	Local Authorities, All relevant Departments and Organs of state
	Green Paper on Development and Planning	DFA Principles	Local Authorities, All relevant Departments and Organs of state
State Land Management	Development Facilitation Act 67 of 1995	Land Development Objectives DFA Principles	All relevant Departments and Organs of state

Compliance with DLA policies

DLA's function with respect to spatial planning (proactive planning) and land development (land development management) is to develop national norms and standards, which are

implemented and monitored by Local Authorities and Provincial Government. Therefore, it is not appropriate for the DLA Consolidated EI&MP to report on compliance, as this should be done in the Provincial EIPs. This situation may change through the White Paper (on development and planning) process, and if this occurs, the Annual Reports and second edition Consolidated Plan will include compliance.

The [table](#) below summarises DLA functions and activities and information contained within the report related to land development, which address the NEMA Principles.

Table of Compliance with NEMA Principles

NEMA Principles	DLA Functions		
	Spatial Planning (Proactive planning)	Land Development (Land Development Management)	State Land Management
Sustainable development	Application of Environmental based DFA Principles	Application of Environmental based DFA Principles	Application of Environmental based DFA Principles
Integration into decision making	DFA Principles require integration	DFA Principles require integration	
Participation	DFA Principles require full participation	DFA Principles require full participation	DFA Principles require full participation
Environ. Justice and equity	DFA Principles are based on 1) Human centred & 2) Natural resource base integrity	DFA Principles are based on 1) Human centred & 2) Natural resource base integrity	
Ecological integrity	DFA Principles are based on 1) Human centred & 2) Natural resource base integrity	DFA Principles are based on 1) Human centred & 2) Natural resource base integrity	EIA's are required to be performed for proposed development
International	Inter-governmental coordination and cooperation is key to DLA	Inter-governmental coordination and cooperation is key to DLA	Inter-governmental coordination and cooperation is key to DLA

Monitoring

A similar argument must be made for monitoring of spatial planning (proactive planning) and land development (land development management), as DLA does not currently have a monitoring-auditing role. Sustainable development indicators appropriate for these functions should be developed by the relevant Provincial Governments and included in their EIPs as they are the implementing agents. Sustainable development indicators of a policy nature are provided in [Annexure A](#).

Summary of points which relate to Purpose and Objectives of EI&MPs (NEMA [Chapter 3](#))

The DLA Consolidated EI&MP report has synthesized information pertinent to the potential duplication, fragmentation and gaps that currently exist within the ambit of cooperative governance and DLA responsibilities in environmental management.

Duplication: In summary there is currently limited but notable duplication of functions.

- Some duplication exists with the Department of Provincial and Local Government's Local Government Transitional Act, which requires Integrated Development Plans (IDP) to be compiled. IDPs are very similar to Land Development Objectives (LDOs). Spatial planning is an integral part of the IDP process at municipal (Local government) level. The DLA has however resolved this duplication issue through The Green Paper on Development and Planning, which proposes to integrate the two requirements into a single process.

Potential duplication also exists in the planning approval process currently contained within the Planning legislation and the EIA legislation. The DLA seeks to align the two processes in order to ensure a more sustainable and better quality decision-making process. The DLA is currently in discussions with DEA&T through the White Paper process to resolve the issues.

Fragmentation: In summary the document highlights and details the very complex and fragmented nature of spatial planning in South Africa. The Green Paper on Development and Planning is focussed on resolving the current situation. A White Paper shall be produced in the latter part of 2000. The National Department of Land Affairs has taken the lead in setting national norms and standards for spatial planning, but does not currently play a monitoring nor implementation role. Provincial and Local Authorities are responsible for implementation and management.

Gaps: In summary there are several gaps that have been identified in this report. The identified gaps fall outside of the jurisdiction of the DLA and require cooperative governance with other departments to be resolved. The most significant gaps are as follows:

- Land Reform is perceived as the sole responsibility of DLA rather than a cooperative governance responsibility of all organs of state involved in reconstruction and development, each playing a specific and necessary role;
- Formalised and accountable linkages, and involvement, of Local Authorities and the departments of Environmental Affairs, Agriculture, and Water Affairs and Forestry in the planning of Land Reform projects. Although an interdepartmental committee (for example the statutory PPAC) exists, departments do not regularly attend or are not held accountable for decisions taken;
- Formalised and accountable involvement of all relevant departments National, Provincial and Local government in the project cycle of Land Reform projects;
- The enforcement and monitoring of DLA principles and requirements for land development applications to be compliant with DEA&T EIA legislation and requirements. The DLA does not have enforcement or monitoring jurisdiction. The Green Paper proposes to address some of the issues;
- The monitoring and evaluation of LDOs which, although must be compliant with the DFA [Chapter 1](#) Principles, is currently not being performed. The Green Paper addresses several of the concerns but does require the cooperation of cooperative governance partners;
- With reference to state land in particular, the following has been highlighted:
 - Monitoring and management responsibility gaps of state land which have been issued with mining leases by the Department of Minerals and Energy;
 - Monitoring and enforcement of EIAs on state land; and
- Finally, the Department of Provincial and Local Government is not required to compile NEMA [Chapter 3](#) reports and therefore the necessary planning processes and legislation under the jurisdiction of that department will not be addressed within this First Edition and CEC reporting processes.

Recommendations for Institutional Cooperation

The following recommendations summarise the main institutional issues around cooperative governance and environmental management that are not relevant for the purposes of IEM in [Chapter 5](#). There is a need for an:

- Integrated Planning System, as proposed by the Green Paper on Development and Planning;
- Enhancement of capacity of National government to enforce the above planning system and to monitor the implementation of the DFA [Chapter 1](#) principles;
- New institutional frameworks for Land Reform where the District Council are the drivers. Capacity and budgets would need to be transferred to the District Council to support the delegation of powers;
- A review and possible amending of the Conservation of Agricultural Resources Act (Act [43 of 1983](#)) so as to align it effectively and make it more applicable to Land Reform;
- Enforcement of relevant legislation by the provincial departments, especially Agriculture and Environmental Affairs;
- Training and education for government officials, beneficiaries and service providers in Environment and Land Reform, and DFA [Chapter 1](#) principles; and
- NEMA [Chapter 5](#) guidelines needs to be developed to ensure quality and not quantity.

Recommendations and Proposals in terms of [Chapter 5](#) of NEMA

[Chapter 5](#) of the report details recommendations for Land Reform and proposals for Spatial Planning, providing options and preferences for both. Which are summarised as follows:

Recommendations for Land Reform (in terms of EIP)

NEMA provides for drafting of environmental impact assessment regulations by departments other than just the DEA&T. The DLA therefore proposes to draft Land Reform specific EIA regulations in consultation with the DEA&T and proposes a process. National DEA&T is currently undergoing a process to revise the National EIA regulations allowing for easy alignment of the processes. The DLA is committed to environmental sustainability in Land Reform and would like to self regulate as far as possible. Two options are detailed in the report, the preferred option of which is the following.

DLA and DEA&T jointly draft land reform specific regulations which are issued by DLA in terms of existing Land Reform legislation. Potential implications of self-regulation for the DLA are that it provides additional motivation for DLA to provide resources and build capacity for this function. This environmental management function would need to be reported upon as the EMP of DLAs Consolidated EI&MP report and would need to be audited annually. This implies a form of self regulation by DLA and an auditing role for the DEA&T. Auditing would then become part of the annual reporting process associated with the DEA&T Consolidated EI&MP.

Proposals for Spatial Planning (in terms of EMP)

Proposals for spatial planning are detailed in the report, the most important of which is the alignment of planning authorisations and environmental authorisations. Implementation of the authorisations is conducted at Provincial and Local levels, outside of the DLA ambit, however National DLA through setting of policy and norms and standards is required to facilitate and put in place mechanisms to align the two processes. Consequently two detailed proposals are made in

this regard for consideration in the cooperative governance arena of the CEC. The preferred option of which is the following.

The second proposal in the report identifies an approval process which, although dealt with separately by the two departments is aligned in terms of procedure. Streamlining of the processes will be initiated by firstly, attaining environmental approval and thereafter, planning approval. Consequently applications will only be considered once environmental approval has been acquired. Although the potential slowness of this option is of concern if sufficient resources are not available within the Environmental Departments, the alignment of the processes is a strong positive feature in the cooperative governance partnership.

DANCED Guidelines

The DLA-DANCED project guidelines will integrate environmental planning into the Land Reform process. The project is currently in progress and will be finalised in March 2001 at which time the products will become available. Reporting on the integration process will therefore be possible for the first annual report to the CEC. The guideline documents are aligned to the IEM principles and procedures. Greater involvement of the National and Provincial DEA&T officials is however required for more in-depth comment and technical input.

DEPARTMENT OF LAND AFFAIRS

CONSOLIDATED ENVIRONMENTAL IMPLEMENTATION AND MANAGEMENT PLAN

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ACRONYMS AND GLOSSARY

DLA	National Department of Land Affairs
PDLA	Regional Department of Land Affairs in the Provinces
NDA	National Department of Agriculture
PDA	Provincial Department of Agriculture
NEMA	National Environmental Management Act, <u>107 of 1998</u>
ECA	Environmental Conservation Act, <u>73 of 1989</u>
CEC	Committee for Environmental Coordination in terms of NEMA Act, <u>107 of 1998</u>
DLA-DANCED	South African Department of Land Affairs and Danish Corporation for Environment and Development Project: <i>The Integration of Environmental Planning into the Land Reform Process</i>
CIU	Coordination and Implementation Unit in the Executive Deputy President's office
DFA	Development Facilitation Act, <u>67 of 1995</u>
DPC	National Development and Planning Commission
PPAC	Provincial Project Approval Committee in terms of the Provision of Land and Assistance Act, <u>126 of 1993</u>
CPAs	Communal Property Associations
EIA	Environmental Impact Assessment
FEPD	Forum for Effective Planning and Development
LDO	Land Development Objective in terms of the Development Facilitation Act, <u>67 of 1995</u>
IDP	Integrated Development Plan in terms of the Local Government Transition Act, <u>200 of 1993</u>
SDI	Spatial Development Initiative
Spatial Planning	The organisation of space, rather than land planning which sought to plan all land parcels comprehensively
SACTRP	South African Council for Town and Regional Planners
IEM	Integrated Environmental Management in terms of NEMA Act, <u>107 of 1998</u>

DEA&T	National Department of Environmental Affairs and Tourism
SLAG	Settlement and Land Acquisition Grant
EI&MP	Environmental Implementation Plans and Environmental Management Plans in terms of NEMA Act, 107 of 1998
Commission	Commission on Restitution of Land Rights
TLC	Transitional Local Councils
M&E	Monitoring and Evaluation section of the DLA
MEC	Member of Executive Council for a Province: Department of Local Government
RLCC	Regional Land Claims Commission
MTEF	Medium Term Expenditure Framework
RDP	Reconstruction and Development Programme
ULTRA	The Upgrading of Land Tenure Rights Act, 1991
PTO	Permission to Occupy
TBVC States	Transkei, Bophuthatswana, Venda, Ciskei, former homeland states
SGT	Self-governing Territories

CHAPTER ONE:
MANDATE AND FUNCTIONS

Repealed Act	x
Act 200 of 1993 has been repealed by s 242 of Act 108 of 1996	

1.1 Objectives of this Report

The Department of Land Affairs' (DLA) *First Edition Consolidated Environmental Implementation and Management Plan* report, as required by NEMA (National Environmental Management Act, Act [107 of 1998](#), [Chapter 3](#)), is in support of cooperative governance in environmental management and towards sustainable development of South Africa.

In addressing sustainable development, land and developmental issues cannot be separated, especially when trying to achieve social equity and welfare. Improving the quality of life and achieving sustainable development in land reform involves all three spheres of government and various departments. Thus coordination between spheres and departments is essential. In order to make a contribution to cooperative governance in land and environmental issues, through the First DLA Consolidated EI&MP Report, it is important to have a firm understanding of the mandates and functions of DLA as laid down by the executive powers of the South African Government.

On the basis of the understanding of the functions and priorities of the DLA it will then be possible, through the processes of the Committee for Environmental Coordination (CEC) to identify potential gaps and potential duplication which needs to be addressed. Consequently, this report provides the first necessary step in order to facilitate the discussions with "environmental management cooperative governance partners", from which improved cooperative governance and management of our environment will stem.

It is important however to point out that this report does not represent a plan for integrated environmental management. It should not be confused with requirements of [Chapter 5](#) of NEMA (as pointed out in the *Guidelines for Preparation of the First Edition Environmental Implementation and Management Plans November 1999*). [Chapter 5](#) of this report will focus on recommendations

and proposals as required in [Chapter 3](#) of NEMA for integrated environmental management (IEM), which will then be incorporated into the broader programme of IEM to be addressed at the CEC. Recommendations for cooperative governance, which are important from a broader governance perspective, will be presented in [Chapter 4](#).

This report will serve as an invaluable tool for establishing the mechanisms of cooperative governance in environmental management in order to achieve sustainable livelihoods. For those members of the CEC, public and other stakeholders who are either interested or concerned with the DLA this document will provide an accessible, transparent and detailed account of Land Affairs and environmental management.

This report is neither a plan for integrated environmental management nor a strategy for sustainable development. It is also not a single event but rather an initial step in a progressive process to be driven and guided by the CEC.

This report has been compiled and drafted following the DEAT Guidelines for Preparation of the First Edition Environmental Implementation Plans and Environmental Management Plans November 1999.

1.2 Historical Context

Land ownership and land development patterns strongly reflect the political and economic conditions of the apartheid era. Racially-based land policies were a cause of insecurity, landlessness and poverty amongst black people, and a cause of inefficient land administration and land use (Land Policy White Paper, 1997).

At the outset, it must be emphasised that the central thrust of South Africa's land policy since 1994 has been the *land reform programme*, given the historical context. The South African government's land reform policy has tried to address the following:

- redress the injustices of apartheid;
- foster national reconciliation and stability;
- underpin economic growth; and
- improve household welfare and alleviate poverty.

The three aspects of the land reform programme are:

- Land Tenure Reform*: to improve the security of tenure of all South Africans and to accommodate diverse forms of tenure.
- Land Restitution*: to restore land and/or provide other remedies (such as compensation) to people dispossessed by racially discriminatory legislation and practice (since 19 June 1913).
- Land Redistribution*: to provide the poor with access to land for residential or productive purposes in order to improve their livelihoods.

1.3 Government Priorities in terms of Land Reform

Land Reform is a *South African Government* priority. The inclusion of three clauses in our Constitution, which relate directly to the three key aspects of the land reform programme mentioned above, support this. The constitutional provisions are (The Constitution of the Republic of South Africa, 1996, [Chapter 2](#)).

*A person or community whose **tenure** of land is legally insecure as a result of past racially discriminatory laws and practices is entitled, to the extent provided by an*

Act of Parliament, either to tenure which is legally secure or to comparable redress (s25(6)).

*A person or community dispossessed of property after June 19 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either **restitution** of that property, or to equitable redress (s25(7)).*

*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(s 25(5)).*

The Constitution also makes provision for environmental rights:

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 measure the
 - (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 (s24).**

The Constitution is clear that development and service provision is the responsibility of Provincial and Local governments who are the lead agents in this area. Provincial governments have concurrent competencies with National government with regard to critical areas such as rural and urban development and agriculture, which impacts directly on the sustainability of Land Reform.

In addition, the case for the government's rural Land Reform programme and its scope and content were clearly set out in the Reconstruction and Development Programme in 1994 (RDP: A Policy Framework, ANC, 1994). Amongst others, statements such as "a national land reform programme is the central and driving force of a programme of rural development" and "The RDP must implement a fundamental land reform programme" supports the view that land reform is a South African Government priority.

It was acknowledged at the outset of the Land Reform programme that the successes of the programme are dependant on more than merely access to land. The provision of support services, infrastructural and other development programmes, are essential to improve the quality of life and the employment opportunities resulting from land reform. The successful delivery of Land Reform depends not only on integrated government policy and delivery systems, but also on constructive partnerships between the different spheres of government as well as between the state and private and non-governmental sectors.

The intentions of the Land Reform programme (mentioned in the previous section) are broad governmental aims, which cannot be achieved by DLA alone.

1.4 The Mandate and Functions of DLA

The DLA, as listed by NEMA, exercises both "*functions which may affect the environment*" and "*functions involving the management of the environment*". Functions, which may affect the environment, are largely associated with Land Reform and functions which involve the management of the environment have been categorised as those components dealing with Land Development Facilitation, Spatial Planning and State Land Management.

The DLA's mission is to enact, establish and maintain an equitable and sustainable land dispensation in support of reconstruction, growth and development. The core business of DLA is:

- Registration of Land Rights
- Cartographic and Mapping Services
- Cadastral Surveys
- Restitution of Land Rights
- Redistribution of Land
- Land Tenure Reform and Protection of Land Rights
- Management of certain State Land; and
- Spatial Planning and Information

1.4.1 Land Reform

Land reform is a national competency. It is the responsibility of national government to ensure a more equitable distribution of land ownership, to support the work of the Commission on Restitution of Land Rights and to ensure that a programme of land tenure and land administration reform is implemented.

The DLA is responsible for ensuring that Land Reform and land administration services are delivered effectively and speedily through accessible and efficient institutions. Land Reform however has been seen, as the sole responsibility of DLA and the necessary coordination and integration with other departments and spheres of government has not occurred optimally.

At the same time DLA has defined its Land Reform core business as "*the delivery of land rights*", with DLA's role officially ending upon transfer of the land.

The DLA is however, undergoing a major transformation process and the manner in which it implements its core business is being clarified. The three basic legs of Land Reform remain, but more emphasis will be placed on the following (only those issues relevant to this report are listed):

- Better integration and coordination with other government departments and spheres;
- Contributing to an integrated rural development strategy to address development and settlement at the local level;
- Land Reform will be integrated into local development planning and the point of delivery will be the district level. New District Councils will therefore be capacitated to deliver land reform;
- Unlocking economic opportunities to improve the lives of beneficiaries by addressing social and economic development;
- More in-depth consideration of the land use needs of beneficiaries (food security/sustainable livelihoods net; settlement; small scale commercial agriculture) and the land use needs of society;

- Speeding up of restitution claims, and focussing on rural claims;
- Addressing equity and development in a sustainable manner; and
- Consolidating and rationalising tenure legislation and that tenure reform should lay the foundation for integrated economic development, sustainable land use and agricultural development by providing the basis for secure investment in land by rural households, private entrepreneurs and local government.

With respect to *environmental cooperative governance*, the issue of DLA's mandate and responsibilities versus those of other departments and spheres has severe implications for sustainable development and is central to this report.

Land Reform "*functions which may affect the environment*", are Land Restitution, Redistribution and Tenure. In tenure related projects emphasis has been on legal matters relating to prevention of evictions, securing people's land rights where they are or upgrading of land tenure status *in situ*. In these cases the focus is on the existing land conditions and issues are related to present land use as well as the well-documented problems of open access. Land Restitution and Redistribution projects are more often associated with movement and influxes of people onto land and the often related potential change in land use and resource utilisation.

Relative scope of impact DLA 's jurisdiction over land

It is important to put into perspective the "footprint" of Land Reform in South Africa. Land Reform is a small government programme when compared to water, infrastructure and housing programmes. For example, the 1999/2000 Land Reform budget was R567 million which is 0.34% of the national budget. Posts available for Land Reform are 697 which is 0.063% of the national public service. To date (March 2000), a total of 773 363 hectares of land has been redistributed and transferred through 465 projects (redistribution and tenure) and 173 805 hectares has been restored through 1651 claims (restitution). This accounts for a total of 0.65% and 0.15% of the total land surface in South Africa, respectively. Consequently, the actual footprint of DLA projects is relatively small when put in context. However small it is a very important component of government policy. Although the DLA is a small impactor, the effect of DLA policies and programmes due to the direct linkage with sustainable livelihoods, has the potential to influence social welfare and land management (from a productivity perspective) and have long term implications.

With respect to total land, DLA is responsible for managing about 11% of the total land surface of South Africa (including the former TBVC states and SGT), while the State as a whole owns about 25% of the country. This is principally done through State Land Management policies and programmes. Large portions of this land are the subjects of tenure and land administration reform. As many of governments development programmes, for example Spatial Development Initiatives (SDI's), fall within these areas DLA's impact in these cases can be significant.

1.4.2 Land Development Facilitation

The South African planning system has stemmed and emerged as a consequence of the historical context, influences of the ruling government of the past and is complexly fragmented.

The National Department of Land Affairs is responsible for policy and legislation on land development planning and land management, and to provide support to Provincial and Local government in their implementation of policy and legislation, notably the Development Facilitation Act of 1995 (DFA). Provinces may also draft their own planning legislation and regulations in accordance with National policies and principles. Planning mechanisms for implementation of the DFA are the Land Development Objectives (LDOs) and Provincial Development Tribunals which may decide on land development applications made in terms of the DFA. Local Government planning ordinances will not be addressed in the DLA report since that is the mandate of Local Government and will be potentially represented in the appropriate Report to the CEC.

Planning is constitutionally a responsibility of all three spheres of government, each playing a different role. The National government is responsible for setting norms and standards but is not responsible for management or implementation. However, planning is fragmented and very complex. For these reasons the National Development Planning Commission (DPC) in close

collaboration with the Department produced a Green Paper on Development and Planning (also herein referred to as the Green Paper). The Green Paper, which is normative in nature, sets out to align and provide a framework for integrated spatial planning in South Africa. The planning division within the DLA, Land Development Facilitation Directorate has become a priority directorate of the Department and will in future be capacitated to enhance and fulfill the requirements of this work. Consequently the linkages and involvement of the cooperative government partners (such as Local Authorities and departments of DEA&T and Agriculture) in decision making on land use and land management is of great importance.

1.4.3 Other Functions

Other Departmental functions are not further described in this report, since they are not seen as having a potentially directly *significant* affect on the environment. It must however be stressed that the maintenance of an efficient Deeds and Survey System for the country, as a whole and particularly the extension of this to comprehensively cover the former homeland areas, is seen as an essential base for effective governance at National, Provincial and Local Government spheres. Other Departmental functions, which will not be dealt with in this report, are:

-

Deeds

The function of the 9 (nine) Deeds offices in the country is to register land in the name of its owner to protect and record security of title.

-

Cadastral Surveys (and National Spatial Information Network)

The offices of the four Surveyor's General in the country, amongst other tasks, maintains the country's Cadastral Survey System by accurately identifying the position of each registered land parcel and the extent of rights over such a land parcel. These offices examine and approve all cadastral surveys for the registration of ownership of property and real rights in land.

-

Surveys and Mapping

This section is responsible for maintaining the Integrated National Control Survey System (which is the backbone to the surveys and mapping industry), the national mapping programme (map production), the national aerial photography programme and associated geo-spatial products.

!

This report focuses on *Land Reform* as the priority function that DLA exercises which may affect the environment and *Spatial Planning* and *State Land Management* as the priority functions that DLA exercises involving management of the environment.

1.5 Integration of Land, Rights, Values and Ownership Concepts

Common law land ownership is traditionally perceived as having absolute control over a parcel of land to the exclusion of all outsiders. Any interference with the rights of the landowner is seen as a risk to the owner and as an exception to the absolute control the owner has over their property. Ownership is perceived of in terms of rights with no obligations attached to it.

This concept is strengthened by the perception that there is a clear distinction between the public and private spheres of law, with ownership falling within the sphere of private law over which the State has no control.

The constitutional right to a healthy environment and sustainable conservation however, blurs this distinction. The environmental effects of land use go beyond the legally surveyed borders of a parcel of land. It is not the landowner or land user who suffers the effects of injudicious land use, but the wider public who have to bear the brunt of its effects. These effects are cumulative and difficult to trace back to a particular person and are especially important when considering future generations and potential landowners.

Once environmental damage has been done, the negative effects are often permanent and rehabilitation is costly. The best defense against environmental degradation is prevention.

Prevention in the interest of the public which includes landowners as users and controllers of land, a valuable resource which has to be managed not only to the exclusive interest of the owner, but in the interest of the country as a whole.

The Constitution protects the right to compensation in the event of expropriation and not the right to property per sé. Expecting a landowner to meet certain obligations set by the state in respect of land use in the interest of sound environmental management is not in any way expropriation. It defines the content of the rights to ownership that include obligations in the legal concept of ownership, a concept that has implications beyond the sphere of the private individual.

No rights are absolute and the rights of owners are no exception to this. In terms of [section 39](#) of the Constitution common law needs to be interpreted in a manner which is consistent with the rights conferred by chapter two of the Constitution, the Bill of Rights. [Section 24](#) confers on all the right to a healthy environment. The rights of ownership need to be shaped in accordance with this right.

Cooperative governance for sustainable development and environmental management needs to embrace and address the above issues, through interdepartmental, government and civil society debates and directives. The concept of a paradigm shift in the understanding of what it means to be a landowner as a key player and manager of land resources needs to go beyond the current practice. South Africa requires a paradigm shift to a "duty of care responsibility" associated with land ownership. This needs to be fostered not only with Land Affairs but by a dialogue between government departments and civil society.

1.6 The Concept of a Sustainable Development and Environment in terms of Land

Land is a fundamental natural resource that is important both in terms of human settlement and economic production. For the purposes of this report, DLA's responsibility for sustainable environmental management has two aspects:

Firstly, in terms of land reform, a sustainable environment is necessary to support sustainable livelihoods of the beneficiaries and surrounding community. Therefore, environmental management for land reform needs to consider the linkages between natural resources, environmental quality and poverty.

Secondly, in the case of land development, the major considerations for a sustainable environment relate to ensuring that land use activities conducted on that land do not degrade the natural resource base and ecological systems beyond their natural ability to recover and that human beings are protected from adverse impacts. This may be done through proactive planning of land development and through authorisation of land use change.

NEMA defines the environment as:

"the surroundings within which humans exist and that are made up of—

the land, water and atmosphere of the earth; (i)

micro-organisms, plant and animal life; (ii)

any part or combination of (i) or (ii) and the interrelationships among and between them; and (iii)

the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;" (iv)

NEMA defines sustainable development as:

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

The above definitions are aligned with the DLA's interpretation and understanding of the environment and sustainable development and views the two definitions as integral to the success of DLA policy, programmes and plans.

1.7 Process followed for compilation of the Report

The Process followed for compiling the Department's Report¹ involved the following key steps of detailed structured interviews, documentation review, drafting and workshops:

Overview and Steps of Process followed

- Project initiated in December 1999
- Consultants appointed to assist and work in very close collaboration with Department Project Manger who drives the entire process
- Reviewed Departmental structure and functions
- Reviewed and analysed key policies and documentation
- Designed questionnaire identifying key aspects per chapter for the First Edition Report (chapter template as per DEA&T Guidelines document)
- Series of structured interviews of key officials, sections, projects and all provinces
- Developed a framework for compiling the report
- Framework submitted to DEA&T
- Internal departmental brainstorming session
- Prioritisation of information, through interviews and brainstorming sessions, to be submitted in First Edition report
- Quick research and write-ups based on prioritisation by department representatives
- Presentation of results of interviews to Planning Network forum
- Compilation of Draft Report
- Departmental review of First Draft
- Department Workshop
- Finalise Report based on workshop and draft inputs and comments
- Consultants submit Finalised Report to Department Project Manager
-

Presentation to Acting Director General on report and process of submission (17/03/00)

- Department submits First Edition Consolidated report to CEC in March, for tabling at CEC meeting of the 14th April 2000
- CEC Sub-Committee reviews and provides comments on report on 23rd May
- Department resubmits report with revisions and inputs on 4th July 2000
- Report is tabled for adoption at CEC

List of departmental interviews planned and conducted

No	Date	Time	Inteview*	Place
1	7 Jan	9:00am	Monitoring & Evaluation	Pretoria
2	10 Jan	1:00pm	Western Cape Province	Cape Town
3	11 Jan	10:00am	Eastern Cape Province	East London
4	13 Jan	9:30am	State Land/Pub Inventory	Pretoria
5	14 Jan	10:00am	DLA-Danced Project Team	Pretoria
6	17 Jan	2:00pm	Land Development	Pretoria
7	18 Jan	10:00am	Redistribution	Pretoria
8	20 Jan	5:00pm	Restitution & Land Commission	Pretoria
9	21 Jan	2:00pm	Tenure(Land Rights Bill)	Pretoria
10	26 Jan	3:00pm	D-Director General's	Pretoria
11	28 Jan	10:00am	KwaZulu/Natal	Pietermaritzburg
12	-	Document	Northern Cape	Kimberly
13	31 Jan	11:00am	Northern Province	Pietersburg
14	1 Feb	10:00am	Free State Province	Bloemfontein
15	2 Feb	9:00am	Gauteng	Pretoria
16	3 Feb	9:00am	Project Brainstorming	Pretoria
17	4 Feb	11:00am	North West	Mabatho
18	-	Document	Mpumalanga	Nelspruit
19	8 Feb	9:00am	Brainstorming session	Pretoria
20	21 Feb	2:00pm	DEA&T - Stakeholder	Pretoria
21	24 Feb	1:00pm	Planning Network Forum	Pretoria
22	6 March	9:00am	DLA EI&EMP Workshop	Pretoria

* Internal project meetings with Project Manager are not itemised.

Footnotes

Footnote	X
<p>This document was compiled by Greta Pech (Pegasus Strategic Management) and Ruth Beukman (DLA), with input from a number of DLA contributors, under the auspices of the Directorate Land Development Facilitation.</p>	1

1.8 The Structure of this Report

This report has been compiled using the DEAT Guidelines for Preparation of the First Edition Environmental Implementation Plans and Environmental Management Plans November 1999, wherein the proposed template for Consolidated Plans is detailed. The order of chapters has

however been changed in order to facilitate the flow of information that is presented to be more accessible.

The report focuses on:

- Land Reform as “functions which may affect the environment” (NEMA: 3s11(1)); and
- Land Development, State Land Management and Spatial Planning as “*functions involving the management of the environment*” (NEMA:3s11(2)).

There is an immense amount of information with regard to DLA’s core business, policies, strategies, implementation approaches particular to each Province, guidelines and results of projects. In researching and compiling this report it became evident that a strategic and generic approach needed to be adopted, especially as this report is not an audit of DLA, but needed to serve the purposes and objectives of the CEC. In particular the information presented in this report is to provide the CEC with the overarching information (inclusive of specific details where necessary) for cooperative governance in environmental management. The information provided in this report is therefore of a generic and concise nature, to allow the CEC to identify any gaps, duplication or key areas that require coordination for sustainable land and environmental management.

Based on this, the following structure has been adopted for the DLA Consolidated Report:

- Chapter One** provides the mandates and functions of the Department and focuses on the priority issues.
- Chapter Two** provides information, policies, plans and programmes on the Land Reform programme as functions affecting the environment or the environmental implementation plan requirement.
- Chapter Three** discusses the land development and management policies, plans and programmes as reflecting the environmental management aspect of DLA.
- Chapter Four** discusses the institutional arrangements of both Land Reform and Land Development and Spatial Planning and provides recommendations for cooperative governance pertinent to successful implementation and sustainability of DLA’s functions.
- Chapter Five** outlines recommendations and proposals for integrated environmental management, as described in [Chapter 5](#) of NEMA, for Land Reform and Land Development and Spatial Planning, respectively.

CHAPTER TWO: LAND REFORM POLICIES, PLANS AND PROGRAMMES

2.1 Introduction

There are many land reform policies, plans, programmes and laws for each specific component of land reform (Redistribution, Restitution and Tenure). All of these originate from the overall guiding Land Policy White Paper of 1997.

2.2 DLA’S Land Reform Policies

This section gives an overview of the intentions and considerations of sustainable development and the “environment” in the Land Reform programme (as stated in the Land Policy White Paper of 1997). In addition, an account is given of actual implementation of policies and procedures for

Redistribution and Restitution. Tenure and tenure related projects will also be provided as a significant function of the DLA. These aspects of Land Reform address the issues of DLA's priority functions which "have an affect" on the environment.

The intentions and considerations of environmental sustainability in the land policy are as follows (Land Policy White Paper, 1997):

- *"land policy must deal with the need for sustainable use of the land;*
- *environmental issues need to be addressed if land policy is to be effective;*
- *land reform will allow people more control over their lives and their environment, which is expected to reduce the risk of environmental degradation;*
- *land reform aimed at the alleviation of poverty, should ameliorate the current levels of environmental destruction associated with the crowding of large numbers of poor people on marginal, erodable and often dangerous land;*
- *land reform can have important favourable environmental impacts in both urban and rural areas (tenure security is a precondition for people to invest in land improvements and encourages environmentally sustainable land use practices; and*
- *one of the challenges of land reform is to relieve land pressure without extending environmental degradation over a wide area. Unless projects are properly planned and the necessary measures are put in place to govern zoning, planning and the ultimate use of the land, the programme could result in land being used unsustainably" (Land Policy White Paper).*

An assessment of the implementation and impacts of Land Reform has been performed for a proportion of the total projects to date (10% of all projects). The results of the study (Quality of Life Report) performed by the Monitoring and Evaluation Division in the DLA has indicated that in some cases, the above intentions and assumptions have not been met in the implementation of land reform, for a range of reasons. This is explained further in the sections below.

2.2.1 Tenure issues, policy and legislation

- *Background*

Under apartheid laws, black people were prevented from retaining and/or acquiring rights in land. Land for black occupation was registered as property of the government or the South African Development Trust. Approximately 17 million hectares, 13% of the country, is still held in this manner and includes most of the so-called former *homelands* and coloured reserves (Land Policy White Paper, 1997). Black people living on "white" farm land were very vulnerable and subject to arbitrary evictions which left them homeless and destitute.
- *Land rights not legally enforceable*

In some of these areas, groups and tribes have strong underlying rights, which were not registered in their name due to discriminatory laws. This had led to long-standing disputes between government and traditional leaders about who owns and therefore controls the land. This often inhibits the implementation of appropriate land use practices and development, which can have a negative affect on the environment. In some cases, occupants are not treated as decision-makers on land that they have occupied for decades.

In urban areas, large informal settlements exist where rights are also not clearly delineated. Surveying, registration and upgrading of tenure rights is required. This

enables Local Authorities to manage these areas – to be able to charge and thus provide for basic services and implement land use planning measures and controls.

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Overcrowding and overlapping rights

Other difficulties are severe overcrowding, poverty and pressure on the land resulting from forced resettlement under apartheid and from the eviction of farm occupants. This has led to overlapping rights, since the original occupants who had strong underlying rights, have had to accommodate new residents, who have then obtained rights as permit holders or tenants. In some cases, it is very difficult to understand who has what rights to what piece of land. Lack of clarity on land rights can lead to open access and negative consequences for the environment. Coupled with actual overcrowding, the land upon which these people were settled was mostly marginal, with a very limited natural resource base off which they could depend.

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Land administration and land management

In each of the former homelands, different laws and authorities administer land and there is a complex and dysfunctional mixture of old and new institutions and practices. Generally, the systems of administration and record keeping have broken down. People are often confused about the real extent and nature of their rights or about what institutions and laws affect them. Getting approval for developments is very complex and time consuming. In some cases unlawful permission to develop land is granted which results in environment problems. For example the well-known case of the Transkei holiday cottages where individuals got permission from headmen to erect shacks on vulnerable parts of the coastline. The government had to spend large resources to investigate and take legal proceedings against these people.

Due to this, people have to plan development and use land without legal clarity on who has rights to use, occupy and invest in the land. The fundamental right to legitimately exclude others from one's property is diminished, as enforcement of legal and administrative provisions does not occur. This situation has had a negative effect on initiatives such as the Spatial Development Initiatives (SDI's) with investors being wary to be involved in a situation where there is no legal clarity and no effective and efficient system of land administration.

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Tenure insecurity on farm land

The bulk of people living on farmland with the consent of the owner did not enjoy any form of tenure security until 1998 with the passage of the Extension of Security of Tenure Act. (ESTA). People who had been on the land for generations, those who had worked the land for years and those providing seasonal labour were all subject to illegal and arbitrary evictions. Evictions were common where there were labour disputes, the farm changed hands or the elderly were no longer seen as a viable source of labour. Those evicted would either squat on any piece of land or join the ranks of those moving to the cities and towns to swell the ranks of the informal settlements. This created difficulties in urban areas for development and the environment.

The aim of tenure policy

The primary aim of tenure reform is to improve tenure security of all South Africans, to accommodate diverse forms of tenure and to develop an efficient, integrated system of land administration and management. Effective tenure reform will provide the basis on which sustainable economic development and good governance can occur. The use of land is a key issue that is defined through tenure rights and tenure underlies all development potential.

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Tenure reform deals with land rights where people are living now.

- Restitution deals with land rights where people used to live in the past, often involving people choosing to return to their original tenure system.
- Redistribution deals with land rights where people will live after acquiring new land, involving people choosing a tenure system appropriate to their needs on their new land.

It is therefore important to note that Tenure is central to all Land Reform projects.

Recent Policy Direction on tenure

The Minister for Agriculture and Land Affairs has recently indicated that the following aspects of tenure reform will be prioritized over the next year:

- *To rationalise and consolidate land administration Icons and create a unitary system of land tenure – ownership and statutory rights which can be legally registered;*
- *Government must be divested of ownership in the former homelands;*
- *A framework document is to be prepared to guide future legislative developments on the transfer of land to tribes and the administration of tribal land under the new local government dispensation; and*
- *The developmental aspect of ESTA will receive primary focus.*

Tenure legislation and procedures

- *Legislation to address tenure issues affecting mainly the former homelands;*
This item cannot be expanded on at this current time as the framework legislation is in the process of being prepared.
- *Legislation addressing tenure insecurity*
Legislation to establish a basic level of tenure security for “occupiers”, farm workers/labour tenants, and residents of the former homelands has been passed. These Acts give occupiers of land who have the consent of the owner to be on the land, rights in land. Arbitrary and illegal evictions are made a criminal offense. Legal evictions can still occur, mostly where suitable alternative accommodation is available. The relevant acts are:
 - The Interim Protection of Informal Land Rights Act, [31 of 1996](#) (IPILRA);
 - The Extension of Security of Tenure Act, 1998 (ESTA); and
 - The Land Reform Labour Tenants Act, 1996 (LTA).
- *Legislation to regulate communal ownership of land*
In many land reform projects, land is collectively acquired, held and managed by communities or groups under a written constitution. This is made possible through the Communal Property Associations Act, [28 of 1996](#) that enables group ownership systems to be recognised. The Act requires a land holding group to draft a constitution which sets out the rules governing access to and management of the

jointly owned land. This constitution is then attached to the title deed of the property.

- *Legislation for tenure upgrades*

The Upgrading of Land Tenure Rights Act, 1991 (ULTRA) was enacted by the pre-1994 government with the intention of upgrading informal land tenure rights and Permissions to Occupy (PTOs) to ownership. ULTRA was amended to bring it more in line with the South African Land Policy and is only implemented if certain criteria are met. These relate to (amongst other things) integrating tenure upgrades with broader development and planning initiatives and ensuring that no one is compromised in the upgrade.

- *Procedures*

DLA's role and the procedures that are followed for the above types of tenure projects include facilitation, information provision, conflict management, administering applications and ensuring that the laws are followed. The emphasis is on reaching agreements within community groups, or landowner and "occupiers", tenants or farm-workers – to secure tenure. Tenure rights are secured where people are, or on alternative nearby land. Government subsidies can be used to create either "on-site" or "off-site" settlement and development. More consideration for environmental and livelihood issues will be included in future procedures.

- *Summary of environmental and local planning issues relating to tenure*

- *Land Administration and open access*

There are a number of negative consequences due to the fact that no efficient land administration (land allocation and management) framework or legislation is in place in the former homelands.

There are long-standing disputes between provincial and/or local governments and traditional leaders about who owns and therefore controls the land. The uncertainty as to who has rights and who can take decisions hinders development planning and investment projects. This means that opportunities for employment, access to essential services, health care and education are lost.

Most of the former homelands consist of over-crowded, disconnected fragments of marginal lands, where a poor natural resource base limits opportunities for sustainable livelihood creation. Problems of inefficient land use and ineffective management of common property resources (due to the lack of clarity in relation to rights and the lack of effective institutions on the ground) leads to environmental degradation. Over-grazing, over-exploitation of natural resources (such as woodland resources), inappropriate agricultural practices and inappropriate use and management of water resources are common problems. Without the authority to exclude "outsiders" from using limited natural resources in a communal area, it is almost impossible to manage the resources effectively.

A similar problem has been experienced in land reform projects where land has been acquired, held and managed by large groups (through the Communal Property Associations Act). The problem is two-fold. Often the land resource cannot adequately support the number of people in the group so natural resources are over-exploited and poorly managed. Secondly, the CPA constitution that sets out how the land is to be managed may not specify natural resource access and use rights within the group. Even if this is specified, the constitution is not necessarily adhered to.

- *Tenure security and upgrades*

Land tenure policies and legislation principally secure people's rights to land that they currently occupy. Tenure security is therefore obtained for the *status quo*, which in some cases is an unsafe and unhealthy environment. The importance of the environment to livelihoods, safety and quality of life is not emphasised.

In the past situations have occurred where DLA has assisted people to secure their tenure where they are, without being able to secure support from other spheres of government to cater for improved livelihoods, development, employment opportunities or service provision.

In some cases, Local Authorities do not consider themselves responsible for delivering services to land beneficiaries. There is also a lack of clarity around whether any secure tenure status or full title (ownership) is necessary to secure the provision of services by the Local Authority. Many people insist that the latter is needed and therefore insist upon full title as their tenure option. This is a costly and time consuming process and also can give rise to conflicts with the tribal leaders.

More recently, the approach adopted in DLA has been towards partnerships with Local Authorities and Provincial government in tenure upgrade and residential settlement projects. DLA secures tenure rights (this involves negotiation and conflict resolution between Local Authorities and tribal leaders and the people themselves) and the Local Authority undertakes the provision of services. It remains a concern however, that settlements may be upgraded in areas where it is not safe or habitable for people. In such cases alternative land should rather be obtained but often this is not possible.

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! Tenure is central to all Land Reform projects. The primary aim of tenure reform is to improve tenure security of all South Africans. This is important for environmental justice and equity as this relates to the access to and opportunity to utilise resources sustainably. The aim is further to accommodate diverse forms of tenure and to develop an efficient, integrated system of land administration and management.

2.2.2 Redistribution Policy, Products and Procedures

Policy and Legislation

The purpose of the redistribution policy is to provide access to land for residential and productive uses and thereby to improve livelihoods and quality of life. The policy targets the rural poor, farm workers, labour tenants, women and new entrants to agriculture.

The legislation under which redistribution takes place is the Provision of Land and Assistance Act, [126 of 1993](#).

The institutional arrangements for delivery of redistribution have always been to provide access to services at District and Local spheres, to build partnerships with other spheres of government, NGOs and beneficiaries, and to allow for a diversity of institutional arrangements that should match provincial needs.

It is within this context that redistribution projects were to be developed, planned and implemented. It was always assumed that to improve livelihoods and the quality of life of land reform beneficiaries, economic and environmental sustainability would be given attention. However, reality indicates that this is not always the situation.

Products

The redistribution program responds to different needs, with a wide variety of different projects being implemented. Five broad categories of redistribution products have emerged over the past four years. These are:

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Commonage: where land is purchased by a municipality (through the assistance of a Grant for the Acquisition of Municipal Commonage administered by DLA) for use by local poor residents to supplement their income, keep their livestock or for small farmers to use as a stepping stone to becoming independent producers;

- *Farmer worker equity schemes:* where DLA assists farm workers to buy into existing farming enterprises;
- *Group production:* a group of beneficiaries pool their grant to purchase a farm for productive purposes;
- *Individual/family farms:* same as above except on an individual or family scale; and
- *Settlement:* where families or groups access land primarily for settlement, through the assistance of DLA legislation and grants.

The DLA has also designed a new supply led approach to redistribution. This is in order to be more proactive and to manage the allocation of land coupled with a more strategic use of grants to support the government's Integrated Rural Development Strategy. It is expected that the District and Local government sphere will play a key role in planning for and prioritising land redistribution opportunities. The DLA has consequently set new priorities in terms of redistribution and will pay particular attention to environment, economic, financial, management and social viability, as well as sustainability of farming enterprises for which government grant funding will be solicited. In future projects that will be eligible for grant funding, will be commonage areas, communal areas and commercial farming areas. The policy and grant specifically for commonages are currently being reviewed.

New direction for Redistribution Grants

There are three important new approaches to redistribution grants, namely:

- Grant for Settlement. The grant shall be used for urban poor and rural communities who wish to access land primarily for settlement purposes;
- Food Safety Net. The DLA has in addition prioritised a grant for purposes of a Food Safety Net. This is a grant that is targeted for poor sections of communities who do not have land and cannot sustain themselves. The grant is intended to give them both land and food security;
- Land Reform Grants. The SLAG grant shall be replaced by the Land Reform Grant for emerging farmers; and
- Grant for equity purchases are being reviewed.

Official Procedures

Although the redistribution programme has different products, generic procedures are still applicable. The implementation of the redistribution program is based on a generic *Project Cycle* i.e. 'how to develop and implement a redistribution project'.

The project cycle has four phases:

- Phase 1: Project Identification;
- Phase 2: Feasibility Assessment and Project Business Planning;
- Phase 3: Approvals and Land Transfer; and
- Phase 4: Development Support.

For each phase certain milestones were developed, to ensure that social, economic, environmental and financial issues are addressed in land reform project planning. To ensure that a project is environmentally sustainable the following mechanisms/guidelines were put in place:

- *Identification of suitable land*

When land parcels are needed to be identified a land resources appraisal is conducted to determine the following: the current use of the land; potential use of the land; and possible resource constraints. There are two ways in which this is done.

Once a parcel of land has been identified, a valuation must be done to determine the market value of the land. A well-documented valuation will already indicate what the land is currently used for and what the land can be used for, including a potentially comprehensive resource assessment of the land. There are however limitations within which DLA officials operate, such as problems associated with availability for land for projects and the dependence on land that is put on the market (willing seller and willing buyer). In other words and in the many cases, unsuitable, or problematic, land is marketed and thus available for projects. An additional limitation is the size of parcels of land that are available. The DLA is also dependant on the availability of a macro-plan or vision, associated with the LDO's for the Districts in which projects have been proposed. These however may not exist and where they do exist do not address Land Reform issues.

The business plan (drawn up by an external consultant with the assistance of a DLA official) includes a description of the current land use, the land potential and a land resource assessment. This should address environmental aspects that might affect the sustainability of the project. A natural environment and a human environment checklist forms an appendix of the Redistribution Manual, which is supposed to be followed in the implementation of redistribution projects. Both the DLA official and the appointed consultant can therefore identify and address any environmental issues early on in the project.

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Significant changes in land use

Where there might be a significant change in land use (for larger projects), an Environmental Impact Assessment (EIA) may be required in compliance with the Department of Environmental Affairs and Tourism's EIA Regulations (ECA Act [73 of 1989](#)). This however has proven very difficult for Land Reform implementation and especially for land beneficiaries since there are financial implications. This is discussed further in [Chapter 5](#) of this report.

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To ensure co-operative governance and 'buy-in' for the project

The Provincial Projects Approval Committee (PPAC) is established per regional office and is responsible for scrutinizing and approving the project proposal. The PPAC, except in KwaZulu/Natal, consists of relevant stakeholders including the relevant provincial government departments. The KwaZulu/Natal regional office liaises with other departments prior to the PPAC in the project steering committee, however the PPAC does still formally approve and process projects. PPAC members are identified and invited to the meetings early in the project cycle. In some regional office support from key stakeholders such as the District Council is sought in writing prior to the PPAC. Based on the nature of the project, relevant stakeholders are involved in the project and committee and this is often when the Provincial departments of Environmental Affairs and/or Conservation Authorities are invited to participate in the PPAC meetings.

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Actual Procedures: Reality check

Based on the above the question may be asked: if there are policies, mechanisms and guidelines in place to allow for sustainability in projects, why have some of the implemented land reform projects not addressed environmental sustainability?

Firstly, project planning and implementation do not generally adhere to the existing mechanisms/guidelines that cater for environmental planning. There is no enforcement of the "environment specific" procedures. Most land reform project business plans have a section that refers to environmental issues but if completed, it does not form an integral part of the business plan rather it is included as an add

on. This is largely due to the poor understanding amongst DLA officials of what the significance of the "environment" is in rural land reform. It appears that it is not yet understood that land provides a natural resource base on which rural livelihoods are dependant. The importance of this is generally not included in the terms of reference for the external consultants appointed to develop the business plans particularly as there is a requirement for an independent EIA.

In addition, the existing mechanisms/guidelines do not adequately address environmental planning and sustainability issues. This was acknowledged by DLA in 1996 when a study was commissioned to investigate the "environment and land reform" (LAPC, 1996). This process later developed into the project "The Integration of Environmental Planning into the Land Reform Process", discussed in [Section 2.3](#).

Pooling of the Settlement and Land Acquisition Grant (SLAG) by land beneficiaries in order to enable them to purchase a farm, encourages the packing of too many people on the land. This however is under policy review. Often Communal Property Associations (CPA's) are formed. There is often much mismanagement in these CPA's with powerful individuals preventing real democratic decision-making.

DLA's internal performance management systems has rewarded officials in terms of "quantity" i.e. hectares and households and spending their financial budget. They were not rewarded for "quality" i.e. delivery of sustainable land reform and sustainable livelihoods. This system does not necessarily encourage sustainable delivery of land or improved livelihoods.

The involvement of key stakeholders such as DEA&T (National and Provincial), Department of Water Affairs and Forestry (DWAF), Provincial Department of Agriculture (PDA) and Local Government in the planning and implementation of a project affects the sustainability of the project. This is elaborated on in [Chapter 4](#): Institutional Arrangements and Cooperative Governance Recommendations.

Summary of Environmental Issues in selected Land Redistribution projects

The following are summarised assessments of a selected number of projects (19) in 3 (three) Provinces from the Monitoring and Evaluation Directorate's Environmental Impact Surveys (name to change to Environmental Sustainability Assessments). Issues were also raised through interviews conducted with Provincial Land Affairs officials through the DLA EI&MP process and recent project reviews undertaken in some of the provinces. Similar studies would need to be performed for a greater number of projects in more Provinces in order to provide a more complete and thorough understanding. Consequently the following provides a quick scan and overview of some of the project issues found to date.

- Poor access to water resources, in particular inadequate quantity and quality. Water is often a scarce resource on or nearby the project (farm), or on the other hand if there is adequate supply it is sometimes polluted on-site (livestock), or by those living up-stream (off-site);
- Soil erosion, due to land use activities on highly erodable soils and land already with poor basal (vegetation) cover thereby becoming exposed and more prone to erosion;
- Overgrazed veld and associated bush encroachment which results in palatable species being rapidly reduced, fire hazards and inappropriate (and uncontrolled) burning regimes;
- Overstocking of cattle, since communal grazing areas are shrinking. In some places this is due to tribal state land being made available for housing developments;
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Limited nearby source of wood for fuel, if available, it is often over exploited due to the high numbers of people being dependant on the woodland resource for firewood and basic household construction;

- Inadequate sanitation and solid waste management system resulting in the risk of water-borne diseases to be high. Other impacts such as livestock death due to eating plastic as a result of no solid waste disposal system and severe litter problems;
- Settlement being developed in unsafe areas such as floodplains, and agricultural development in wetlands; and
- Generally poor land use management practices (crop and livestock related) as a result of ignorance or inadequate knowledge coupled with lack of agricultural extension service support.

Summary of some general issues which often lead to environmental problems

Apart from internal DLA issues raised earlier, the following are also apparent:

- Inappropriate land purchased for beneficiary land use needs, which due to political pressure in some cases, may have been selected without the necessary resource assessment studies;
- Inadequate resource assessments can in some instances lead to too many people and/or overstocking of the land;
- In some commonage projects, the TLC support does not adequately lead to successful implementation of projects, which sometimes come to a standstill. In these cases usually there are no land use management plans and/or inadequate enforcement (problems with open access) are drawn up, which results in people using the commonage areas as they please;
- Often the roles and responsibilities of stakeholders are unclear and/or role players change or are not *bona fide*;
- Land beneficiaries often have a limited grasp of the environment, sound land use practices appropriate for the parcel of land, lack of leadership and vision, and waste management knowledge;
- In the past, there has often been a political imperative to deliver land above quality;
- Lack of other spheres and departments of government fulfilling their supportive roles;
- Lack of capital to implement a business plan;
- Lack of integrated planning and development;
- Lack of technical assistance either due to lack of capacity in Provincial government or because of an unwillingness to cater for land reform beneficiaries;

- Business plans are in some cases problematic;
- Even if sound business plans have been drawn up and approved leading to land transfer, they are often not adhered to by the land beneficiaries – DLA has assisted in the transfer of the land and officially has no authority over the new private land owners;
- In communal areas no formal land allocation procedures are in place and land management systems often do not exist, resulting in *ad hoc* local decisions being made. (The legal vacuum to address land allocation and management in communal areas in the former homelands compounds these problems);
- State Land Management is often unable to manage and control certain state land which compounds the above mentioned issue;
- Tenure related issues and problems of open access; and
- Lack of follow-up support after delivery of the land has taken place also referred to as post-transfer support by the line function departments.

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The purpose of redistribution policy is to provide **access** to land for residential and productive uses to improve livelihoods and quality of life. The DLA has formalised processes and products for redistribution, which rely on an inter-governmental participation and decision making process in the planning and implementation of projects.

2.2.3 Restitution Policy and Procedures

Restitution Policy and Legislation

Land Restitution involves returning, or compensating for, land which was lost since 19 June 1913 due to racially discriminatory laws and practices.

Restitution project procedures are guided by the legislative principles set out in the Restitution of Land Rights Act [22 of 1994](#). Restitution is principally a legal process to restore land rights to people dispossessed of those rights. In this regard, the pursuit of restoring rights and compliance with legal procedures to fulfill restoration is the principal role of the DLA wherein environmental considerations are often only viewed as a priority on a case specific basis.

Restitution procedures

There are 6 phases to the Restitution procedures. These are:

1. Lodgment of claim: A claim is lodged against the State and followed up by the relevant Regional Land Claims Commission office.
2. Screening and categorisation: This involves the investigation of elementary evidence pertaining to the claim. Once a claim has been initially screened a preliminary options assessment (between project staff and claimants) is carried out (if it appears that the claim will be accepted by the Regional Land Claims Commission – *prima facie evidence of a valid claim*). This assessment also aims to determine what the claimants want and their subsequent options, which allows the claim to be categorised. An advanced screening phase is then entered into where the details of the interested and affected parties are obtained, as well as any other necessary information. The claim is then prioritised according to certain criteria in terms of section 6(2) (d), a substantial number of persons or person who have suffered substantial losses, and as developed within each RLCC office.
- 3.

Acceptance of claim: Once validated, the claim can be gazetted. All interested and affected parties are then notified. Depending on the specifics of a claim, this may also require advertisements to be published in the local newspapers and/or put up in a suitable public place. Following gazetting the Commission will accept comments from interested and affected parties.

4. Preparation for negotiations and settlement: During this phase issues of feasibility of the various options are discussed (restoration, alternative land and/or monetary compensation). These choices are guided primarily by legal and financial factors. During this phase a negotiating 'position' is established from which actual negotiations with the relevant stakeholders will take place.
5. Negotiations: The Commission convenes and manages the negotiations process in an attempt to achieve a settlement out of court. The process can include multiparty discussions, bilaterals, mediation (in cases of dispute), etc. Negotiations can lead to an out-of-court settlement, a partial settlement or no settlement. The case is referred to the Land Claims Court in the case of the latter.
6. Implementation: In this phase, consultants are hired, a business plan is developed and approvals for the land settlement and land uses are obtained. Transfer of the land together with required deeds and subsequent registration occurs in this phase. The RLCC is however not responsible for implementing the settlement agreement. Following this, the business plan is implemented. DLA's Monitoring & Evaluation directorate takes the responsibility of monitoring the implementation of the business plan.

Given the existing restitution procedures, six key issues need to be further discussed. These are:

- What constitutes an informed choice and "options";
- The late stage at which land use plans and business plans are developed;
- Commitment to setting in place mechanisms for the development of land use plans and business plans;
- The lack of involvement in some cases or the lack of commitment of relevant stake holders (especially other departments and local government);
- The issue of "feasibility" in Restitution projects where restoration is the preferred option; and
- The policy shift in DLA concerning "maximising development potential" for restitution projects.

The informed choice and considerations of options appear to be narrowly related to information from archive files, deeds and claimant testimony which guides the type of settlement "options" i.e. whether restoration or alternative land or monetary compensation should be pursued. It is an exercise that involves only the claimants, the Commission and DLA Restitution staff. The options considered at this stage in no way relate to land use or livelihood options since no information about the natural resource base has been considered. Should the claimants insist upon restoration as their option, they are doing so from an *uninformed* position since they have no idea of what livelihood options or services are possible on the land they want restored. A land claim that does not involve conservation land is often not subject to an assessment/evaluation that looks at environmental sustainability or natural resource issues during project planning and development.

A preliminary natural resource base assessment should be undertaken to enable informed choices by claimants. Only once a settlement is reached, does a development plan get produced, and then only if deemed necessary. This is far too late in the process since it is only here, almost

at the end of the process where natural resource base limitations or opportunities and limited or potential livelihood opportunities will be discovered. There should be commitment to address the issue of producing development plans and feasibility assessments (or similar inputs) at an early stage of investigation and negotiation, in order to ensure that these could be raised in frameworks for settlement to the Minister.

Regarding the involvement of other stakeholders and government departments, no advice or guidance is actively sought from outside to facilitate the "options" process. Other departments, like the Provincial departments of Housing, Agriculture, Environmental Affairs and Tourism and Water Affairs and Forestry, as well as Local Authorities, could potentially add value to the restitution process if they were brought on board much earlier on in the process (prior to negotiations). This would allow a more comprehensive 'informed' choice to be made. DLA and the Commission alone do not have the expertise to advise on options which consider livelihood opportunities and a safe living environment for the claimants. Their involvement earlier on would also encourage more support during implementation since current levels of buy-in for restitution projects are low since they have been isolated or alienated from a exclusively DLA-Commission process. This jeopardises the future support for claimants post-transfer of the land.

It has been mentioned that one of the reasons for the relative success of Makuleke and St Lucia restitution claims was because the claims were on conservation land and this necessitated the involvement of the conservation authorities. Conservation authorities in turn spent a large amount of time with claimants raising awareness on the relevant issues and were extensively involved in drafting of the business plans.

The Restitution Act sets out factors that the Land Claims Court may take into consideration when making an award in restitution ([section 33](#) of the Act). One of these factors is *feasibility* in claims where *restoration* is the preferred option. This concept can cover the suitability of the land for agricultural purposes or the availability of sufficient water or development possibilities. Feasibility does not influence the validity of the claim but the outcome. Feasibility cannot deny a claimant's right to restitution if the claim meets the acceptance criteria laid down on the Restitution Act. Feasibility goes to the resolution of the claim and to the process to be followed in cases where restoration is the outcome.

The Kranspoort case LCC26/98 gives clear guidelines as to how these issues are to be dealt with. In this case, the Land Claims Court granted restoration subject to the claimants drawing up a business plan which reflected the conservation status of the land. The case clearly indicated that restoration of land must take place within the development framework set by Local and Provincial government. All these issues pertain to feasibility of restoration.

It was stated that it is the Commission's responsibility to raise issues around feasibility, and that in some cases the relevant commissioner did this. Other parties can and should raise issues of feasibility, especially other government institutions that must assist in post settlement development. Matters such as the delivery of bulk services are important for sustainability of the project if restoration occurs.

Restitution Policy (RP) Directorate is currently busy drafting a document that will define the 'feasibility' section of the Restitution Act. Central to this document will be the establishment of 'factors' that should be taken into account during the assessment of a restitution project where restoration is the preferred option.

There is a shift in policy in DLA with respect to restitution projects in that one of the aims will be to 'maximise the development potential'. All types of land reform must be supportive of development in terms of land development objectives set at local government level. Other government departments should become involved to provide assistance and information as regards schemes aimed at development. In this way, claimants will make informed choices regarding possible opportunities (and constraints) related to the resolution of land claims. With maximising development opportunities, restoration of land needs to be seen not as an end in itself but a means to an end. *Restoration of land or access to land rights should never be an end in itself unfortunately a lot of Land Reform has resulted in this. Land needs to serve as the basis for development and the process should not stop with handing over of the land.*

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Restitution deals with land rights where people were illegally and/or forcibly removed during the apartheid era. People often choose to return to their original land. Restitution can be in the form of returned land, compensation, alternate land or combination of the

various options. Feasibility studies are performed where land is returned.

2.3 Plans and Programmes to ensure Environmental Integration and Sustainability

2.3.1 The DLA-DANCED Project

From the above account of Tenure, Redistribution and Restitution policies and procedures, it is clear that DLA has much to attend to regarding the "environment and land reform". For this reason DLA has invested R1.5 million in the implementation of a project entitled: *The Integration of Environmental Planning into the Land Reform Process*. The project is largely supported by a Danish donor agency, the Danish Corporation for Environment and Development (DANCED). DANCED is contributing approximately R11 million towards the project over a two and a half year period. The project commenced in September 1998 and will continue until March 2001.

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Project Objectives

The primary objectives of this project are to develop appropriate procedures, guidelines and policies for the incorporation of environmental planning into Land Reform. Content for procedures, guidelines and policies will be derived from "on the ground experience" from existing land reform projects in two demonstration areas (in the North Eastern Free State and Nelspruit area of Mpumalanga).

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Guidelines and Procedures

Guidelines Approach: Simple and practical, participatory land use planning approach has been followed in developing the guidelines. The guidelines focus on environmental planning and not environmental management due to DLA's role and mandate in *land reform planning* prior to land transfer. The guidelines do not duplicate existing procedures developed by other departments but have been developed to fit within the land reform context specifically.

Guidelines Content: The General Guiding Principles contain the overarching approach and procedures to be followed. Three specific sets of guidelines catering for specific land reform products or types have also been drafted. The first draft guidelines have been developed for certain Redistribution projects (including Commonage, Individual, Family and Group farming as well as Settlement projects) and Restitution. The specific guideline procedures fit within the procedures designed for the implementation of specific land reform projects. The guidelines are being tested and implemented on the ground in existing land reform projects in Free State and Mpumalanga for the next 6 months. They will be modified based on what is experienced in the field. The guidelines have to follow the generic Project Cycle (described earlier).

Procedures and guidelines are being developed in this project to incorporate environmental assessments in the project procedures prior to securing tenure rights. The General Guidelines and the Settlement Guidelines are relevant in the tenure context. The guidelines also address sustainability issues in relation to the broader planning and land development context, especially at the local level.

The project has also developed guidelines on the establishment of common property resource management regimes, which can be applied to CPA constitutions as well as communal areas in the former homelands.

The environmental economics component of the guidelines includes a strong motivational message to be used as a communication strategy within DLA regarding the natural environment and promoting rural livelihoods in Land Reform. Not only is it necessary to develop appropriate guidelines and procedures, it is even more crucial that perspectives of the role and value of the natural environment in the livelihoods of land reform beneficiaries are changed within DLA. It is pointless to keep developing and introducing new policies and procedures unless there is willingness and understanding and supportive institutional environment to implement the policies and procedures.

In addition, a simple decision-support tool that assesses the demand and supply of ecosystem services provided by the natural resources on a particular piece of land has been developed. This tool caters for examining existing land use and possible land use changes based on beneficiary needs or desires (once the land is transferred) and is designed to assess the impacts on the natural environment. There is provision for mitigation in the tool especially for identified negative impacts. In these instances better methods or even other land use options are sought to minimise or eliminate the identified negative impacts in order to enhance project benefits.

In summary, this is a participatory decision-support tool that assesses:

- the current state of the natural environment in terms of what natural services can support the beneficiaries;
- it examines the possible impacts on these natural services should the land use change; and
- it allows the assessors to consider both the *intended results* (i.e. the aims of the project to improve the quality of life of beneficiaries through land use opportunities) AND the *unintended results* (such as the environmental costs) associated with a land use change or intensity change. Information on whether benefits out-weigh costs or *vice versa* is therefore available to inform decision-makers prior to land transfer about the likelihood of success of a particular land reform project.

The tool will be tested in the field in the next 6 months and then accordingly modified. DLA officials and other service providers will be trained in the methodology developed. This tool needs to be aligned with project cycle and therefore the other guidelines developed through the DLA-DANCED project.

The outputs of the above-mentioned project are discussed again briefly in [Chapter 5: Proposals / Recommendations for IEM](#).

- *Institutional Arrangements*

The project also needs to address the strengthening of institutional arrangements towards sustainable land reform. Guidelines are given on how to create successful partnerships at the project level. Institutional arrangements are discussed further in [Chapter 4](#).

- *Capacity and Training*

Another objective is to build capacity and skills in environmental planning for various target groups which include land beneficiaries, service providers (other government departments mainly) and local authorities. The training budget for this project over 2.5 years is about R4.4 million to forge collaboration with other departments and local government through joint training exercises. To date the courses developed by the external training consultants are Foundation Courses in:

- Environmental Issues in Land Reform;
- Sustainable Use of Natural Resources; and
- The Environmental Dimensions of LDOs/IDPs.

Project-based training: Implemented for project teams consisting of DLA staff, other service providers and beneficiaries and are trained specifically on technical project related issues as well as facilitating project processes and problem solving.

Guidelines in Action training: Conducted for predominantly DLA officials to form the direct link between the outputs of the research component of the project and the training component.

In addition, to date approximately 70 provincial government officials from various line departments have participated in the training courses. Participants include officials from provincial departments of Agriculture (40), Local Government and Housing (10), Environmental Affairs (10), other departments (5) and regional representatives from the Department of Water Affairs and Forestry (5).

Approximately 30 local government representatives have undertaken some of the courses (from TLC's in Harrismith, Clarens and Nelspruit and certain District Councils in the project areas). A further 60 local government officials will be trained in "The Environmental Dimensions of LDOs and IDPs" over the period March – May 2000. By the end of the DLA-DANCED project, a total of 500 people will be trained of which 200 are DLA officials, 100 are provincial government officials, 100 are local government officials and 100 are land beneficiaries.

The aim is to integrate this DLA-DANCED project into other departmental initiatives, so as to avoid duplication as well as foster relations towards both the incorporation of Land Reform into local planning and for Land Reform support post-transfer. Key partners in the project are those departments that have responsibilities in environmental and/or planning fields. The programme post-March 2001 will predominantly consist of the incorporation of the various training modules into in-house DLA training modules. This will also be made available to other departments should they be interested.

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The DLA-DANCED project's primary objective is to develop appropriate procedures, guidelines and policies for the incorporation of environmental planning into Land Reform. The project is due for completion in March 2001. The project will address sustainability issues ranging from broad planning and development to local implementation.

2.3.2 Monitoring the Environmental Impact of Land Reform

DLA is responsible for transferring land. The responsibility for planning and implementing the development, as well as post transfer support, rests with Provincial and Local government. DLA does however, perform a monitoring and evaluation (M&E) function regarding the socio-economic and environmental aspects of land transfers. Currently, the M&E reporting mechanism and document titled, the Quality of Life Report, is not integrated with the environmental assessments, which are separately reported on. A system to integrate the two is in the process of being developed for future reporting. The DEA&T will be invited to provide inputs and comments on the integrated system.

Monitoring of environmental impacts is focused on post transfer of land. DLA's M&E Directorate commissioned the University of Durban-Westville to develop a practical and simple methodology which would enable DLA M&E officials to monitor the environmental impacts of Land Reform. Although the developed methodology is called an Environmental Impact Assessment, the methodology is not inclusive of all the requirements that make up an EIA and is instead a monitoring tool. Consequently, the name will be changed to "Environmental Sustainability Assessments" to avoid confusion with formal EIA's. The methodology includes an assessment of the following:

- Soil erodibility status;
- Soil resources – in relation to current land use practices;
- Water resources – quantity and quality;
- Waste management practices;
- Veld condition and management practices;
- Natural resource utilisation practices (such as woodlands for firewood);

- Livestock condition and management practices;
- Field observations; and
- Social parameters of resource use.

This system should not only be used as an in-house monitoring tool to feedback into refining land reform policies and implementation procedures. It needs to cater for follow up and referral of identified environmental problems detected in Land Reform projects, with the relevant Provincial department. This could be Department of Water Affairs and Forestry, Provincial Agriculture, Provincial Environmental Affairs or the Local Authorities. This is discussed again briefly in [Chapter 4](#) of this report.

The DLA has benefited from the above exercise from both a capacity building and training point of view and raising of environmental awareness in Land Reform through this process. Approximately 20 DLA officials were trained in this methodology and therefore have a deeper understanding of how the environment affects people's quality of lives.

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This report focuses on *Land Reform* as the priority function that DLA exercises which may affect the environment and *Spatial Planning* and *State Land Management* as the priority functions that DLA exercises involving management of the environment. The DLA is responsible for policies and programmes relating to **access** to land.

2.4 Evaluation in Terms of NEMA Principles

The following NEMA principles will be addressed by the DLA-DANCED project and have been evaluated according to the Land Reform principles of the White Paper on South African Land Policy 1997 (page 12).

- **Principle 2(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. Since beneficiaries and land rights are central to land reform the DLA-DANCED project adds the environmental management component to an already strongly people orientated programme. Land Reform principle of social justice seeks to redress unacceptable inequalities of the past in the distribution of land.
- **Principle 3:** Development must be socially, environmentally and economically sustainable and these are land reform principles. In addition participatory land use planning approach coupled with business planning and enforcing environmental considerations in the DLA-DANCED project procedures.
- **Principle 4 (a):** Sustainable development requires the consideration of all relevant factors including subsection (ii) referring to pollution and degradation of the environment is stated in Land Policy White Paper, and subsection (viii) referring to negative impacts where people and the environment is addressed in the DLA-DANCED guidelines. The DLA Monitoring and Evaluation programme of "Quality of Life reporting" will in future be aligned to environmental sustainability criteria.
- **Principle 4(b):** Environmental Management must be integrated and refers to best practicable environmental options, which is incorporated in the DLA's policies and focus for implementation.
- **Principle 4 (1):** There must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the environment. The DLA's firm

commitment to cooperative governance and compilation of the Consolidated EI&MP is a demonstration of the application of this principle.

These principles are addressed in DLA policies however implementation of the principles is limited due to lack of strategy and programme development of the principles. It is expected that this will be addressed by the DLA-DANCED project and be formally adopted into the Policies of the Department.

Summary Table of Land Reform Policies, Plans and Programmes

Land reform function	Relevant policies and Legislation	Plans and programmes (activities)	Partners
Restitution	Restitution of Land Rights Act 22 of 1994	6 Phased approached on page 33 DLA-DANCED project environmental interventions	All relevant Departments and Organs of state
Redistribution	Provision of Land and Assistance Act 126 of 1993	Commonages Farmer equity schemes Group Products Individual/family farms Settlement DLA-DANCED project environmental interventions	All relevant Departments and Organs of state
Tenure	Extension of Security of Tenure Act of 1998	Tenure Security	National, Provincial and Local Authorities
	Interim Protection of Informal Rights Act 31 of 1996	Tenure Security	National, Provincial and Local Authorities
	Upgrading of Land Tenure Rights Act of 1991	Tenure Security	National, Provincial and Local Authorities
	Land Reform Labour Tenants Act of 1996	Tenure Security	National, Provincial and Local Authorities

The following [table](#) summarises DLA functions and activities and information, which address the NEMA Principles.

Summary Table of Compliance with NEMA Principles

NEMA Principles	DLA Functions		
	Restitution	Redistribution	Tenure
Sustainable development	Feasibility studies Linkages to LDO Design of Development Plans	Feasibility studies Linkages to LDO Design of Development Plans	Tenure integral to sustainable development Design of Development Plans
Integration into decision making	Design of Development Plans Linkages to LDO	Design of Development Plans Linkages to LDO	Land ownership and title deeds are key to decision making
Participation	Participation is integral to all of DLA functions DLA-DANCED project conducts capacity building	Participation is integral to all of DLA functions DLA-DANCED project conducts capacity building	Participation is integral to all of DLA functions DLA-DANCED project conducts capacity building
Environ. Justice and equity	Land Reform policy is key to equity and justice issues	Land Reform policy is key to equity and justice issues DLA Food Safety net programme	Land Reform policy is key to equity and justice issues
Ecological integrity	Conduct Natural Resource Base Assessment studies	Conduct Natural Resource Base Assessment studies	
International	Partner to internal	Partner to internal	Partner to internal

	convention programmes Inter-governmental coordination and cooperation is key to DLA	convention programmes Inter-governmental coordination and cooperation is key to DLA	convention programmes Inter-governmental coordination and cooperation is key to DLA
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CHAPTER THREE:
SPATIAL PLANNING POLICIES, PLANS AND PROGRAMMES

3.1 The DFA and Spatial Planning

In addressing spatial planning and proposing a proactive and integrated planning system for South Africa, the *Green Paper on Development and Planning* defines spatial planning as:

"a public sector activity which creates a public investment and regulatory framework within which private-sector decision making and investment occurs. The public sector activity of spatial planning has two broad dimensions: pro-active planning which defines desirable directions, actions and outcomes; and land development management, which is concerned essentially with regulating land use change . . . "

The Development Facilitation Act (Act [67 of 1995](#)) prescribes the current requirements for spatial planning, which can be separated into land development objectives (i.e. proactive spatial planning) and land development management. It is important to note that the Development Facilitation Act (DFA) defines land development as *"any procedure aimed at changing the use of land for purpose of using the land mainly for residential, industrial, business, small-scale farming, community or similar purposes"*. However, the DFA does not incorporate the term spatial planning.

For the purposes of DLA's Consolidated EI&MP, Spatial Planning, Land Development and State Land Management relates to the EMP component (or *"functions involving the management of the environment"*), because procedures for land use planning and management provide a means of ensuring a sustainable environment. This Chapter therefore describes the policies, plans and programmes for Spatial Planning, Land Development and State Land Management, distinguishing between planning and management, and evaluates them in terms of their role in environmental management.

DLA is only responsible for formulating national policy and legislation for land development, while Provincial government and Local Authorities are primarily responsible for implementation of proactive spatial planning and land development management. The DFA introduced an interim planning system for South Africa, which is policy led and normative in nature. This system forms the basis on which Provinces can develop their own planning laws. The DFA and the Green Paper currently provides the legislative framework and norms and standards for spatial planning, which provincial government may use to develop land development legislation and regulations. The following discussion therefore focuses on the DFA, taking account of the recommendations of the recent *Green Paper on Development and Planning*. It should be noted that the White Paper stemming from the Green Paper will create a new planning system for South Africa and will result in the necessary legislative reform.

Planning and management of land development in South Africa must be in accordance with the *principles for land development* set out in Chapter I of the DFA (please see [Annexure B](#)). In terms of DLA's Consolidated EI&MP, these principles fundamentally address the requirements for a sustainable environment, and are consistent with the NEMA [Section 2 environmental management principles](#). In particular:

- **Section 3(1)c** requires the promotion of efficient and integrated land development, which encourages environmentally sustainable land development practices.
- **Section 3(1)h** requires the promotion of sustainable land development, in terms promoting fiscal, institutional and administrative feasibility, promoting viable

communities, promoting sustained protection of the environment, meeting basic needs, and ensuring safe utilisation of land.

The land development principles are the principal “norm and standard” used for land development management and spatial planning. They provide a set of interrelated intentions (desirable directions) to guide land development planning and management in South Africa. The principles apply to all forms of planning which affect land development including:

- spatial planning and policy formulation;
- the planning of whole settlements as well as parts or elements thereof;
- decisions of all public authorities affecting land development under any law, including those of traditional leaders; and
- all legislation, including all land use control systems and instruments affecting the development of land.

The principles are also binding on all future actions of legislatures at national, provincial and local government levels. This means that all laws, regulations and by-laws which are passed or changed must conform to and be consistent with the principles.

The land development principles are normative, rather than prescriptive, and are underpinned by two sets of values. Firstly, *being people-centered* to foster positive human development and to improve the quality of life of all people, with particular attention on achieving social justice. Secondly, *the concern with environmental resources*, which provide the basis for human life.

Although DLA (through the National Development and Planning Commission) has produced guidelines for interpreting the land development principles, as with the NEMA environmental management principles, the normative nature of these principles results in problems with interpretation and application, especially with regard to environmental sustainability. The *White Paper* (currently being drafted from the *Green Paper on Development and Planning*) should consider providing greater clarity on environmental sustainability in the land development and management context. The DLA (through the Development and Planning Commission) has developed [Chapter 1](#) Principles Guidelines (a Resource Document and a Manual) in order to make them more specific and enforceable. This is being even further developed and re-worked.

The DFA does incorporate environmental management requirements, which are specified in regulations. In terms of regulation 19,3(e) of the DFA Regulations (gazetted on the 7 January 2000) requires environmental sustainability considerations to be taken into account in deciding on the award of a land availability agreement. Regulation 31 of the DFA Regulations requires environmental evaluations to be performed and provides detailed requirements on the content, extent and aspects of the environment potentially affected by the development (regulation 31(6)(a-n)). It is important to note that Regulation 31(1) requires that environmental evaluations be prepared in accordance with the EIA guidelines or other requirements which may be issued by DEA&T for time to time. The DLA has, in consultation with DEA&T attempted to bring the new Regulations in line with the ECA Regulations. This is a clear incorporation of IEM in land development applications in terms of the DFA. The DLA shall monitor and enforce the use of DFA [Chapter 1](#) principles and its regulations and would require the support of DEA&T. Bilateral discussions between DLA and DEA&T should be a priority.

3.2 DLA’s Spatial Planning Policies

3.2.1 Spatial Planning

The DFA addresses land development planning at a local authority level, by requiring the compilation of Land Development Objectives (LDOs) by Local Authorities. The subject matter of LDOs is specified in Chapter IV of the DFA, although Provincial MECs may formulate additional requirements in terms of Provincial LDO regulations.

LDOs set out the qualitative and quantitative objectives of the relevant authority in terms of the access to and standard of services for land development, the growth and form of the area and

associated development strategies. LDOs are concerned with promoting equity, promoting efficiency, protecting the public good, ensuring the good use of scarce resources and protecting the environment, which are all consistent with the NEMA environmental management principles. In particular, objectives relating to “the sustained utilisation of the environment” and “the optimum utilisation of natural resources” should be developed.

Integrated Development Plans, similar to LDOs but more focused on administration and finance, are required to be drafted by local authorities in terms of the Local Government Transitional Act. The Green Paper on Development and Planning proposes a single, integrated planning process for Local Authorities, inclusive of the IDPs and LDOs, which will satisfy the requirements of all the different laws which need to be taken into account. This would in essence allow for an integrated plan which not only fulfills the requirements of the IDPs and LDOs but also Local Authority/municipal planning such as water, transport and environment. It is important to note that LDOs are a local application of the [Chapter 1](#) principles and once approved by the MEC are binding on all land development decisions.

The Minister of Land Affairs inherited the administration of planning laws for example the Physical Planning Act etc and hence has the national spatial planning function. This function however needs to be strengthened. Provincial Planning is an exclusive legislative competence of the Provinces and the DLA consequently only plays a supporting and advisory role to the Provinces. This has contributed to uncoordinated and inconsistent approach to spatial planning. The Green Paper addresses this and proposes that the DLA is best equipped to take on the challenge of spatial planning due to the inherent and current responsibilities as the lead/coordinating agent for spatial planning. The White Paper will consequently, clearly define the role of DLA as the lead agent in National government with regards to spatial planning. The Green Paper makes a strong argument for the term “spatial planning” referring to the spatial considerations and is proactive in nature.

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Spatial Planning Policies are housed within the DFA, which are underpinned by the Chapter Principles. These principles provide a set of interrelated intentions to guide land development planning and management. They are binding on all present and future actions of all legislation at National, Provincial and Local governments.

3.2.2 Land Development Management

Land Development Management involves the more reactive element to planning. Land development management has the following two commonly agreed upon goals, which are achieved through the determination, allocation and restriction of rights to use and develop land:

- Effective protection of both the natural environment and public from negative impacts of land development and land use changes; and
- Providing a reliable degree of certainty to developers regarding the use of land.

Noting that land development refers to approvals for change in land use for settlements and business (including small-scale farming), land development management may be separated into the following categories:

- The management of the development of vacant or open land (agriculture or pristine land); and
- The management of ongoing changes to existing land use.

This distinction is particularly important in terms of the spheres of government and departments that need to be involved in the decision about land development (see [Chapter 4](#)). For example, nature conservation bodies have a particular interest in changes from undeveloped (pristine or fallow) land, while agricultural departments have a particular interest in changes from agricultural land. Local Authorities and development oriented Provincial government departments tend to have an interest in the second category, developed land use changes.

Currently, the legislative environment that governs the processes of land development is extremely complex. Typically, the former white urban areas are managed by means of town

planning or zoning schemes based on the provincial town planning ordinances. In contrast, proclamations like for example R188 of 1969 and R293 of 1962 still form the legal basis for the regulation of land use and ownership in the former homeland areas. This situation is further complicated by the existence of laws at a national level, such as the Less Formal Township Establishment Act, Removal of Restrictions Act and the Physical Planning Acts of 1967 and 1991, that also impact on land development management.

The DFA introduced a system in which land use management could be considered in the context of the [Chapter 1](#) principles, local plans (LDOs) and the decision making body created by the DFA, namely the Development Tribunal. The Development Tribunal has extraordinary power including the powers to suspend the application of some laws in land development areas.

It is stated in the Green paper that there is a tendency in South Africa for sectoral issues to be considered in isolation, which resulted in most national government departments prescribing policies that impact on spatial planning. These include the Environmental Conservation Act (ECA) that *inter alia* gives the Minister of Environmental Affairs and Tourism the power to establish procedures for land development applicants to obtain environmental permissions to undertake certain land uses or to change the use of land. Regulations promulgated in terms of the ECA, listed uses for which environmental permissions are required as well as the process to obtain such permissions.

The Development Tribunal provided for by the DFA, incorporates environmental criteria through requiring that environmental sustainability be addressed with all tribunal applications and can require the applicant to perform detailed Environmental Impact Assessments and evaluations as well as impose conditions on the applicant relating to environment and environmental evaluations. In many cases, this had led to the requirement for an EIA process to be performed for proposed projects. On the other hand however, the Development Tribunals do have the powers to suspend the requirement for EIA's.

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The legislative environment governing the processes of land development is extremely complex. The DFA introduced a system based on the [Chapter 1](#) Principles to resolve some of the issues and allowed for the creation of autonomous provincial Development Tribunals. However land development is still largely being processed through old legislation which was not repealed by the DFA. In addition not all Provinces implement the DFA, however in these cases they do adhere to the [Chapter 1](#) Principles.

3.3 Plans and Programmes for Implementing Land Development

3.3.1 Implementation of Land Development Management

The DFA land development principles acknowledge that environmental considerations are very important and furthermore emphasise the importance of environmental sustainability. The Green Paper is adamant that the Principles should be central to the entire planning system in South Africa. It should inform the pro-active integrated development plans that are drawn up and should form the primary criteria against which applications for land use changes can be assessed.

It is, however, acknowledged within the Green Paper that the land development principles to date have had a disappointing impact on planning. A lack of knowledge and difficulties with interpretation, are cited as possible contributing factors. The DFA furthermore does not currently provide for a interventionist role, nor a mechanism for DLA (as the national department responsible for its administration), to enforce or encourage compliance with these principles by other national departments, provincial and local government. In order to address these problems with the implementation of the land development principles, the following recommendations were made in the Green Paper:

- The existing principles should be reordered and reworded;
- The Minister of Land Affairs as well as the Premiers should be encouraged to make use of power they have in terms of the DFA to add to and elaborate on the existing principles to maximise their impact;
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Principles specifically dealing with land use management should be added, addressing issues like for example how land use management in an area must be made compatible with spatial dimensions of the IDPs;

- DLA should conduct a two yearly national audit taking the form of a sample of different spheres of government involving a review of plans and decisions taken to monitor their compliance with the land development principles;
- Development and Appeal Tribunals should be required to provide short summaries of the reasons for their decisions on a case-by-case basis – with specific reference to the way in which the DFA [Chapter 1](#) Principles have informed the outcomes. These should then routinely be forwarded to the unit within DLA responsible for monitoring compliance. This unit will be responsible for compiling a progress report that together with the national audit results should be submitted to the Minister of Land Affairs every two years.
- The South African Council for Town and Regional Planners (SACTRP) should be statutorily required to report to the Minister of Land Affairs on progress made with the implementation of the land development principles. This would serve to monitor the professions that are statutorily responsible, and would actively assist in making the land development principles central to the national planning system.
- The Department of Provincial and Local Government should be requested to include the monitoring of the land development principles as part of its broader function of monitoring local authorities. It is proposed that officials from that department report to the national monitoring unit within DLA on a two-yearly basis.

The Directorate Land Development Facilitation does not have adequate capacity to fulfil the roles and functions described above should it be tasked to do so. Both the political and senior management of DLA have however acknowledged that the spatial planning role of the department has been neglected, but that it has now been identified by the Minister as one of the priority functions of DLA. Departmental capacity will need to be increased to do this role justice.

The Green Paper also proposes that different sectoral procedural requirements be aligned or streamlined so as to facilitate the co-ordination and integration of the various approvals needed to undertake land development. The current situation of dual planning and environmental applications leads to legal uncertainty regarding the granting of land use rights, as different authorities may reach conflicting decisions regarding applications. The alignment of planning approvals and environmental approval in terms of the ECA is being considered in the White Paper drafting process currently being undertaken by DLA and it would thus be premature to speculate on the precise strategies that will be employed. DLA is, however, committed to encouraging the implementation of environmentally sustainable development and will seek to promote this approach in the White Paper.

Capacity building for Tribunal members in terms of environmental issues has been incorporated within the broader DFA training but not specific to it. Capacity building and formal training on DFA procedures and processes is provided by the DLA and takes place on a regular basis for Development Tribunal Registrars and Designated Officers and Provincial Tribunal members in the Provinces.

The effectiveness of Development Tribunals in implementing environmental management and sustainability principles depends upon two issues. Firstly, the Tribunals are largely dependant on the inputs, expertise and support of the Provincial Departments of Environment who are required by the DFA to submit comments on the applications. Secondly, within the composition of the Tribunal members, there should be environmental expertise to evaluate and assess the environmental information submitted as part of the application and to deliberate and make a decision at the Hearing. Capacity within the Tribunals in terms of environmental expertise is however often thus a concern and varies between Provinces.

3.3.2 Implementation of Spatial Planning and development planning

Local authorities, in accordance with procedures determined by the responsible Provincial MEC compile Land Development Objectives (LDOs). The Local Authority submits draft LDOs to the MEC for approval before implementation. The MEC has to ensure that the subject matter of the DFA has been adequately addressed and that the procedures to draft LDOs as identified in the Provincial regulations, have been followed before approval of LDOs. The DLA has no direct responsibility for the drafting or approval of the LDOs. However, the DLA provides guidance to Provincial governments and municipalities on the interpretation of the subject matter of LDOs. In addition, assistance is provided to Provincial governments to draft suitable procedures for setting LDO regulations.

In an effort to support the drafting of LDOs, DLA made a Grant available to poor and under resourced Local Authorities to partly fund the drafting process. The conditions attached to the Grant provided an opportunity for DLA to promote the integration of Land Reform issues within the LDOs. The business plans of qualifying Local Authorities were assessed by the national and relevant regional offices of DLA to ensure compliance with the conditions of the Grant. Qualifying Local Authorities have to:

- indicate the manner in which land reform will be integrated into the planning process;
- indicate the extent of relative poverty of the area;
- provide information about the degree to which the Local Authority is under resourced;
- provide information about the nature and extent of planning need;
- indicate its technical competence and capacity for sound financial management; and
- provide a cost estimate of the process.

An investigation commissioned by DLA, into the LDO endeavour in the provinces of Gauteng and the North-West, indicated that land reform issues were not sufficiently addressed in the LDO documents. Local Authorities did not seize the opportunity to draft a strategic vision to address land reform issues. In most instances, basic information on the extent of landlessness in their areas of jurisdiction was absent. Local Authorities were constantly monitored to produce LDOs but once these documents were submitted for approval not much legal pressure was placed on Provincial government to finalise the approval process. Other Provincial government departments did not contribute sufficiently to the process to allow for the integration of their development objectives in the LDO drafting process. DLA's lack of participation was evident as the process failed to link LDOs with DLA's land reform programme. Effective measures to promote co-ordination will have to be put in place.

Proposals to promote integration and co-operative governance are currently the focus of debate in drafting the White Paper on Development and Planning. The Green Paper proposes the identification of a political home for co-ordination at a national level that should be followed by a clarification of the roles and relationships that the different spheres of government should play. In this regard it is proposed that DLA revise the relevant sections of the DFA to clarify the requirements of LDOs and the spatial elements of integrated development plans drafted by Local Authorities.

Although the DFA requires environmental components and considerations for LDOs, the compliance by local authorities throughout South Africa has been highly varied. Unfortunately, DLA does not currently have a mandate to monitor and ensure compliance, although this issue will be addressed in the White Paper process.

DLA has not yet provided focused capacity building to provincial government and local authorities in terms of incorporating environmental considerations into the LDO process. However, the DLA-DANCED project will be providing capacity building on this issue over the next year. A

specific training course entitled "*The Environmental Dimensions of LDOs/IDPs*" has been developed by the project and designed to cater for local government decision-makers. DLA officials will be trained with local government officials so as to encourage greater understanding and appreciation for the incorporation of environmental issues into LDO process.

In summary the following should occur:

- Environmental planning should be addressed in the Land Reform process;
- Land Reform should be integrated into local planning (LDOs); and
- Environmental issues should be integrated into local planning (LDOs).

3.4 State Land Management (SLM)

In South Africa the State is the biggest landowner in the country. It is estimated that in total the state owns approximately 24.3 million hectares of land (approximately 20% of the land surface, excluding land held in trust please refer to [Annexure C](#)). State land referred to in this report concerns State Land registered in the name of the Minister of Land Affairs as well as land held in trust by the Minister (nominally owned state land). However, nominally owned state land is strictly speaking not regarded as state land, and the state can not dispose thereof, without the consent of the community or individual. This land is mainly situated in the former TBVC-states and Self-governing Territories and the former Coloured Rural Areas. This land comprises land that is settled and beneficially occupied by tribal groupings and communities (approximately 11.8 million hectares); and about 1 million hectares of state-owned agricultural land that is managed under various lease agreements and which is available for redistribution. The departments of Public Works, the South African National Defence Force (SANDF), National Parks, Provincial governments and Local Authorities also have jurisdiction over other state land but this is not discussed in this report.

3.4.1 Policy Issues

Policy issues on state and public land indicate the following. Firstly, that assets should be effectively managed in the public's best interest; secondly, that tenure rights of those who beneficially occupy public land should be secure and registered; and thirdly that available public land should be properly allocated for Land Reform and development.

One of government's key responsibilities pertinent to this report is to ensure the release of state land as a resource for sustainable development. Recently in DLA, much emphasis has been placed on policy, procedures and institutional arrangements for the efficient disposal of state land to address sustainable development in the Land Reform context.

Key functions of DLA in relation to state land:

The following are key functions of DLA relevant to state land namely:

- Disposing of state land under the Minister of Land Affairs;
- Awarding and managing leases of state land;
- Maintenance of state land;
- Eviction of unlawful occupiers;
- Provision of advice for prospecting and mining leases;
- Processing and providing advice on applications for servitudes;

- Issuing item 28(1) certificates as per the Constitution: this provides for the vesting of State land in either national government or a provincial government;
- Dealing with land development applications on state land;
- Provision of information;
- Identification and delivery of saleable property for Land Reform purposes (compilation and maintenance of asset registers and Public Land Inventory Geographical Information System);
- Powers of Attorney for land administrations to Provincial governments; and
- The establishment of inter-departmental State Land Disposal committees in all provinces.

3.4.2 *Implementation of state land management functions*

State land management is an “environmental management” function. However there has been very little emphasis on environmental management *per se* within the DLA in implementing these functions. Consequently, there is limited information for reporting purposes. This is explained below.

- *Disposing of state land under the Minister of Land Affairs*

The purpose of state land disposal is to make land available for Land Reform, where beneficiaries should be the previously disadvantaged people, groups, communities or tribes.

Based on applications received for state land disposal, the Provincial State Land Disposal Committees (PSLDCs) make recommendations on the appropriateness and feasibility of the proposal. Whether “optimal use of the land” has been addressed is a key consideration in the recommendation outcome. Provincial and the National State Land Committee advise the Minister on the disposal of the land. Departments represented on the PSLDCs include DLA, Public Works, Provincial Department of Agriculture and Local government. Recent policy proposals indicate that in the future this group may be extended to include the Department of Water Affairs and Forestry, the Land Bank and traditional leaders.

DLA undertakes a preliminary scan of the land in question. This involves identifying current and potential land use activities based on a landscape assessment of the environmental and infrastructural resources. The Department of Agriculture undertakes a more detailed assessment at a later stage, if necessary. For unencumbered agricultural state land, the MEC for Agriculture has full responsibility to make a decision on the disposal. Suitable emerging black farmers will be given preference.

- *Awarding and managing leases of state land*

DLA does not consider environmental issues in the awarding of leases. DLA only investigates tenure issues prior to providing *pro forma* lease agreements. DLA does not actively monitor or manage the state land once it is leased out. However, the lessee would be responsible for obtaining authorisation for any regulated activity from the relevant environmental management authority (DMEA and Provincial DEA&T).

- *Provision of advice for prospecting and mining leases*

In providing advice for prospecting and mining leases, DLA works closely with the Department of Minerals and Energy (DMEA). Local authorities, Provincial government and DMEA are all required to give consent to the application prior to DLA making a recommendation to the Minister for approval or not. There are no environmental assessment requirements or conditions issued by DLA. DLA depends on DMEA for this sort of support. DLA only investigates tenure issues on the land being investigated. In the event of the mining lease being approved, the prospector / developer is responsible for undertaking an Environmental Management Programme Report (EMPR, in terms of the Minerals Act). Should mining activities go ahead, the land is still the responsibility of DLA but there is no monitoring of the activities, or implementation of any requirements by the department.

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Processing and providing advice on applications for servitudes

With regard to servitude applications by potential developers DLA will only investigate tenure related issues that may be relevant on that land. DLA processes the application and submits it to the Minister for approval. Again, it is the responsibility of the developer to have an EIA undertaken. Monitoring and managing the land thereafter is not actively undertaken by DLA.

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Dealing with land development applications

The DLA facilitates negotiations between tribal authorities and potential developers. This does not involve any environmental assessments but DLA will not approve the land development unless the development is in line with the Land Development Objectives (LDOs) set in that area (where they exist). Environmental considerations are included from a local planning perspective as well as the impacts of the development since the developer is responsible for EIAs. An issue of concern that has been raised is that tribal land made available for development purposes means that communal land such as grazing land is lost. This obviously leads to overgrazing in already resource poor and potentially degraded areas.

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Delivery of saleable property for Land Reform purposes

This is primarily an information support function whereby a Public Land Inventory (GIS based) and asset registers are compiled and maintained.

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Maintenance of state land

DLA does not actively maintain state land due to lack of capacity and resources. Only in the event of a concern raised by another government department or the general public, will DLA follow up with the Department of Agriculture for assistance. This may be for example, firebreaks or fencing issues.

In summary, most of the above functions relating to management of state land do not cater for any active monitoring or management of the state land once leases or servitudes have been granted. Although it is the responsibility of the other relevant line function departments to authorise and monitor particular activities and users, associated with water, mining, agriculture, etc. In fact it appears that there are significant numbers of hectares of state land not being proactively managed by any department. There may be serious environmental degradation occurring and hazardous situations being created, but nothing is known about this unless it is discovered and brought to the attention of DLA on a case by case basis.

There is a lack of clarity around the active management of state land particularly when tribes or communities who are the de facto "owners" of the land beneficially occupy it. However ultimately DLA remains responsible since this is land registered or held in trust by the Minister of Land Affairs. This will be the case until such time as the land is registered in the name of its rightful owner. As a matter of urgency, DLA needs to address its management role and develop and agree upon the required institutional arrangements with various National and Provincial departments. The urgency of concluding tenure reform policy and implementing it effectively and

fairly will be a key step in resolving the locus of responsibility in the management of these large areas of land. It is the responsibility of DLA to drive these processes.

! State Land Management falls within the ambit of several departments namely, DLA, Public Works, South African National Defence Force, National Parks, Provincial governments and Local Authorities. It is consequently a cooperative governance challenge and opportunity.

The [table](#) below provides a summary of the DLA land authorisations and the relevant decision making authority.

Summary [Table](#) of DLA Land authorisations

Name of Act	Nature of authorisation	Decision making authority
Physical Planning Act, 1991	Land use decisions	Decision making power assigned to Provinces
Development Facilitation Act, 1995	Land development decision	Development Tribunals
Provision of Land and Assistance Act, 1993	Designation (land use)	Minister of Land Affairs
Extension of Security of Tenure Act, 1998	Land use (off farm settlements)	Minister of Land Affairs

The following [table](#) summarises the EMP functions as performed by DLA.

Policies, Plans and Programmes

DLA Function	Relevant Policies and Legislation	Plans and Programmes (activities)	Partners
Spatial Planning	Development Facilitation Act 67 of 1995	Land Development Objectives	All relevant Departments and Organs of state
	Green Paper on Development and Planning	DFA Principles	All relevant Departments and Organs of state
Land Development	Development Facilitation Act 67 of 1995	Land Development Objectives DFA Principles	Local Authorities, All relevant Departments and Organs of state
	Green Paper on Development and Planning	DFA Principles	Local Authorities, All relevant Departments and Organs of state
State Land Management	Development Facilitation Act 67 of 1995	Land Development Objectives DFA Principles	All relevant Departments and Organs of state

The following [table](#) summarises the DLA functions and activities and information contained within the report, which address the NEMA Principles.

Compliance with NEMA Principles

NEMA Principles	DLA Functions		
	Spatial Planning	Land Development	State Land Management
Sustainable development	Application of Environmental based DFA Principles	Application of Environmental based DFA Principles	Application of Environmental based DFA Principles
Integration into decision making	DFA Principles require integration	DFA Principles require integration	
Participation	DFA Principles require full participation	DFA Principles require full participation	DFA Principles require full participation
Environ. Justice and equity	DFA Principles are based on 1) Human centred & 2) Natural resource base	DFA Principles are based on 1) Human centred & 2) Natural resource base	

	integrity	integrity	
Ecological integrity	DFA Principles are based on 1) Human centred & 2) Natural resource base integrity	DFA Principles are based on 1) Human centred & 2) Natural resource base integrity	EIA's are required to be performed for proposed development
International	Inter-governmental coordination and cooperation is key to DLA	Inter-governmental coordination and cooperation is key to DLA	Inter-governmental coordination and cooperation is key to DLA

**CHAPTER FOUR:
INSTITUTIONAL ARRANGEMENTS & COOPERATIVE GOVERNANCE RECOMMENDATIONS**

4.1 Introduction

Cooperative governance is a priority for the DLA as reflected in the Green Paper on Development and Planning. It is therefore anticipated that cooperative governance from a planning perspective will be further developed in the pending White Paper.

With regard to the internal DLA institutional arrangements it is important to outline the departmental structure and functions. Land Affairs is a National competency with regional offices in all the Provinces also referred to as provincial offices in this report, but which must not be confused with Provincial government structures.

4.1.1 Department structure

The departmental structures described below have been limited to those that are applicable to the drafting of the Consolidated EI&MP for the First Edition submission. DLA (National and Regional Offices) is currently undergoing restructuring and transformation. Consequently, it is not possible to present a definitive organisational organogram, rather a generic description is provided below.

In terms of the official existing structures in DLA the following units are of relevance in the context of this report:

-

The Land Reform Policy Branch

Consisting of the Chief Directorate Redistribution, Land Rights and Development and Directorates: Redistribution Policy and Systems and Land Development Facilitation (Land Development Policy sub-directorate managing the DLA-DANCED project and environmental and sustainability policy matters generally). This branch also consists of the Chief Directorate: Tenure Reform and Public Land Management.

Policies are developed in the Land Reform Policy Branch in consultation with the 9 provincial (regional) offices of the Land Reform Implementation Branch. Policies have to officially get approved by the Minister and Director-General after recommendations from the Policy Committee with representation from all 3 branches.

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The Land Reform Implementation Branch

Consisting of nine Provincial offices and their respective District Offices, the number of which varies from province to province, and the Monitoring and Evaluation Directorate. The nine provincial offices are tasked with implementing land reform using policies and procedures developed in the Land Reform Policy Branch.

The Monitoring and Evaluation Directorate (M&E) is responsible for monitoring and evaluating the implementation of land reform using M&E systems such as "The Quality of Life" and "Environmental Impact" Monitoring systems. M&E are managed from the National office with provincial M&E officers represented in all 9 provincial offices.

- *The Restitution Branch*

Consisting of the former Chief Directorate: Restitution and the Directorates: Restitution Policy and Restitution Research. The Commission on Restitution of Land Rights (consisting of the Chief Land Claims Commissioner's office and 5 Regional Land Claims Commission offices are also part of this Branch.

The restitution component which formerly constituted the Restitution Chief Directorate provides policy and research support to the Commission's work. The Restitution Policy Task Team, which is part of the Branch, submits policies to the Departmental Policy Committee. The Research Directorate researches restitution claims that have been lodged. All units work closely in developing policy, undertaking research towards processing of restitution claims. While the Commission is officially incorporated into DLA, the Commissioners retain certain independent statutory powers.

4.1.2 *Inter-departmental Government Programmes*

For information purposes, the DLA has been involved with three environmental interdepartmental programmes namely:

- *The International Convention on Desertification*, with the National Department of Environmental Affairs and Tourism as the lead department. The DLA played a supporting role on the Steering Committee attending meetings and supplying information when required.

- *Partnership Project for the Working for Water Programme*, with the Department of Water Affairs and Forestry to provide benefits by including land reform beneficiaries in the Working for Water Programme. Job creation opportunities were created while enabling the beneficiaries to improve the quality of their land. The DLA allocated R25 million from its 1998/9 budget part of which, was to provide an independent evaluation of the partnership itself to indicate the value of this type of initiative and provide guidance for similar initiatives in the spirit of cooperative governance.

- *The Land Care Project*, with the National Department of Agriculture (DoA) as the lead department. The DLA's role in the project is currently only on an ad hoc basis due to lack of clarity from DoA on the role of other stakeholders.

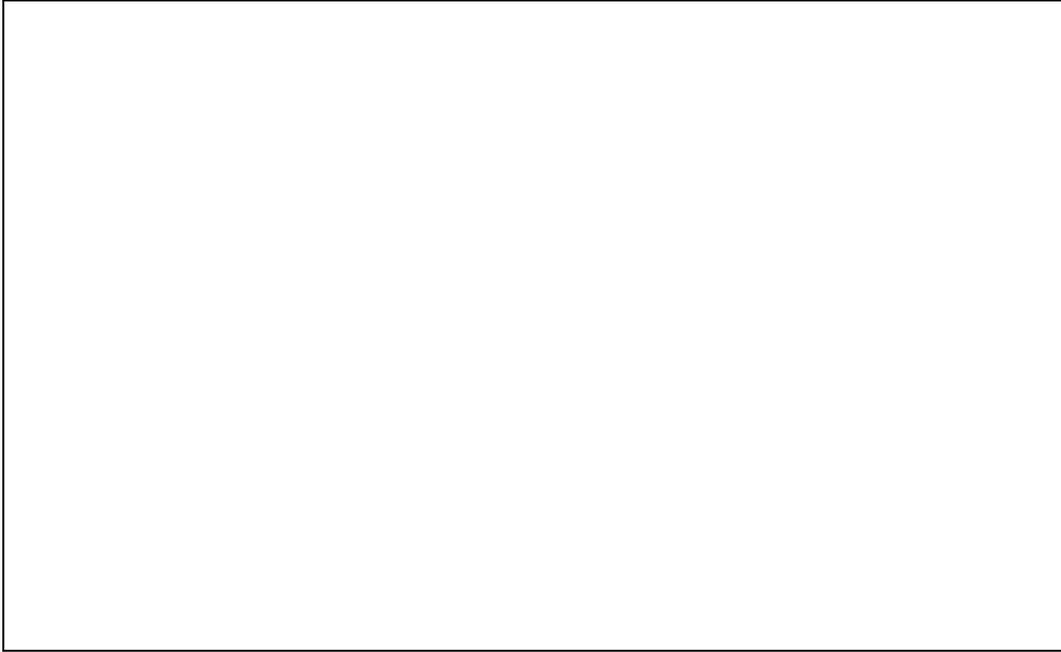
4.2 Institutional Arrangements for Spatial Planning and Land Development

The Directorate: Land Development Facilitation is responsible for all DLA's functions in terms of land development planning and management. DLA's responsibilities are dictated by the DFA, which is largely that of setting of policies and norms and standards. The Green Paper proposes a monitoring and auditing role with an expanded area of responsibility to ensure effective integrated spatial planning within the DLA. Implementation takes place at the local government sphere with provincial government responsible for provincial planning.

The Western Cape and KwaZulu/Natal provinces have both drafted Provincial Planning legislation which clarifies the roles of the spheres of government and planning mechanisms in respect of the provinces.

4.2.1 *Spatial Planning*

In terms of Land Development Objectives (LDO's), provincial government (MEC) further develops the national land development planning requirements and approves the LDOs that local authorities have prepared. Currently, DLA does not even have a monitoring and evaluation role, which limits the possibility of ensuring compliance with the environmental requirements of the DFA, even though the land development [Chapter 1](#) principles must be adhered to in all land development planning process.



Departments involved in the local authority planning environment

The linkage between LDOs and Integrated Development Plans² (IDP) implies that cooperative governance is required between DLA and a number of national government departments requiring plans of Local government. This is particularly important to ensure consistent requirements for Local Authorities, including the environmental component. The roles and relationships of these departments, particularly in terms of local authority planning and environmental considerations, is currently unclear, as is their combined role with respect to ensuring compliance with environmental considerations as part of local authority planning. The White Paper on Planning and Development should engage this issue. The following National departments are relevant:

- Department of Provincial and Local Government (DPLG)
- Department of Water Affairs and Forestry (DWAf)
- Department of Housing (Housing)
- Department of Transport (DoT)
- Department of Environmental Affairs and Tourism (DEA&T)
- CIU in Presidents Office

The role of the Coordination and Implementation Unit (CIU) in the President's Office is to address the problems currently experienced on integration, implementation and coordination of programmes relevant to development planning. The Forum for Effective Planning and Development (FEPD), on which some of the above departments are represented, attempts to coordinate and integrate the national and provincial planning responsibilities. This forum however, is currently no longer active. The Green Paper proposes that a new forum the National Planning Coordination Committee (NPCC) replaces the FEPD and its relationship with the CEC should be elaborated. The NPCC's purpose is to coordinate spatial planning across sectors and across the different spheres of government. The relationship and linkages with bodies such as the CEC are currently being discussed through the Green and White Paper processes.

4.2.2 Land Development Management

The DFA makes provision for the establishment of Provincial Development Tribunals which currently exist in seven provinces. Provinces, which do not implement the DFA (such as Western Cape), do however align their policies with the [Chapter 1](#) principles of the DFA. The DFA Task Team is constituted as a formal structure for communication between the DLA and Provinces. The DLA does play a supportive role by conducting regular meetings and capacity building sessions with Development Tribunal Registrars and Designated Officers (refer to [Chapter 3](#)).

The Tribunal Decisions which are made at the Hearings often have implications for other government departments and are of a cooperative governance nature. However there does not seem to be a mechanism to ensure compliance or monitoring of the decisions, in relation to the implementation and monitoring of the decisions. For example the Department of Water Affairs and Forestry (DWAF) may be implicated in a decision on a settlement or township establishment decision (at which they might not be present) in a water sensitive area. There appears to be no mechanism for DWAF to directly acquire and accommodate the necessary actions from a cooperative governance perspective. Consequently developments may be implemented without the proactive and reactive involvement of key departments due to the overarching and powerful decisions of the Tribunals.

Footnotes

Footnote	
It is important to note that, the Department of Provincial and Local Government (responsible for IDPs) does not need to submit a Environmental Management Plan, or Environmental Implementation Plan, as per the First Edition NEMA Chapter 3 requirements.	2

4.3 Institutional Arrangements for Land Reform

4.3.1 Internal DLA cooperation

The intention of this section is to describe the internal mechanisms and procedures to ensure that sustainable development and therefore environmental policies are put into place. Since a detailed account is already given of Land Reform implementation and issues, the application of policy and procedures with respect to environmental considerations (in [Chapter 2](#)), this will not be repeated here.

It is important to note that *official DLA environmental policy* has not yet been developed and will be one of the DLA-DANCED project outputs to be developed by March 2001. This policy will address all aspects of Land Reform and will follow the normal policy development and submission route for all land reform policies. This includes extensive consultation with national and provincial staff and a formal submission *via* the Policy Committee for approval.

An assessment of internal compliance of DLA's environmental policy at this stage (for the First Edition Consolidated EI&MP report) is therefore not possible but will be addressed in future editions of the Consolidated EI&MP Report. This section of the report also needs to indicate what capacity (human and financial) and resources are allocated to environmental functions within DLA.

The DLA-DANCED project structure, human resources and finances are therefore briefly described. In addition, a brief account is given of other staff in national and provincial (regional) offices who have environmental backgrounds and can put their training to use, given their functions in the department.

Within the DLA-DANCED project, there are three project teams:

- One national team, consisting of two DLA officials (one coordinator and one planner) who both have post-graduate environmental training and one Chief Technical Adviser (external foreign land use planning consultant);
- Two provincial teams (one in each province of Mpumalanga and Free State), each consisting of a Provincial Technical Adviser (local external, environmental consultants) and two DLA officials (one coordinator and one planner).

All technical advisers spend 100% of their time on the project. The national coordinator and the national planner share a 50% time allocation on the project. The remainder of their time is

dedicated to environment and sustainable development policy matters. Liaison with other national departments' policy processes is an important function.

Provincial coordinators spend 20% of their time on the DLA-DANCED project, whilst the planners spend 50% of their time on the project as per project requirements. The Planner for the Mpumalanga PDLA has recently been increased to 100%. Project teams were structured so as to facilitate the transfer of skills between the consultants and DLA staff. The positive impacts of this arrangement have recently become evident.

With respect to financial resources set aside for the project, DLA has committed R1.5 million over two and a half years and DANCED has committed R11 million over this period.

Apart from DLA-DANCED project staff there are only three known staff members at National Office who have environmental training and are in a position to apply their skills in their work. One is in the Redistribution Systems and Policy directorate and two in the M&E directorate. Through the DLA-DANCED project training (mentioned in [Chapter 2](#)) 100 DLA officials in total (from the provinces and national office) have received environmental training to date. A further 100 DLA officials will be enrolled in the courses that are scheduled for the remainder of the project life-span (one more year). This training coupled with a major internal communication programme on natural resources and rural livelihoods will definitely improve the environmental capacity of DLA officials and management.

It should be noted that the aim of the training is NOT to develop environmental experts out of DLA officials, but to equip them with a sound, practical understanding of the environment and land reform. The project also needs to ensure that DLA planners have the necessary skills to draft appropriate terms of reference for business planning consultants, for them to be in a position to make a judgement on the consultant's reports and to assess the quality and content of documentation in terms of sustainability considerations. It is anticipated the Planners in the regional offices will become key players in environmental management for the DLA and capacity would need to be developed accordingly.

However, it is unlikely that DLA will have adequate human resources to be able to build a strong environmental unit at National level. The aim is to build the skills of the implementers of land reform (so that more sustainable land reform can be achieved) and to forge supportive relations with the relevant role players in provincial and local government. Duplication of skills and functions is to be avoided.

4.3.2 External DLA cooperative governance arrangements

The regional offices of the DLA are key institutions in the implementation of the Land Reform programme. They are responsible for liaising with provincial government in Land Reform matters for ensuring that the programme is coordinated with broader provincial development plans and priorities and that supportive relationships are built with provincial and local government so that they may assist land beneficiaries post transfer. The specific allocation of functions between the DLA regional offices and the provincial authorities varies according to negotiated arrangements as dictated by the local conditions.

The following is reflected in [Chapter 3](#) of the South African Land Policy (1997):

"Provincial governments have responsibilities in a number of functional areas related to land reform. These are mainly where national and provincial governments have concurrent responsibility in terms of [Schedule 4](#) of the Constitution. These are mainly agriculture, environment, soil, conservation, housing, regional planning and urban and rural development. Local governments also have constitutional functions which affect land use and planning.

There is a need to coordinate the functions of the different spheres of government not only because of the constitutional requirement of cooperative governance, but also to achieve effective government.

It is the responsibility of provincial governments to provide complementary development support (such as infrastructure and agricultural support services) to those participating in the land reform programme. In this respect there must be close cooperation between national and provincial governments to ensure that

beneficiaries of land reform enjoy services provided by the provinces, as envisaged by [Schedules 4 and 5](#) of the Constitution”.

Despite the words in the Land Policy White Paper and the Constitution, Land Reform and its beneficiaries have unfortunately not enjoyed adequate support and services from the Provinces and Local government.

The following government departments are essential partners of DLA for the implementation of sustainable Land Reform (the nature of support is indicated in brackets):

- National and Provincial Departments of Agriculture (technical assessments for farming potential, extension support, support mechanisms to farmers to access infrastructure/inputs);
- National Department of Housing and Provincial Local Government and Housing departments (Rural housing / infrastructure for land reform settlement projects);
- National Department of Water Affairs and Forestry and its Regional offices (technical support regarding water management and services both locally and regionally; forestry extension support, including rehabilitation/problem solving);
- National and Provincial Departments of Public Works (in disposal of state land);
- National Department of Environmental Affairs and Tourism and Provincial Government Units responsible for environmental functions (technical advice and on the ground support relating to integrated environmental management and Land Reform project “feasibility” and environmental impacts, environmental management support to beneficiaries including capacity building and rehabilitation programmes); and
- Local Authorities and District Councils, inclusive of metros where applicable (to cater for land reform in local development and planning to ensure adequate provision of basic services as well as maximising economic and social development opportunities for land beneficiaries). The District and Local Authorities will in future become the driver of Land Reform;
- The Coordination and Implementation Unit in the Executive Deputy Presidents Office, (for coordination, implementation and alignment of programmes);
- Department of Provincial and Local Government (IDPs and local economic development);
- National Department of Minerals and Energy (where mineral rights are involved in land transfers and possibly where land needs to be rehabilitated due to abandoned mine dumps);
- National Department of Finance (especially with regard to grants);
- Other departments such as National Trade and Industry and Transport (where Spatial Development Initiatives and National Projects impact on land reform);
- National Department of Defence, SANDF (South African National Defence Force);
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National Parks and Provincial Conservation Authorities of which some may be parastals;

- National Monuments Council and newly established Heritage council; and
- Provincial Departments of Traditional Affairs (for cooperation and facilitation especially with regard to communal resource management and development projects).

4.3.3 Agreements and Memorandums of Understanding

Agreements between the DLA and National Departments relate specifically to the core business areas of the department and not to environmental management. For example there is an agreement between departments of Finance, Transport, DWAF, PALG, Housing and DLA to align subsidies and avoid duplication. There is also an agreement between the Department of Public Works and DLA on the Disposal of State Land. The agreement clarifies the roles, responsibilities, administration and disposal functions of each department.

4.3.4 Organs of State

The DLA relates to a variety of organs of state on an ongoing basis. However this is presented for information purposes as there is not in all cases a direct relationship between the Department and the organ of state.

- The Parliamentary Portfolio Committee for Land and Agriculture;
- Land Bank, (it is not known whether there are specific environmental requirements for loan approvals);
- Development Tribunals in Provinces where the DFA is implemented (not all Provinces has established Tribunals yet);
- Development and Planning Commission (to be possibly decommissioned but has worked closely with the Department);
- National Archives; and
- Khula Enterprises, which manages the Land Reform credit facility by agreement with DLA.

4.3.5 National, Provincial and District level arrangements of Land Reform

In a recently released policy statement (11 February 2000) by the Minister for Agriculture and Land Affairs, the importance of an integrated approach to Land Reform, in close collaboration with other departments (particularly departments of Agriculture and Housing) was emphasised. The Minister also indicated that DLA must actively work with provincial governments and district councils to build the capacity of the latter to undertake Land Reform and land development planning. Cooperative governance towards sustainable Land Reform and livelihoods will therefore be a priority for DLA in the next year.

DLA's regional offices have established various forms of inter-departmental committees and decision-making systems within each Province in close collaboration with appropriate Provincial departments and with most District Councils.

Sustainability of Land Reform projects is dependant on stakeholders' input in the planning process and their provision of development support and aftercare. The Provincial Project Approval Committee (PPAC), which meets on a monthly basis, has been constituted and should be representative of all key stakeholder departments in each Province. The PPAC is established through Act 126 regulations and is required to be approved by the Director General of the DLA. The PPAC reviews and approves the Business Plans and Memorandums for Land Reform projects,

which are then submitted to the National office and Minister for approval. The mechanism of attaining stakeholder approval may vary between the regional offices of the DLA, for example some may be a district level. The process may also vary where for example other departments inputs are coordinated prior the PPAC sitting thereby reducing the time and resources spent at each PPAC sitting.

The PPAC can be at either District or Provincial sphere dependant on the requirements of the local conditions. Representivity from a functional perspective, on the PPAC is not consistent throughout the Provinces. In some Provinces other departments play vital roles in the process and planning of projects, while in some Provinces key departments are absent. If the relevant stakeholders do not attend PPAC and planning meetings, the provincial office has little alternative but to proceed with the project, without their involvement.

In addition, even though certain departments may participate in PPAC meetings and approve the project and promise support, in reality budgets, human resources and varying departmental priorities prevent any real support of the actual land reform project post transfer. It is a generally the case that the Provincial Departments of Agriculture in most provinces, do not have the financial resources and human capacity to provide the necessary training, support and extensions services to land beneficiaries.

The following should be considered in trying to establish more effective institutional arrangements between DLA and provincial and local government:

- Commitment to cooperate needs to be driven at the level of Premiers and MEC's;
- Land Reform should fit in with provincial and local strategic planning and development priorities (this is more difficult with Restitution cases);
- Land Reform support needs to be budgeted for in other departments and human resources allocated; and / or
- Flexible approaches for inter-governmental transfer of funds and other resources – especially where support is required from local government.

The National State Land Disposal Committee and Provincial State Land Disposal Committees consist of the departments of Public Works, Provincial governments and DLA regarding State Land Disposal inclusive of procedures, advise, records and policy issues.

Throughout the country, various committees have been established to facilitate integration and cooperation between DLA and other government departments or spheres either at a political level or project level. In practice, their effectiveness varies widely and some have been discontinued (for example the FEPD).

In summary, internal and external DLA cooperative structures are based on projects and reliant on the Provincial inputs of Departments on a voluntary basis. Internally within the DLA there is no "platform" from a committee perspective at which environmental issues are specifically taken up. In this regard, the DLA rather relies on the business plans and project cycle to include criteria on a project basis as compiled by provincial DLA planners. This highlights the importance of expanding the environmental role of these planners.

4.3.6 Proposed cooperative governance arrangements for Land Reform and the environment

It is proposed that the Provincial Departments of Environmental Affairs (structured differently in each Province) become more involved in the administration and planning of Land Reform projects through the existing Provincial Planning Approval Committees (PPAC). This will allow for environmental consideration to be considered at an earlier stage. The DLA-DANCED project will provide input to the format and content of the Business Plans however it is also recommended that the Environmental Departments provide an endorsement of the process and formatted contents.

The Environmental Departments together with the Agricultural Departments should further become more involved with monitoring of implementation of the projects and post transfer support. The particulars of which may need to be formalised within a Memorandum of

Understanding detailing resources such as budgets and personnel. To this effect, Environmental Management plans could be compiled for sensitive or "problematic" projects to be monitored by the Environmental (or Agricultural) departments for progressive development and achievement of sustainable development.

With reference to rehabilitation, abandoned mine dumps and historical soil conservation problems are of significant concern. However, it is not clear at this stage which department is responsible for rehabilitation.

4.4 Recommendations for Cooperative Governance

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The following recommendation summarise the main institutional issues around cooperative governance and environmental management that are not relevant for the purposes of IEM in [Chapter 5](#). there is a need for an:

- Integrated Planning System, as proposed by the Green Paper on Development and Planning:
- Enhancement of capacity of National government to enforce the above planning system and to monitor the implementation of the DFA [Chapter 1](#) principles:
- New institutional frameworks for Land Reform where the District Council are responsible for Land Reform implementation. Necessary resources would be transferred to the District Council to support this process;
- A review of and possible amending of the Conservation of Agricultural Resources Act ([Act 43 of 1983](#)) so as to align it effectively and make it more applicable to Land Reform;
- Enforcement of relevant legislation by the provincial departments of Agriculture and Environmental affairs.
- Training and education for government, beneficiaries and service providers in Environment and Land Reform, and DFA [Chapter 1](#) principles; and
- NEMA [Chapter 5](#) guidelines needs to be developed to ensure quality and not

CHAPTER FIVE: RECOMMENDATIONS & PROPOSALS FOR NEMA: CHAPTER 5

5.1 Introduction

In 1998, Minister to Minister communications on Environmental Impact Assessments and Land Reform were initiated between the Department of Environmental Affairs and Tourism and the Department of Land Affairs.

DLA raised the following concerns:

- That farmers opposed to Land Reform were using the "environmental argument" to prevent previously disadvantaged people from becoming their neighbours;
- That the "land-use change" clause in Government Notice R1182 of 05 September 1997 was too broad (with no consideration of intensity or scale of the land use change) and that many Land Reform projects would be subject to EIAs, although not strictly necessary;
-

That time frames involved in getting approval from the relevant Provincial Department of Environmental Affairs were not spelt out in the regulations and that this could cause unnecessary delays in already time consuming and complex Land Reform projects. These delays could also mean that an opportunity to purchase a property would be lost; and

- That poor land beneficiaries cannot afford to pay for an independent consultant to conduct an EIA and that it was a matter of great concern if poor people were excluded from benefiting from Land Reform for this reason. Though DLA makes a Planning Grant available to Land Reform applicants to undertake the planning necessary to develop a sustainable project, this money is not sufficient to cover the costs of an EIA.

The matter was referred to the two respective Directors-General and inter-departmental discussions proceeded. But despite debating the issues for almost two years, no mutually acceptable approach could be agreed upon. The purpose of this section is to suggest a way forward on the topic, in the spirit of environmental cooperative governance. Initial discussions on the above issues were held with the National Department of Environmental Affairs and Tourism on 21 February 2000.

5.2 DLA-DANCED Project Guidelines

The purpose of these guidelines is to integrate environmental planning into the Land Reform process. The project team has undertaken a preliminary cross-referencing exercise between the approach, principles and procedures of IEM and the draft DLA-DANCED project guidelines.

The draft guidelines are generally in line with the following IEM principles and procedures and is being further developed:

- Informed decision-making (generating accurate and timely information for sharing among stakeholders in order for informed decisions to be made is emphasised in the draft guidelines);
- An open participatory approach in planning (participatory planning processes are advocated throughout the draft guidelines);
- Consultation with interested and affected parties (the draft guidelines promote the identification and involvement of multiple stakeholders);
- Due consideration of alternative options (the land-use planning approach adopted in the draft guidelines promotes the identification of alternative options);
- An attempt to mitigate negative impacts and enhance positive aspects of proposals (the simple decision support tool developed in the resource economics component of the draft guidelines is based on examining the intended and unintended impacts of land reform projects and follows an iterative approach to enhance the more positive aspects);
- An attempt to ensure that the "social costs" of development proposals are outweighed by the "social benefits" (this principle forms the essence of the decision-support tool developed in the resource economics component of the draft guidelines);
- Democratic regard for individual's rights and obligations (the guidelines uphold those provisions of the Constitution, as well as those of the Land Policy White Paper of 1997);

- Compliance with these principles during the planning and implementation of proposals (the draft guidelines propose a stepped approach and each step is intended to make a contribution to uphold these principles); and
- The opportunity for public and specialist input in the decision process (the participation of land users, consultation with experts from government as well as the private sector is upheld in the draft guidelines through the proposed planning teams).

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With respect to actual IEM procedures and specifically EIA procedures, the draft guidelines require further input. It has been agreed between DLA and national DEA&T that the draft guidelines will be made available to National and Provincial Environmental Affairs offices for in-depth comment and technical input. In this way, the guidelines will be further in-line with IEM procedures and DEA&T will be providing direct technical support to DLA.

5.3 Recommendations in Terms of EIP and Land Reform

So as to build sustainable Land Reform and an effective and supportive relationship between DEA&T, it is proposed that land reform specific EIA regulations should be drafted and agreed to by the two departments of DLA and DEA&T. These should replace the existing EIA regulations as far as land reform projects are concerned.

DLA is committed to environmental sustainability in Land Reform and would like to self-regulate as far as possible. The advantages of this approach are:

- from a management perspective within DLA this will ensure better responsibility and ownership for environment management as part of Land Reform,
- integration of environmental considerations with the planning process improves the changes of holistic and sustainable Land Reform; and
- this will allow for more streamlined and efficient delivery of Land Reform.

Regarding the content of these regulations the following is suggested:

- The DLA-DANCED project guidelines, once tested, provide the basis;
- DEA&T, both National and Provincial, provide substantive input into these guidelines;
- Procedures must be streamlined to increase efficiency;
- The roles of DEA&T and DLA must be clear, with as much self-regulation by DLA as possible; and
- The appointment of an appropriate consultant is optional due to the cost involved and that alternatives be considered.

There are two ways in which these land reform specific regulations could be drafted:

Option 1: DLA and DEA&T jointly draft land reform specific regulations to amend the EIA regulations. DEA&T issues them in terms of NEMA. This environmental impact function will then become part of DLA's EIP component and be audited accordingly.

In terms of the EIA regulations, there is a need to distinguish between activities and procedures (or process) either one of which may be amended to become Land Reform sensitive. Out of this comes the possibility to change or adapt the *procedures* required for EIA regulated Land Reform, and to give more responsibility to DLA in the process which will be done in consultation with DEA&T.

This might require that a DLA planner (suitably qualified) is used rather than an independent consultant, possibly supported by an appropriate committee and/or individual (from the environmental regulator). This would include EIA-type-activities such as site visits, check lists and assessments for evaluating the severity of potential environmental impacts. This process would be part to the Land Reform planning process and reporting, which would improve the integration of environmental and sustainability issues into the current planning assessment. This approach is based on an alignment of procedures concept, in which the EIA is part of the planning assessment as opposed to being an add-on or separate report as is currently the situation.

Some implications for DEA&T, with this approach, are that DEA&T will need to provide resources (personnel and budget) to ensure its implementation, as the revised approach will still be under NEMA. This would then need to be incorporated as part of the DEA&T Consolidated EI&MP Report and be audited according to compliance with DEA&T regulations, and will from DLA's perspective be part of the DLA's EIP component of the Consolidated EI&MP reporting.

The option may involve a change to the definition of *activities* as per existing EIA regulations and make them Land Reform specific, which will still need to be done by DEA&T.

□

Option 2: DLA and DEA&T jointly draft land reform specific regulations which are issued by DLA in terms of existing Land Reform legislation. Potential implications of self-regulation for the DLA are that it provides additional motivation for DLA to provide resources and build capacity for this function. This environmental management function would need to be reported upon as the EMP of DLAs Consolidated EI&MP report and would need to be audited annually.

The effect of this option would be to exclude Land Reform projects from DEA&T regulation and to instead promulgate DLA environmental regulations in terms of requirements as part of the planning procedure using DLA legislation. There may be variations specific to types of projects within this option that could be explored. For example, there may be a conditional exclusion, which may include a DEA&T role in the assessment process and/or an auditing role. This implies a form of self regulation by DLA and an auditing role for the DEA&T. Auditing would then become part of the annual reporting process associated with the DEA&T Consolidated EI&MP.

Potential implications of self-regulation for the DLA are that it provides additional motivation for DLA to provide resources (budget and personnel) and build capacity for this function as part of the MTEF. Furthermore, it would then represent an environmental management function and would need to be reported upon as the EMP of the DLA Consolidated EI&MP report and would need to be audited annually. DLA reporting on Land Reform implementation will then be done through the EMP component of the Consolidated Report.

!

! DLA preference in terms of Land Reform EIA options is Option 2: *DLA and DEA&T jointly draft land reform specific regulations which are issued by DLA in terms of existing Land reform legislation.*

5.4 Proposals in terms of EMP and Spatial Planning

Spatial planning is interpreted as relating to the EMP component of DLA's Consolidated EI&MP, consequently [Section 14\(g\)](#) of NEMA *requires proposals for the **promotion of objectives and plans** for the implementation of . . . [Chapter 5](#)* (Integrated Environmental Management) of NEMA. The *Implementation* of IEM specified in [Section 24](#) of NEMA refers to activities that require authorisation.

Land Development Objectives (LDOs) are instruments for strategic spatial planning at a Local Authority level, and therefore are not relevant for [Chapter 5](#) of NEMA. Nevertheless, the relevant national departments involved in the various components of Integrated Development Plans (IDPs) should engage the issue of incorporating environmental considerations into the local authority planning (IDP-LDO) process, in terms of both policy, design and implementation. The processes

leading to the *White Paper on Development and Planning* (DLA) and the *Municipal Systems Bill* (DPLG) should address these issues.

On the other hand, land development management, and particularly the land development authorisations under the DFA (or other provincial planning legislation), directly relates to authorisation of activities. Clarity is required on the ambiguity between the DFA land development authorisation process and the environmental regulations under ECA (and in the future, IEM procedures and regulations under [Chapter 5](#) of NEMA). The process, scope and role of these authorisation requirements must be aligned. The alignment issues will be addressed by the DLA in consultation with the DEA&T.

One of the main factors that contribute to the slowness of the process of obtaining planning approvals for development applications are the requirements that land development applicants need to obtain different types of approvals from different authorities. These processes tend to duplicate each other and there has been no effort to align them. The effect of this has been that land development applications have been long drawn and are consequently expensive. The DFA intention is to speed up the development approval process to an approximate 120-day process regulated by the DFA regulations.

The following proposals do not seek to eliminate all the different types of approvals that have to be sought, but rather to how those that are linked to spatial planning should be aligned. Approvals such as for access to provincial and national roads, as well as detailed building plan approvals are not regarded as planning approvals in terms of this mandate and therefore will not be dealt with here.

The main approval routes that have to be aligned are the planning approvals as applied for in terms of the different laws, as well as environmental approvals in terms of the Environmental Conservation Act. It will be worthwhile to explain the purpose of these approvals. The Environmental Conservation Act (ECA) was passed, *inter alia* to give the Minister of Environmental Affairs the power to establish procedures for land development applicants to obtain environmental permissions in order to undertake certain land uses or to change the use of land. The regulations promulgated in terms of the ECA listed land uses for which environmental permissions are required as well as the process to obtain such permissions. The Minister of Environmental Affairs and Tourism gives or withholds these approvals, with certain approval powers delegated to the provincial MECs responsible for environmental affairs. It is clear from the ECA that it was intended that it would be possible for the environmental approvals to be granted by Local Authorities but no such delegations have been made to date.

It must be acknowledged that environmental considerations are indeed very important and no planning system can be sustainable without due consideration being given to environmental management. The [Chapter 1](#) principles of the DFA also make this quite clear. It should also be mentioned that due to current capacity constraints, particularly at local government level, it is unlikely that the vast majority of Local Authorities will be able to exercise the function of being environmental authorities in the short to medium term, in the event of this function delegated to local government. The Green Paper on Development and Planning does however correctly propose that most planning decisions should be taken at the local sphere of government. This would be a long term proposal as it is not entirely possible for environmental and planning decisions to be taken at that sphere of government currently. What needs to be done is that the two approval processes need to be more closely aligned, both in terms of process and the consistency of decisions taken by different authorities.

Two proposals are made in this regard.

-

The first proposal is based on the DFA model of decision making. In terms of this proposal, the procedures for planning applications would include environmental procedures, as the present DFA regulations do. The land development applicants would conduct environmental investigations as part of the preparation of the land development application. The environmental investigation would be submitted as part of the land development application. The environmental authority (Provincial Environmental Affairs) and the Local Authority would evaluate the application simultaneously and one decision could be reached which would cover both issues. The conditions that could be imposed on the approval would cover both planning and environmental issues. There are, however, a few problems with this proposal. In terms of the ECA, the power to grant environmental approvals can be delegated

to the provincial MEC responsible for environmental affairs or to the officials of the environmental department. An environmental approval is also sought prior to the Tribunal Hearing.

- The second proposal would be for the environmental and planning approval processes to be dealt with separately, but to be aligned in terms of process. What this will involve is that land development applicants which require environmental approvals will first have to obtain the environmental approval by complying with the ECA regulations. Having obtained such environmental permission, the land development applicant can then proceed to apply for a planning permission. The principle here will be that the planning authority will not consider land development applications if no environmental permission has been given, where such is required. This process does not integrate the two approval processes and certainly does not solve the time problem, but it simply aligns the two processes such that the problem of legal uncertainty is removed.

There seems to be a change in the approach towards environmental management in the country. This change is made clear by the National Environmental Management Act. This Act recognises the need for cooperative environmental management and there is recognition for government departments, other than DEA&T, as environmental *affectors* and environmental *managers*. This allows scheduled departments to put in place environmental management procedures and systems particular to their needs. This moves us a step towards integrating planning authorities and environmental authorities. Until there is integration with the authorities and for the time being however, one of the two above proposed processes will need to be further developed.

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Annexure A: INDICATORS

Sustainable Development Indicators

There is currently no clear consensus (international or national) on what constitutes sustainable development, however the achievement of the objective is a priority, and increasingly this is becoming more possible with growing experience in the field. In order to achieve the goal it is useful for policies and programmes to be aligned to some form of indicator. The DLA-DANCED project currently in progress shall be drafting an Environmental Policy from which indicators will be derived. The policy shall be available in March 2001 and the indicators thereafter. In addition the Quality of Life report produced by the Monitoring and Evaluation unit, is currently being revised to incorporate environmental provision in the estimation of sustainable livelihoods. Both of the documents and process shall be reported on to the CEC in the First Annual Report.

In the interim the Department of Land Affairs in striving for and fulfilling its commitment to sustainable development has identified the following characteristics that may be used as indicators to achieve sustainable development within its sphere and constitutional responsibilities.

Indicators for sustainability

The Integration of environmental objectives into broader development goals:

- LDO requirements stipulate the requirement for the process and plans to be human centered and based on an understanding of the natural environmental integrity of the local area.
- DFA [Chapter 1](#) Principles require Environmental Impact Assessments to be performed and include an assessment of the natural environment and environmental expertise in the processes of adjudication by Development Tribunals on land development applications.
- Public participation is a stipulated requirement of LDOs and DFA [Chapter 1](#) Principles. The Development Tribunals adjudication process is empirically based on the active participation of civil society, government and stakeholders. This process is therefore dependant on the active participation by all decision-makers and organs of state for sustainable development to take place.
- Environmental considerations are required in feasibility studies for Land Reform as well as in Project life cycles.

Improvement of institutional coordination

- The DLA is responsible for policy and setting of norms and standards in spatial planning. The Green Paper on Development and Planning outlines and clarifies institutional responsibilities in the currently fragmented planning arena.
- Inter-departmental committees for planning of Land Reform projects are a statutory requirement but are dependant on active involvement by several key departments.
- The DLA is conducting capacity building modules for both internal DLA officials and external departmental officials in order to integrate Land Reform and Spatial Planning LDO process with the environment.

Establishment of consistent and transparent legislation

- The DLA has through the development of normative and principle bases legislation sought to establish consistent and transparent legislation. Often by the nature of the legislative process terminology and concepts are complex. Where this is the case the Department has drafted series of Guidelines, resource documents and manuals, as was done for the DFA [Chapter 1](#) Principles.

Annexure B:
DEVELOPMENT FACILITATION ACT, 1995: [CHAPTER 1](#) PRINCIPLES

GENERAL PRINCIPLES FOR LAND DEVELOPMENT AND CONFLICT RESOLUTION ([ss 2-4](#))

2 Application of principles for land development

The general principles set out in section 3 apply throughout the Republic and—

- (a) *shall also apply to the actions of the State and a local government body;*
- (b) *serve to guide the administration of any physical plan, transport plan, guide plan, structure plan, zoning scheme or any like plan or scheme administered by any competent authority in terms of any law;*
- (c) *serve as guidelines by reference to which any competent authority shall exercise any discretion or take any decision in terms of this Act or any other law dealing with land development, including any such law dealing with the subdivision, use and planning of or in respect of land; and*
- (d) *for the purposes of—*
 - (i)
 - Chapter II, serve as the general framework within which the Commission shall perform its functions and make recommendations and within which those recommendations shall be considered by any competent authority;*
 - (ii)
 - Chapter III, serve as principles by reference to which a tribunal shall reach decisions;*
 - (iii)
 - Chapter IV, provide the guidelines with which the formulation and implementation of land development objectives of local government bodies and the carrying out of land development projects shall be consistent;*
 - (iv)
 - Chapters V and VI, guide the consideration of land development applications and the performance of functions in relation to land development; and*

(v)

Chapter VII, guide the administration of the registration of land tenure rights.

3 General principles for land development

(1) The following general principles apply, on the basis set out in section 2, to all land development:

- (a) *Policy, administrative practice and laws should provide for urban and rural land development and should facilitate the development of formal and informal, existing and new settlements.*
- (b) *Policy, administrative practices and laws should discourage the illegal occupation of land, with due recognition of informal land development processes.*
- (c) *Policy, administrative practice and laws should promote efficient and integrated land development in that they—*
 - (i) *promote the integration of the social, economic, institutional and physical aspects of land development;*
 - (ii) *promote integrated land development in rural and urban areas in support of each other;*
 - (iii) *promote the availability of residential and employment opportunities in close proximity to or integrated with each other;*
 - (iv) *optimise the use of existing resources including such resources relating to agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities;*
 - (v) *promote a diverse combination of land uses, also at the level of individual erven or subdivisions of land;*
 - (vi) *discourage the phenomenon of 'urban sprawl' in urban areas and contribute to the development of more compact towns and cities;*
 - (vii) *contribute to the correction of the historically distorted spatial patterns of settlement in the Republic and to the optimum use of existing infrastructure in excess of current needs; and*
 - (viii) *encourage environmentally sustainable land development practices and processes*
- (d) *Members of communities affected by land development should actively participate in the process of land development.*
- (e) *The skills and capacities of disadvantaged persons involved in land development should be developed.*
- (f) *Policy, administrative practice and laws should encourage and optimise the contributions of all sectors of the economy (government and non-government) to*

land development so as to maximise the Republic's capacity to undertake land development and to this end, and without derogating from the generality of this principle—

(i)

national, provincial and local governments should strive clearly to define and make known the required functions and responsibilities of all sectors of the economy in relation to land development as well as the desired relationship between such sectors; and

(ii)

a competent authority in national, provincial or local government responsible for the administration of any law relating to land development shall provide particulars of the identity of legislation administered by it, the posts and names of persons responsible for the administration of such legislation and the addresses and locality of the offices of such persons to any person who requires such information.

(g) *Laws, procedures and administrative practice relating to land development should—*

(i)

be clear and generally available to those likely to be affected thereby;

(ii)

in addition to serving as regulatory measures, also provide guidance and information to those affected thereby;

(iii)

be calculated to promote trust and acceptance on the part of those likely to be affected thereby; and

(iv)

give further content to the fundamental rights set out in the Constitution.

(h) *Policy, administrative practice and laws should promote sustainable land development at the required scale in that they should—*

(i)

promote land development which is within the fiscal, institutional and administrative means of the Republic;

(ii)

promote the establishment of viable communities;

(iii)

promote sustained protection of the environment;

(iv)

meet the basic needs of all citizens in an affordable way; and

(v)

ensure the safe utilisation of land by taking into consideration factors such as geological formations and hazardous undermined areas.

(i)

Policy, administrative practice and laws should promote speedy land development.

(j) *Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservational, industrial, community facility, mining, agricultural or public use, should in advance or in general be regarded as being less important or desirable than any other use of land.*

- (k) *Land development should result in security of tenure, provide for the widest possible range of tenure alternatives, including individual and communal tenure, and in cases where land development takes the form of upgrading an existing settlement, not deprive beneficial occupiers of homes or land or, where it is necessary for land or homes occupied by them to be utilised for other purposes, their interests in such land or homes should be reasonably accommodated in some other manner.*
- (l) *A competent authority at national, provincial and local government level should co-ordinate the interests of the various sectors involved in or affected by land development so as to minimise conflicting demands on scarce resources.*
- (m) *Policy, administrative practice and laws relating to land development should stimulate the effective functioning of a land development market based on open competition between suppliers of goods and services.*

(2) *The Minister may by notice in the Gazette—*

- (a) *prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1); and*
- (b) *prescribe any principle set out in subsection (1) in greater detail, but not inconsistent therewith,*

whereupon such principle shall apply throughout the Republic on the basis set out in section 2.

(3) *The Premier of a province may by proclamation in the Provincial Gazette—*

- (a) *prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1) or prescribed by the Minister under subsection (2);*
- (b) *prescribe any principle set out in subsection (1) or prescribed by the Minister under subsection (2) in greater detail, but not inconsistent therewith; and*
- (c) *publish for general information provincial policy relating to land development or any aspect thereof which is consistent with the principles set out in or prescribed under subsections (1) and (2) and paragraphs (a) and (b),*

whereupon such principle or policy shall apply in the province on the basis set out in section 2.

(4) (a) *The Minister shall, before prescribing any principle under subsection (2), cause a draft of such principle to be published in the Gazette and shall consider any comment on such draft principle received from any person during the period 30 days after such publication.*

(b) *A list of principles prescribed under subsection (2) shall be laid upon the [Table](#) of Parliament in the same manner as the list referred to in [section 17](#) of the Interpretation Act, 1957 (Act [33 of 1957](#)), and if Parliament by resolution disapproves of any such principles or any provision thereof, such principles or provision shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such principles or such provision before it so ceased to be of force and effect, or to any right or liability acquired or incurred in terms of such principles or such provision before it so ceased to be of force and effect.*

(5) (a) *The Premier shall, before prescribing any principle or policy under subsection (3), cause a draft of such principle or policy to be published in the Provincial Gazette and shall consider any comment on such draft principle or policy received from any person during the period thirty days after such publication.*

(b) A list of principles and policies prescribed under subsection (3) shall be submitted to the provincial legislature, and if such provincial legislature by resolution disapproves of any such principle or policy, or any provision thereof, such principles or policy, or provision, shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such principles, policy or such provision before it so ceased to be of force and effect, or to any right or liability acquired or incurred in terms of such principles, policy or such provision before it so ceased to be of force and effect.

4 General principles for decision-making and conflict resolution

(1) The general principles set out in subsection (2) apply—

(a)

to any decision which a competent authority, including a tribunal, may make in respect of any application to allow land development, or in respect of land development which affects the rights, obligations or freedoms of any person or body, whether the application is made or the development undertaken in terms of this Act or, subject to paragraph (c), in terms of any other law;

(b)

without derogating from the generality of paragraph (a), to any decision—

(i)

on the question whether any illegal use of land should henceforth be regarded as lawful;

(ii)

approving or disapproving of any proposed change to the use of land in the course of proposed land development;

(iii)

relating to the level or standard of engineering services that are to be provided in respect of land development;

(iv)

relating to the permitted periods within which comments or objections should be provided and governmental decisions are to be taken during the course of land development procedures; and

(v)

relating to the consequences for any land development or for the rights and obligations of any person or body of a failure to provide any comment, make any decision or perform any other act within a period of time contemplated in subparagraph (iv); and

(c)

where a decision referred to in paragraphs (a) and (b) is made under any other law, only when such decision is made during the course of the administration of a law made after the commencement of this Act by the legislature of a province or by a local government body, including such a law which is inconsistent with Chapter III.

(2) The decisions contemplated in subsection (1) shall be taken in accordance with the following general principles:

(a)

The decisions shall be consistent with the principles or a policy set out in or prescribed under section 3.

(b)

The decisions shall be made by at least one appropriate officer in the service of a provincial administration or local government body, and experts in the field of agriculture, planning, engineering, geology, mining environmental management, law, survey or such other field as may be determined by the Premier.

(c)

The officer and experts shall, before conducting a hearing or reaching a decision, enquire into and consider the desirability of first referring any dispute between two or more parties in relation to land development to mediation and if they—

- (i) consider mediation appropriate, they shall refer the dispute to mediation; or
- (ii) consider mediation inappropriate, or if mediation has failed, the officer and experts shall conduct a hearing appropriate in the circumstances and reach a decision binding upon persons or bodies affected thereby, including the State or any local government body.
- (d) The hearing conducted by the officer and experts is open to the public and any person entitled to appear at the hearing may be represented by any other person.
- (e) The officer and experts shall upon request provide written reasons for any decision reached by them.
- (f) The Director-General of a provincial administration shall keep a record of reasons provided in terms of paragraph (e), make such record available for inspection by members of the public and permit the publication of such reasons by any person or body.
- (g) A decision made by the officer and experts shall be subject to review by any division of the Supreme Court of South Africa having jurisdiction.

Annexure C:

THE EXTENT OF STATE LAND IN THE REPUBLIC OF SOUTH AFRICA (ha) *												
NATIONAL STATE LAND PER PROVINCE										PROVINCIAL STATE LAND (the nine provincial governments)		
National Department of Public Works					National Department of Land Affairs							

Province	SANDF	SAPS	DCS	Water Affairs & Forestry	Agriculture (FALA-land (1))	South African National Parks	Other national state land (2)	Ex TBVC states & SGT's	Ex-SADT (3)	Nature reserves & protected areas	Other provincial state land (4)	RSA Total
Eastern Cape	17 550	4 985	13 195	189 768	15 621	125 417	279 700	4 761 048	82 813	458 444	128 120	6 076 661
Northern Province	16 735	2 720	7 890	13 202	8 405	1 025 940	350 000	3 113 389	310 170	335 602	120 020	5 304 073
North West	34 134	1 715	2 435	3 200	6 390	0	225 000	3 129 011	90 300	240 119	184 400	3 916 704
Mpumalanga	10 251	4 410	3 000	81 356	1 936	955 670	181 000	644 773	119 499	209 878	173 740	2 385 513
KwaZulu-Natal	7 690	4 205	17 700	79 982	8 029	0	355 900	0	457 841	783 786	218 390	1 933 523
Western Cape	47 959	5 750	20 755	382 500	17 380	196 812	256 000	0	0	812 964	173 370	1 913 490
Northern Cape	254 812	490	1 300	3 975	27 251	1 038 697	230 500	0	18 788	57 267	105 600	1 738 680
Free State	31 325	475	3 085	1 020	1 682	11 633	99 700	159 384	63 754	198 418	65 000	635 776
Gauteng	14 176	15 395	14 975	3 777	0	4	155 500	0	36 762	42 191	146 890	429 670
TOTAL	434 632	40 145	84 335	758 780	86 694	3 354 173	2 133 300	11 807 605	1 179 927	3 138 669	1 315 530	24 333 790

Notes:-

Number of central and provincial government properties (including foreign properties): 240 000

* *Excluding* the following:—

- unsurveyed, unregistered state land (e.g. coastal areas)
 - foreign properties (e.g. SA embassies)
 - offshore islands (e.g. Robben Island)
 - land held in trust by the state (e.g. former Coloured Rural Areas)
 - parastatal land (e.g. Transnet)
 - former KwaZulu land (now Ingonyama Trust land – 2 902 056 ha) (*g*)
 - land leased for state domestic or other national purposes (e.g. Richtersveld National Park)
- (1) FALA-land refers to Financial Assistance Land (land bought in from insolvent farmers and ex-PWD agricultural land). The FALA-land is presently administrated by DLA. Legality PWD still has a power of attorney with the National Department of Agriculture, and this needs to be addressed.
- (2) Includes unreserved PWD-land, and other smaller holder departments (e.g. Home Affairs, Justice, Mineral & Energy Affairs and experimental farms)
- (3) Ex-SADT – refers to South-African Development Trust land *outside* the geographical boundaries of the former homelands and Self Governing Territories.
- (4) Includes provincial agricultural land, as well as school and hospital land.

Compiled by the Department of Land Affairs, Directorate Public Land Inventory

GN 249 of 16 February 2001: Environmental Implementation Plans and Environmental Management Plans under [section 15 \(1\)](#) of the National Environmental Management Act, 1998 (Act [No. 107 of 1998](#))

DEPARTMENT OF DEFENCE

I, Mosiuoa Lekota, Minister of Defence, in terms of [section 15 \(1\)](#) and [Schedule 2](#) of the National Environmental Management Act, 1998 (Act [No. 107 of 1998](#)), hereby promulgate the First Edition Environmental Implementation Plan for Defence.

FIRST EDITION

ENVIRONMENTAL IMPLEMENTATION PLAN FOR DEFENCE

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GLOSSARY

Base Environmental Management means the management of the built-up and urban environment including the interaction between man and surrounding environment. This includes waste management and pollution control.

Cultural Resource Management means the management and conservation of cultural resources, including archaeological finds, graves, historical buildings and other structures on military properties.

Ecological Management means the management of the natural environment including the interaction between plants, animals, humans, their actions (military activities) and other elements in their natural environment.

Environmental Education means making all members of the Department of Defence aware of their environmental responsibility.

Environmental Planning means the process of integrating environmental considerations into the planning and execution of military activities.

Environmental Research means the monitoring and observing of the environmental impacts of military activities so as to develop scientific guidelines for environmental planning and ecological management.

Environmental Training means a formal, structured process, which aims at enabling and empowering all members of the Department of Defence to execute military activities within the parameters of Defence policy, national and international environmental legislation, as well as in an environmentally sustainable and responsible manner.

Policy means a general course of action or proposed overall direction that is being pursued and which guides continuous decision-making.

Plan means a purposeful, projected strategy or design, often with co-ordinated priorities, options and measures that elaborate and implement policy.

Programme means a coherent, organised agenda or schedule of commitments, proposal instruments and/or activities that elaborate and implement policy.

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.

LIST OF ACRONYMS

ARMSCOR	- Armaments Corporation of South Africa
ATNS	- Air Traffic and Navigation Service
BNC	- Bi-National Commission
CARCOM	- Civil Aviation Regulation Committee
CCMS	- Committee on the Challenges of a Modern Society
CEC	- Committee for Environmental Co-ordination
CFC	- Chlorofluorocarbons
DEA&T	- Department of Environmental Affairs and Tourism
DME	- Department of Minerals and Energy
DOD	- Department of Defence
DPW	- Department of Public Works
DWAF	- Department of Water Affairs and Forestry
EE&T	

EIA	- Environmental Education and Training
EIP	- Environmental Impact Assessment
EMS	- Environmental Implementation Plan
ERF	- Environmental Management System
ESWG	- Environmental Review Forum
EWT	- Environmental Security Working Group
GSB	- Endangered Wildlife Trust
IMO	- General Support Base
ITAM	- International Maritime Organisation
LOAC	- Integrated Training Area Management
MIEM	- Law on Armed Conflict
NATO	- Military Integrated Environmental Management
NEMA	- North Atlantic Treaty Organisation
NGO	- National Environmental Management Act 107 of 1998
NQF	- Non-governmental Organisation
OAG	- National Qualifications Framework
PDSC	- Office of the Auditor-General
RDP	- Plenary Defence Staff Council
RFIM	- Reconstruction and Development Programme
SAAF	- Regional Facilities Interface Manager
SAASCo	- South African Air Force

	-
SABS	South African Aviation Safety Council
	-
SACAA	South African Bureau of Standards
	-
SAMOAC	South African Civil Aviation Authority
	-
SAN	South African Manual for Outdoor Advertising Control
	-
SANAE	South African Navy
	-
SANAP	South African National Antarctic Expedition
	-
SANDF	South African National Antarctic Programme
	-
SAPS	South African National Defence Force
	-
SAQA	South African Police Service
	-
SD	South African Qualifications Association
	-
SEWing Group	Strategic Direction
	-
SOFA	Strategic Environmental Working Group
	-
UNCED	Status of Forces Agreement
	-
	United Nations Conference on Environment and Development

EXECUTIVE SUMMARY

1. **Priorities: Does the EIP prioritise policies, plans and programmes that may significantly affect the environment?** The mandate and functions of the DOD are stated in [chapter 1](#) as sourced from the White Paper on Defence and the Defence Review. This mandate and associated functions as encountered in the Constitution are stated in addition. The specific references in the mandate that drive environmental responsibility in the DOD are also discussed. The role of ARMSCOR and its association with the DOD as well as its functions in terms of the environment are briefly discussed. Some indication is provided of the organisation in terms of the Environmental Services function responsible for planning, formulating policy, execution and monitoring of environmental management within the DOD.

2. **Policies, Plans & Programmes: Does the EIP systematically show how priority policies, plans and programmes will comply with NEMA Principles (Section 2) and any national norms and standards (Section 146(2) (b) (i) of the Constitution)? This section should include reference to current problems and constraints to achieving compliance.** In [chapter 3](#) the measures and mechanisms instituted by the DOD are evaluated against each of the [Section 2](#) Principles of NEMA. Where deficiencies were isolated in the process of evaluation, these were listed as capacity gaps and limitations in [chapter 2](#) and accordingly translated into appropriate recommendations in [chapter 4](#). All the policies, plans and programmes of the DOD were listed in [chapter 3](#) and those that foster the most significant potential for environmental

impacts were identified and condensed to conform to three of the primary systems within Defence i.e. prepare forces, support forces and employ forces. These policies, plans and programmes are discussed in the context of the associated system followed by a list of some of the potential environmental impacts specific to each system. Owing to the vast spectrum of potential environmental impacts encountered in the business of Defence, concepts such as Military Integrated Environmental Management (MIEM), Integrated Training Area Management (ITAM) and Facilities & Environmental Management Guidelines for the Operation Planning Process are cited as the collective measures and mechanisms employed to manage these impacts.

3. **Functions: Does the EIP show how the Department's functions (statutory authorisations or permits) are exercised to comply with environmental laws and any national environmental norms and standards (Section 146(2)(b)(i) of the Constitution)?** In [chapter 2](#) the EIP issues an overview of the measures and mechanisms that are in place to address national and international statutory requirements in terms of the environment. Once more, any capacity gaps and limitations in this regard were listed in [chapter 2](#) and accordingly translated into appropriate recommendations in [chapter 4](#).

4. **Implementation. Are actions to achieve compliance with the NEMA Principles, environmental laws and environmental standards under the Constitution, clearly described in terms of targets/outputs, time-frames, performance indicators and resources?** A section has been included in [chapter 1](#) to define the environmental management capacity of the DOD as an element of resources. AD actions contained in the EIP however, have been incorporated to allow for execution within the four-year time frame in which the first edition EIP is valid. Although the EIP process is most opportune in terms of incorporating measures and mechanisms for environmental management at a critical phase of transformation of the DOD, the process of transformation simultaneously creates uncertainties in such aspects as environmental capacity on the ground and available budget in the longer term.

5. **Performance Monitoring: Does the EIP clearly show how performance will be monitored?** Indicators for measurement of compliance, implementation and performance are to be developed as part of implementation of the EIP to transpire from such mechanisms as costing, Environmental Management System targets and objectives and three levels of auditing (internal and external). All of these actions are strongly recommended in [chapter 4](#).

6. **Co-operation: Does the EIP describe arrangements for co-operation with other national departments and spheres of government and specifically areas of co-operation – is it explicit? Are the co-operative governance mechanisms sufficient? Does the EIP describe the role of outside stakeholders and opportunities for participation?** [Chapter 2](#) deals with the aspect of external and internal relationships instituted by the DOD to address co-operative governance for the environment. The major capacity gap and limitation listed in this regard stems from the absence of the DOD as a member department of the Committee for Environmental Co-ordination (CEC). This is listed as a recommendation to secure re-admittance of the DOD to the CEC. The relationship between the DOD and the provincial departments are discussed in some detail and reference is made to liaison with local government.

7. **Integrated Environmental Management: Does the EIP describe how the objectives of chapter 5 of NEMA are being promoted?** The concept of MIEM advocated in the Strategy and Functional Strategies for Military Integrated Environmental Management (1992) as discussed in [chapter 1](#) already deals with the aspect of integrated environmental management. The EIP strongly re-inforces the objectives of this strategy throughout its content and translates these to the new force design and structure. The integration of environmental considerations in the process of decision-making is further secured in a recommendation that environmental responsibility be included in the management directives and performance agreements of all General Officers Commanding, Commanding Officers and Commanders in the DOD. The magnitude of such a recommendation demanded that in addition, the required capacity be developed within the organisation through accredited environmental education and training programmes in MIEM in order to empower commanders to exercise environmental responsibility.

8. **Commission for Sustainable Development: Does the EIP link with/include information from the annual national report on sustainable development to the UN CSD?** The link with Sustainable Development Indicators must be further developed preferably as part of the National Strategy in this regard. Sustainable Development and participation by DOD is however, mandated as one of the recommended actions in [chapter 4](#).

9. **Does the EIP for Defence Comply with any relevant EIP or EMP?** Following the completion of the earliest draft EIP of Departments of Land Affairs, Housing and EMP of Minerals & Energy, the Regional Communication Forums of Minerals & Energy have since been incorporated in the EIP for Defence as part of [chapter 2](#) (Institutional Arrangements) whereas no significant direct interactions between DOD and Land Affairs could be identified for purposes of the EIP for Defence. The relationship between the DOD and Land Affairs and the role of the Department of Public Works however, is expounded in [chapter 2](#).

INTRODUCTION

1. The National Environmental Management Act (NEMA) No 107 of 1998, which was promulgated by the Minister of Environmental Affairs & Tourism in January 1999, issues instruction to scheduled organs of the state to develop Environmental Implementation Plans (EIP's) and Environmental Management Plans (EMP's). The purpose of these plans is to co-ordinate and harmonise environmental policies, plans, programmes and decisions of the various national departments, provincial and local spheres of government that exercise functions that effect the environment or are entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable environment. The Department of Defence (DOD) is amongst these scheduled national departments and was destined therefore, to comply with the stipulations of NEMA by preparing an EIP against the 31 August 2000 deadline.

2. A strategy toward producing an EIP for Defence was designed and ultimately approved by the Plenary Defence Staff Council (PDSC) on 8 November 1999. The PDSC was required to approve the proposed strategy for development of an EIP for Defence in terms firstly, of the establishment of a Strategic Environmental Working Group for Defence (SEWing Group), secondly of the nomination of at least one designated representative by each corporate division to serve at SEWing Group and thirdly, the proposed proceedings of SEWing Group that would culminate amongst others in the First Edition EIP for Defence. The strategy toward the development of an EIP for Defence was designed to demonstrate predetermined features that would facilitate the assimilation of NEMA into contemporary defence policy and in addition, secure future implementation of measures for environmental performance.

3. The primary product of the strategy i.e. the First Edition EIP for Defence, is to represent an instrument for the promotion of co-operative governance around environmental management. It takes the first steps in the quest to align environmental management between the DOD and other national departments as well as provincial government. The ultimate pursuit would be to secure protection of the environment within the context of the national objectives for sustainable development once the national strategy in this regard has been decided. Future iterations of the EIP though, is expected to be more focused on this issue.

4. The EIP for Defence assumes a strategic perspective. Recommendations therefore, are not aimed at single, specific or localised objectives for environmental management as it pertains to Defence as a national department. Each action advocated in the final chapter has indeed been intended to mandate at the onset of the implementation phase, the development and pursuit of several related objectives aimed at achieving the single aim encapsulated by respectively recommended actions. The primary motive sustained throughout the document is to address the implementation of measures and mechanisms of environmental management to *enable* sustained environmental performance in accordance with the provisions of NEMA. The issue of sustained environmental performance *per se* is addressed separately and is of greater consequence to the implementation phase rather than the process of mandating such action by which it is preceded in the First Edition EIP for Defence.

5. In preparing the EIP it was considered important to mainstream the actions advocated in the final plan by means of a systematic approach toward implementation in all sectors of Defence. The EIP itself promotes the establishment of an environmental management system (EMS) for Defence as an explicit action whereas the preceding strategy for preparing the EIP for the department already secures the foundations for such a system through decisive measures. By creating the basis for systematic implementation prior to finalising the plan itself, it was endeavoured to foster a medium, which would both facilitate and ensure perpetuated execution of the First Edition EIP for Defence.

CHAPTER 1:
MANDATE AND FUNCTIONS INTRODUCTION

1. Introduction.—This chapter describes the mandate of Department of Defence (DOD) and lists the core functions of the department. The priority functions, in terms of their effect on the environment, are identified and briefly described based on the DOD Level 1 Plan and the Medium Term Expenditure Framework for the department. A brief description on the general structure of the department as well as its mandate and structure with respect to environmental management is also provided.

2. Description of mandate in respect of core functions.—The Constitution, Act [108 of 1996](#) (clause 200 to 204), the Defence Act [44 of 1957](#) as amended, the White Paper on Defence and the Defence Review mandate the DOD. These laws and policies both direct and guide the execution of the defence function of the DOD and the South African National Defence Force (SANDF). All departmental policies and plans are derived from and executed in accordance with such direction.

3. The primary object of the DOD is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force.

Constitution of the Republic of South Africa, Act [108 of 1996](#)

4. According to the Constitution:

- a. "The defence force is the only lawful military force in the Republic",
- b. "The defence force must be structured and managed as a disciplined military force",
- c. "The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force",
- d. "The President as head of the national executive is Commander-in-Chief of the defence force, and must appoint the Military Command of the force", and
- e. "Command of the Defence Force must be exercised in accordance with the directions of the Minister of Defence under the authority of the President".

Defence Act [44 of 1957](#), as amended

5. The Defence Act regulates and provides for the defence of the Republic, the powers and responsibilities of the Chief of the SANDF and the Secretary for Defence and for matters incidental thereto.

White Paper on Defence, 1996

6. The White Paper on Defence makes provision for:

- a. The overarching challenge of transforming defence policy and the armed forces in the context of the Constitution, national security policy, the Reconstruction and Development Programme (RDP), and international law on armed conflict.
- b. Civil-military relations, with reference to the constitutional provisions on defence, transparency and freedom of information, defence intelligence, the structure of the

DOD, military professionalism, civic education, responsibilities of government towards the SANDF and the rights and duties of military personnel.

- c. The external and internal strategic environment and the importance of promoting regional security.
- d. The primary and secondary functions of the SANDF.
- e. Human resources issues, including integration, maintenance of an all-volunteer force, rationalisation and demobilisation, equal opportunity, affirmative action, non-discrimination and gender relations and defence labour relations.
- f. Budgetary considerations.
- g. Arms control and the defence industry.
- h. Land and environmental issues.

Defence Review, 1998

7. The Defence Review addresses the following issues:

- a. Options with respect to the size, roles and structure of the SANDF.
- b. Addresses the implications of the core force approach for the size, doctrine, posture, weaponry, equipment and other features of the SANDF.
- c. Addresses the strategic and technical implications of the constitutional provision that the SANDF shall be primarily defensive in the exercise or performance of its powers and functions.
- d. Deals with the implications of the principles of defence in a democracy for the orientation and posture of the SANDF.
- e. Presents detailed and well-motivated budgetary forecasts and proposals, specific policies regarding the provisioning of logistic resources and the identification of appropriate technology to optimise the cost-effectiveness of the core force.
- f. Deals with the size and structure of the Part-time Component.
- g. Includes an examination of prevailing conditions in the SANDF with the view to rationalise current spending, eliminating waste, unnecessary duplication and determining the most cost-effective means of managing human and material resources.
- h. Provides details on the rationalisation, redesign and right sizing of the SANDF given the absence of a foreseeable conventional military threat.
- i.

Outlines a formula and guidelines for ensuring that the former statutory and non-statutory forces are equitably represented in the SANDF, in the context of demobilisation and rationalisation.

8. Prioritisation and description of core functions.—The primary function of the department is to defend South Africa against external military aggression, to protect the sovereignty and the territory and the people of South Africa in accordance with the Constitution as well as the principles of international law regulating the use of force, in order to secure an environment of peace and prosperity for all. In order to execute this task, the DOD requires a variety of resources including land to accommodate infrastructure, to test weaponry and to train personnel.

9. Due to the unique capability of the DOD, the Constitution and the White Paper on Defence in addition, provides for the employment of the department in a range of secondary functions and activities such as:

- a. Service in compliance with the international obligations of the Republic with regard to international bodies and other states such as Regional and International Peace Support Operations.
- b. Service in the preservation of life, health or property such as search and rescue operations, disaster relief and evacuation of South African citizens from areas of high-threat.
- c. Service in the provision or maintenance of essential services which have been temporarily disrupted and where the capacity of the relevant civil authorities is exceeded.
- d. Service in upholding law and order in the Republic in co-operation with the South African Police Service (SAPS) under circumstances set out in legislation where the SAPS is unable to maintain law and order on its own such as Border Protection and Control as well as operations in terms of the National Crime Prevention Strategy, including Area Protection.
- e. Service in support of any department of state for the purpose of socio-economic upliftment. Although the DOD is not mandated for socio-economic upliftment, the department may be instructed by the Government to contribute to such ends.

10. The core functions of the DOD all have some effect on the environment as it includes activities such as military training, the execution of military operations and exercises. The functions mentioned and discussed in this section are very broad and therefore the impacts are diverse and differ for each of these functions. The impact of military activities which have been identified as having an effect on the environment are however discussed in [Chapter 3](#).

11. Transformation.—In the new South Africa, national security is no longer viewed as a predominantly military and police problem. It has been broadened to incorporate political, economic, social and environmental matters. At the heart of this new approach is a paramount concern with the security of people. This new approach to security does not imply an expanded role for the armed forces. The SANDF may be employed in a range of secondary roles as mentioned previously, but its primary and essential function is service in defence of South Africa.

12. The SANDF, therefore, remains an important security instrument of last resort but is no longer the dominant security institution. The responsibility for ensuring the security of South Africa's people is now shared by many departments of government and ultimately vests in Parliament. In the light of these democratic changes, the new strategic international, regional and domestic environments and the history of the armed forces in the country, the formulation of a new defence policy and the transformation of the DOD was necessitated.

13. The transformation of the DOD takes place against the broader backdrop of the transformation process in South Africa generally. This includes aspects such as:

- a. Civil-military relations including constitutional and legal transformation and mechanisms for oversight,
- b. Normative and cultural transformation, and
- c. Organisational restructuring.

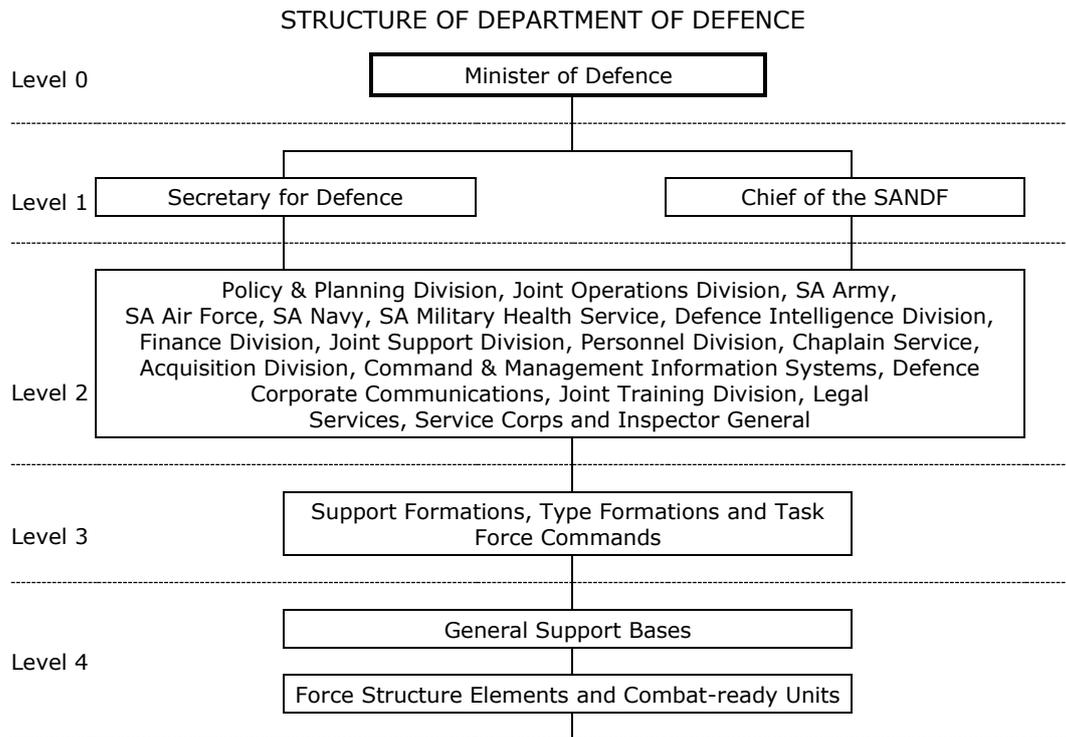


Figure 1: Structure of the DOD

14. Constitution mandates the Minister of Defence to exercise control over and be accountable for the entire defence function (level 0). Government established civil control over the armed forces through the establishment of the Secretariat to support the Minister of Defence.

15. The DOD consists of a Defence Secretariat headed by the Secretary for Defence and the SANDF headed by the Chief of the SANDF (level 1). The Secretary exercises his functions and powers as Head of the Department and Accounting Officer with reference to the SANDF by providing C SANDF with comprehensive instructions for the issuing of orders and directives and the giving of commands. C SANDF is responsible for issuing such orders and commands and the giving of command, ensuring that such orders and commands are complied with, seeing to the execution of all budgetary programmes and supplying information and inputs with regard to the SANDF to the Secretary. Together the Secretary for Defence and C SANDF and their respective divisions (level 2) form the integrated head office.

16. The level 3 intermediate structures of the organisation consist of type formations responsible for the preparation and development of combat-ready units, support formations responsible for providing support to type formations and General Support Bases (GSB'S) and task forces responsible for the employment of combat-ready units. The DOD Logistic Support Formation has additional regional structures called the Regional Facilities Interface Management (RFIM) offices responsible for providing advice on and monitoring facilities and environmental matters in each of the nine regions. These offices are seated in Cape Town, Bloemfontein, Durban, Pretoria and Pietersburg.

17. The level 4 structures are the General Support Bases which provide support at unit level for units, force structure elements and satellite offices in a specific geographical location.

Constitution of the Republic of South Africa, 1996

18. Description of mandate in respect of environmental management.—The Constitution mandates responsible environmental management to all citizens of the Republic and states that, “everyone has the right—

- a. to an environment that is not harmful to their health and wellbeing; 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”.

White Paper on Defence, 1996

19. Chapter 8 of the White Paper on Defence relates to Land and Environmental Issues, mandating the environmentally responsible management of the environment under the control of the DOD. It states that the Minister of Defence, as well as the Chief of the SANDF “are responsible for ensuring the exercise of proper ecological management and control of military properties”. The responsibility and accountability to ensure that “the planning and execution of military activities will take account of the environmental implications and not jeopardise the long-term potential of the land and other natural resources” are directly transferred to Commanding Officers of military installations.

Defence Review, 1998

20. Chapter 12 of the Defence Review, 1998 on Land and Environment, addresses the environmentally responsible management of DOD controlled land in terms of clean-up of training areas, graves and burial sites, utilisation of external expertise, multiple use of facilities and disposal and closure of defence facilities.

Broad Strategy and Functional Strategies for Environmental Services in the SANDF, 1992

21. This broad strategy and functional strategies for Environmental Services Functional strategies on Environmental Planning, Environmental Research, Environmental Education & Training, Base Environmental Management, Ecological Management and Cultural Resource Management serves as the basis for the development and implementation of Environmental Services in the DOD. It was developed in 1992 to direct the environmental function in the DOD through the development of policies and capacities in terms of functional areas. Actions recommended have led to the development monitoring and compliance mechanisms.

22. Policy framework.—Defence policy on the environment is consistent with national policy and includes the following guidelines:

- a. the protection of species and habitats and the conservation of biodiversity and natural resources;
- b.

the protection of the environment against disturbance, deterioration, poisoning or destruction as a result of human activity and structures;

- c. the maintenance and improvement of environments which contribute to the quality of life of South African citizens; and
- d. the provision of a healthy working environment for its personnel.

23. Guiding principles for environmental management.—The DOD accepts the responsibility of stewardship for the environment under its control and within which it operates.

24. Land under military control is considered a National Asset. It is entrusted to the department by the nation and should therefore be used and managed wisely for as long as it is required for military purposes.

25. The handling of environmental matters should take place within the parameters of international, national and regional agreements, legislation and regulations, and should support national environmental objectives as well as the military mission.

26. The emphasis on environmental management should be on integrating environmental considerations into all military planning and activities, which could have an impact on the environment.

27. Every commanding officer is responsible to ensure that the activities, which take place under his/her control are carried out in an environmentally responsible manner.

28. Defence will have to accept responsibility for the environmental impacts of its activities over their entire life cycle.

29. Military utilisation of facilities should take place in such a way that the long-term suitability of these facilities for sustained military use as well as other use is not jeopardised.

30. Maximum use is to be made of external expertise.

31. All military properties are in principle considered as multiple-use conservation areas.

32. Although military properties are primarily used for military purposes, its utilisation for other compatible land-uses should be promoted.

33. Environmental policy statement.—The draft Corporate Environmental Policy Statement for Defence states that:

The Department of Defence shall, in compliance with the environmental obligations placed upon it by the Constitution, national and international regulatory provisions and within the constraints imposed from time to time by nature of its business,

protect the environment through pro-active measures of Military Integrated Environmental Management;

accept responsibility for use of the environment entrusted to it;

minimise the impacts of its operations on the environment by means of a programme of continual improvement;

promote open communication on environmental issues to all interested and affected parties;

train and motivate its members to regard environmental considerations as an integral and vital element of their day-to-day activities

34. Mission of environmental services.—The mission of Environmental Services is to ensure the environmentally sustainable management of military activities and facilities.

35. Structure of the environmental services function.—The execution of the environmental function takes place at levels 2 to 4 of the department’s organisational structure. At Joint Support Division (Directorate Facilities) on level 2, the sub-directorate Environmental Services consists of four dedicated environmental posts responsible for the overall management of the environmental function as well as developing, formulating and promulgating environmental policies, procedures and guidelines.

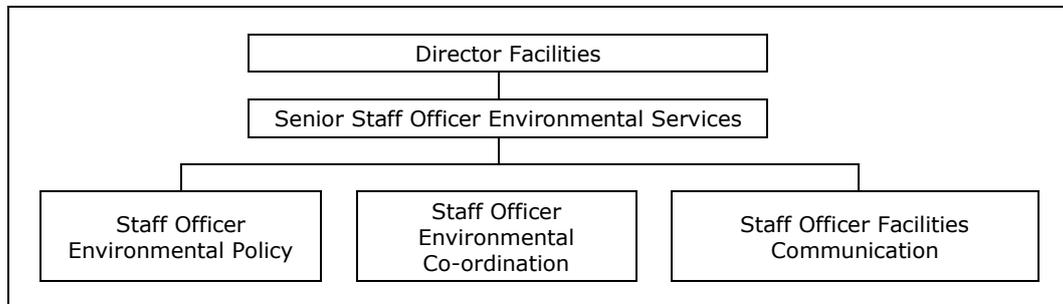


Figure 2: Structure of the Environmental Sub-directorate at Joint Support Division

36. At the DOD Logistic Support Formation on level 3, a section Specialist Environmental Services consists of 9 specialist posts namely:

- a. General Specialist Environmental Services,
- b. Environmental Planning Services,
- c. Botanical Services,
- d. Zoological Services,
- e. Waste Management Services,
- f. Pollution Control Services,
- g. Soil Science Services,
- h. Environmental Education and Training Services, and
- i. Cultural Resource Services.

37. This capability is extended at regional level by two dedicated environmental posts at each of the five RFIM offices, a further ten posts. These qualified personnel are responsible for the implementation and monitoring of military integrated environmental management at regional level. The regional office in Cape Town serves the Western Cape Province, the Bloemfontein office serves Northern Cape Province and the Free State, the Durban office serves KwaZulu-Natal and the Eastern Cape, the Pretoria office serves Gauteng and North West Province and the Pietersburg RFIM office serves Northern Province and Mpumalanga.

38. At level 4, the GSB’s will have an environmental service centre of at least one dedicated environmental officer per GSB. This implies that at least 24 qualified personnel will be responsible to support units, force structure elements and satellite offices regarding the management of their

environment. Therefore, to summarise the DOD has a total of 47 dedicated environmental posts, supplemented by staff to physically execute the environmental programmes.

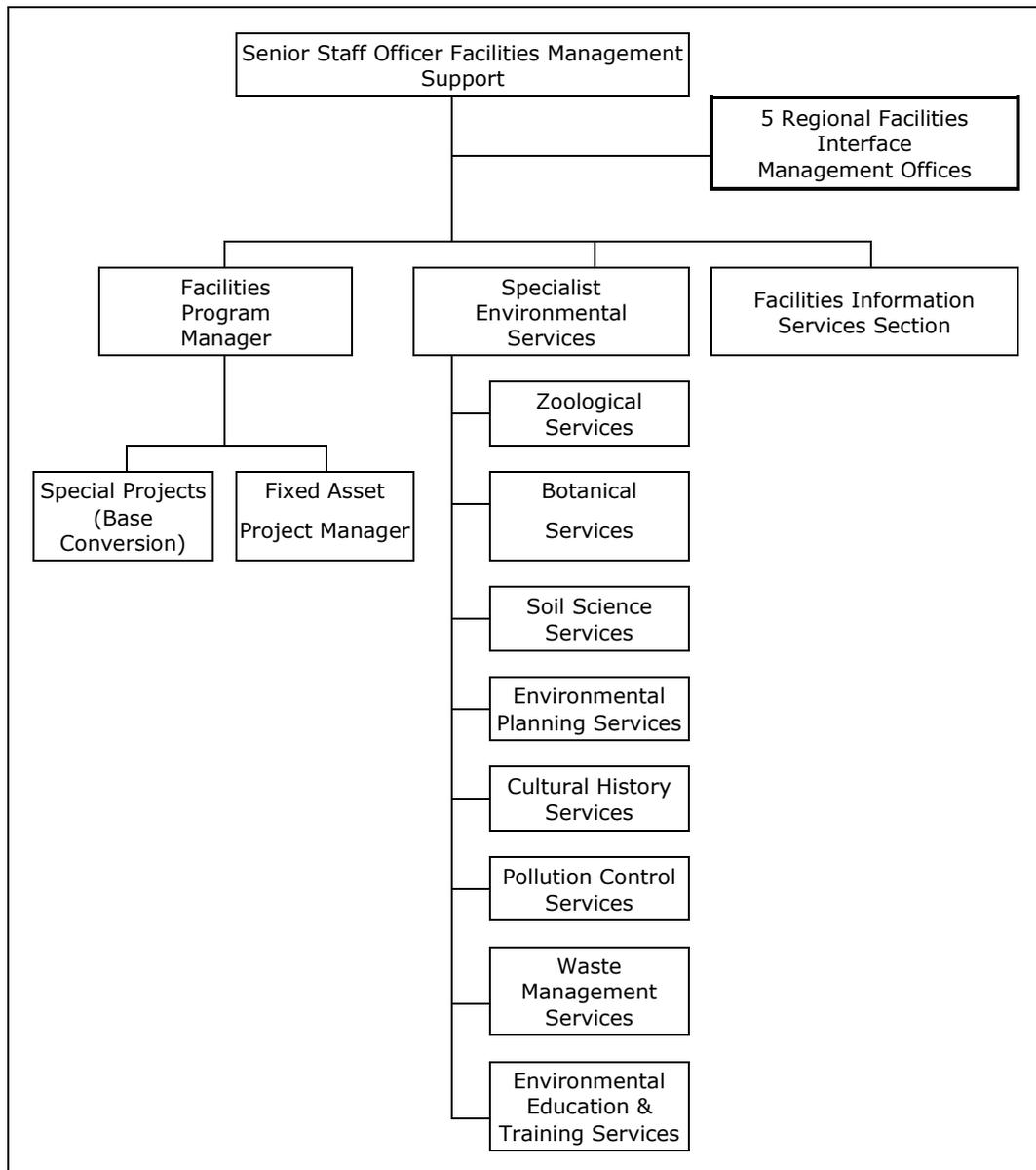


Figure 3: Structure of the Environmental Section at the DOD Logistic Support Formation

39. Role of armscor. The Armaments Corporation of South Africa (ARMSCOR) is responsible for meeting the needs of the DOD and other government departments of the Republic of South Africa in terms of armaments and related products and services to maintain key industries and technologies. It is also responsible to market and promote the local defence-related industry.

40. ARMSCOR provides specialist guidance to clients who need cost-effective solutions without jeopardising the quality or capability of products and systems. It also offers clients a range of government-to-government contracting opportunities, development of technologies, test and evaluation and defence industrial participation. Furthermore, ARMSCOR is responsible for marketing and selling of surplus equipment for the DOD.

41. ARMSCOR's approach to its environment calls for continuous improvement in environmentally managed activities such as waste minimisation, pollution prevention and conservation. It is respected for its scientific approach to environmental management and

conservation. A corporate culture of responsibility towards the environment, encompassing all the facilities within the ARMSCOR group, is now a well-established business philosophy.

42. Being fully aware of its environmental responsibilities, ARMSCOR is committed to the conservation of sites under its control. Special emphasis is placed on international protocols and conventions regarding environmental issues as well as meeting all future environmental legal requirements. ARMSCOR continuously strives to monitor and manage its activities to ensure that these are adhered to. Its activities are also aimed at educating its employees in environmental consciousness.

43. A holistic environmental approach addresses the entire environmental spectrum, people, plants, animals, soil, water and air, together with archaeological and cultural historical aspects.

CHAPTER 2: INSTITUTIONAL ARRANGEMENTS

1. Introduction.—The institutional relationships, with respect to environmental management, between the DOD and other organs of state are presented in a diagrammatic format. These relationships focus on the identified priority functions of the DOD in terms of their effect on the environment. The external relationships have been separated from those internal to the department for purposes of discussion. Internal and external relationships have been distinguished as those relating to environmental management and those that are necessary to exercise the priority functions of the department.

2. This chapter also identifies and briefly describes the environmental legislative provisions governing the priority functions of the DOD, together with a brief description of the management systems and procedures that have been implemented to ensure compliance. An indication of the allocated responsibilities and available capacity to implement the mechanisms, management systems and procedures for co-operative governance are provided, identifying possible capacity caps or limitations.

3. External co-operative governance relationships.—The external co-operative governance relationships illustrated in Figure 1 are formal mechanisms of liaison between the DOD and other departments or spheres of government relating to environmental management as well as those relationships that are necessary to exercise the department's priority function. These relationships are discussed in more detail in the following section.

Figure 1
External Co-operative Governance Relationships for the DOD



4. Mechanisms and procedures for co-operative governance: external co-operative governance relationships.—The DOD has in the past, established informal liaison with a number of national and provincial departments relating to environmental management activities on DOD controlled properties. In this section however, only the formal mechanisms and procedures for co-operative governance will be discussed.

5. The following external co-operative governance relationships are formal co-ordinating mechanisms and procedures for co-operative governance within the DOD relating to environmental management:

a.

Department of Environmental Affairs and Tourism (DEA&T). The DOD has the following co-operative governance relationships with DEA&T:

i.

Committee for Environmental Co-ordination (CEC). In previous years, the DOD was represented on the CEC and its various sub-committees. This representation served extensively as the primary mechanism to ensure inter-departmental co-ordination and harmonisation of policies, legislation and actions relating to the environment. This advantage was however, revoked by the provisions of NEMA in which the DOD was not scheduled as a representative on the CEC. Presently, the department must rely on *ad hoc* and isolated instances of liaison with other departments and organs of state to satisfy requirements for co-operative governance.

ii.

DOD Environmental Awards Programme. This programme was established in the early 1980's and provides for an effective monitoring mechanism. A member of DEA&T is represented on the national adjudication panel as an adjudicator of the Ecological Management section of this programme. This proves to be an effective mechanism to formally liaise with DEA&T in order to address environmental management matters at the level of execution.

b.

Department of Arts, Culture, Science and Technology. The DOD has the following co-operative governance relationships with the Department of Arts, Culture, Science and Technology:

i.

South African Museums Association. The Staff Officer Cultural Resource Services of the DOD Logistic Support Formation represents the DOD and is the Vice Chair of the Gauteng North Committee. The interests of this association are founded on developmental issues concerning cultural resources as defined in the concept of museums. Meetings are convened monthly. The DOD's involvement in this association is considered to be an effective co-operative governance mechanism.

ii.

Regional Heritage Councils. These regional councils are established as part of the SA Heritage Resource Agency to manage and conserve heritage resources at regional level. At present the KwaZulu-Natal Heritage Council is active but the DOD is not yet involved in the proceedings of the council. The DOD would be pursuing representation on all of these councils insofar as heritage resources on DOD controlled properties are concerned.

iii.

Commonwealth War Graves Commission. This commission is responsible for the management of the graves at Delville Wood. A DOD representative serves on the commission to oversee the management of the graves of South African soldiers who perished in the battle. The funds for the maintenance of these graves are provided by the Department of Public Works (DPW).

c.

Department of Minerals & Energy (DME). The DOD has the following *ad hoc* co-operative governance relationships with the DME:

i.

Regional Communication Forums. The Regional Communication Forums are convened by the regional offices of the DME within the nine regions to facilitate communication between the different authorities and concerned parties on matters regarding environmental policy, legislation, and other matters relating to mining and prospecting. The forums meet four times per year in each region and representation on the forums may include the relevant national and provincial government departments, local authorities and other affected parties. At present the DOD does not actively participate in this forum, but would be pursuing representation insofar as DOD controlled properties are concerned.

d.

Department of Water Affairs and Forestry (DWAF). The DOD has the following *ad hoc* co-operative governance relationships with the DWAF:

i.

Working for Water Programme Steering Group. With the inception of the Working for Water Programme, Defence was represented at the national Steering Group. Involvement on behalf of Defence was founded on the fact that this department presides over an extensive portfolio of land that could be made available consistent with the objectives of the programme. Proceedings of the Steering Group however, ceased during the course of 1999 and further liaison on behalf of Defence therefore, continues on an informal basis with elements of this programme that are still underway with the provincial governments.

e.

Provincial Governments. The DOD has the following co-operative governance relationships with the different provincial governments:

i.

DOD Regional Environmental Advisory Forums. The DOD Regional Environmental Advisory Forums were established in 1993. However, due to the transformation process within the DOD and associated staff shortages only a number of these forums continued to operate. At present, only two of the nine forums are currently active and operate effectively, namely the Western Cape and Northern Province Regional Environmental Advisory Forums. The primary objective of these forums is to involve Provincial Authorities in implementing and promoting Environmental Management at military facilities at regional level as well as to provide these authorities with insight into defence activities. The forums in the remaining seven provinces are in the process of being re-established. Forums are chaired by the Senior Staff Officers at the Regional Facilities Interface Management (RFIM) Offices in the respective regions. Other representatives consist of the General Support Base (GSB) Environmental Managers, the Animal Health and Environmental Health officers in the respective regions, the Regional Directors and officials of the respective Provincial Environmental Authorities, representatives of other departments, non-governmental organisations and academic institutions. These forums meet quarterly or more frequently if required and address the following issues:

- (1) Regional strategic issues regarding military environmental issues.
- (2) Promoting the involvement of external expertise in military Environmental Management.
- (3) Co-ordinating interdepartmental matters regarding Environmental Management.

f.

Non-Governmental Organisations (NGO's). The DOD has the following co-operative governance relationships with NGO's:

i.

DOD Environmental Awards Programme. Seven sub-committees constitute the national adjudication panel and are responsible for the adjudication of the seven categories of the DOD Environmental Awards Programme. The alliances forged with external organisations that are formally involved in the programme are significant insofar as environmental management information is exchanged amongst the organisations concerned. The moderating influence of alliances outside of the department in addition, serves as a prominent benchmarking mechanism. Representatives on these panels consist of various corporate DOD environmental services personnel and representatives of the following organisations:

- (1) ESKOM
- (2) Caltex Oil Pty Ltd
- (3) World Wildlife Fund SA
- (4) SA National Parks
- (5) Endangered Wildlife Trust
- (6) International Institute for Energy Conservation
- (7) Environmentally Friendly Goods Trading Company
- (8) Wildlife and Environment Society of SA

(9) National Botanical Institute of SA

(10) Academic Institutions

ii.
South African Museums Association School of Conservation. The Staff Officer Cultural Resource Services of the DOD Logistic Support Formation represents the DOD. The interests of this organisation concern the cultural resource education and conservation of museum related artefacts. Meetings are convened monthly. The DOD's involvement in this association is considered to be an effective co-operative governance mechanism.

iii.
Endangered Wildlife Trust (EWT). The DOD has been an Honorary Fellow of EWT since 1980.

g. Local Governments. The DOD has no formal co-operative governance relationships with local government, however, informal liaison regularly takes place with regard to environmental matters and compliance with local bylaws. Such relationships could be encouraged through participation in the DOD Regional Environmental Advisory Forums.

6. The following external co-operative governance relationships are formal co-ordinating mechanisms and procedures for co-operative governance within the DOD relating to the exercising of priority functions:

a. Department of Agriculture. The DOD has the following co-operative governance relationship with the Department of Agriculture:

i.
Inter-Governmental Technical Committee on Agriculture Veterinary Workgroup. This committee is active and the Director Animal Health of the SA Military Health Service represents the DOD on this workgroup.

b. Department of Safety and Security. The DOD has the following co-operative governance relationship with the Department of Safety and Security:

i.
SAPS Forum for Veterinary Matters. This forum is active and the Director Animal Health of the SA Military Health Service represents the DOD on this forum regarding the veterinary treatment of the animals in service of the SAPS.

c. Department of Health. The DOD has the following co-operative governance relationship with the Department of Health:

i.
National Environmental Health Forum. This forum is active and the Director Environmental Health of the SA Military Health Service represents the DOD on this forum.

d. Department of Public Works (DPW). The DOD liases with DPW on all matters regarding facilities. The DPW in turn liases with the Department of Land Affairs (DLA) on these matters concerning DOD controlled property. The DOD therefore, has no direct link to DLA. In this regard, the DOD has the following co-operative governance relationship with the DPW:

i.

DPW/DOD Strategic and Operational Level Liaison Forums. These forums were established in 1999. The Chief of Logistics and the Senior Staff Officer Facilities Management Support at the DOD Logistic Support Formation as well as the Director Facilities at Joint Support Division represent the DOD at these inter-departmental meetings. These forums are responsible for the facilitation of discussion and consensus on policy, planning and contentious matters with regard to both Departments on a strategic and operational level. Meetings are convened quarterly.

e.

Department of Trade and Industry and Department of Foreign Affairs. The DOD has the following co-operative governance relationship with the Departments of Trade and Industry and Foreign Affairs:

i.

Conventions on Weapons of Mass Destruction. This committee is active and the Chemical & Biological Defence Advisor of the SA Military Health Service represents the DOD on these meetings.

f.

Department of Transport. The DOD has the following co-operative governance relationships with the Department of Transport:

i.

South African Aviation Safety Council (SAASCo). Two members of the SA Air Force represent the DOD at this statutory council, which was instated by the Department of Transport. The interests of this council surround matters concerning national aviation safety. The subcommittee of this council for aviation hazards posed by wildlife addresses environmental management of airfields and our airspace to control collisions of aircraft and wildlife.

ii.

South African Air Force/South African civil Aviation Authority/Air Traffic and Navigation Services (SAAF/SACAA/ATNS) Executive Committee. Six members of the SAAF present the DOD at this committee. The interests of the committee surround matters concerning national aviation. A sub-committee of this forum has been established to consider issues pertaining to aviation safety.

iii.

Civil Aviation Regulation Committee (CARCOM). One member of the SAAF presents the DOD at this committee. The interests of the committee surround matters pertaining to aviation regulation. This committee is an advisory body to the Commissioner of the SA Civil Aviation Authority.

g.

Department of Environmental Affairs and Tourism (DEA&T). The DOD has the following co-operative governance relationship with DEA&T:

i.

South African National Antarctic Programme (SANAP) Agreement. The SA Military Health Services has an agreement entitled the SANAP Agreement that entails regular checking and maintenance of medical equipment used at bases such as South African National Antarctic Expedition (SANAE).

7. Internal relationships.—The internal relationships illustrated in Figure 2 are formal mechanisms of co-operation and liaison between the different corporate divisions and functions within the department. These relationships are discussed in more detail in the following section.

8. Mechanisms and procedures for co-operative governance: internal environmental co-ordinating mechanisms.—The following are formal co-ordinating mechanisms for internal relationships within the DOD relating environmental management:

a.

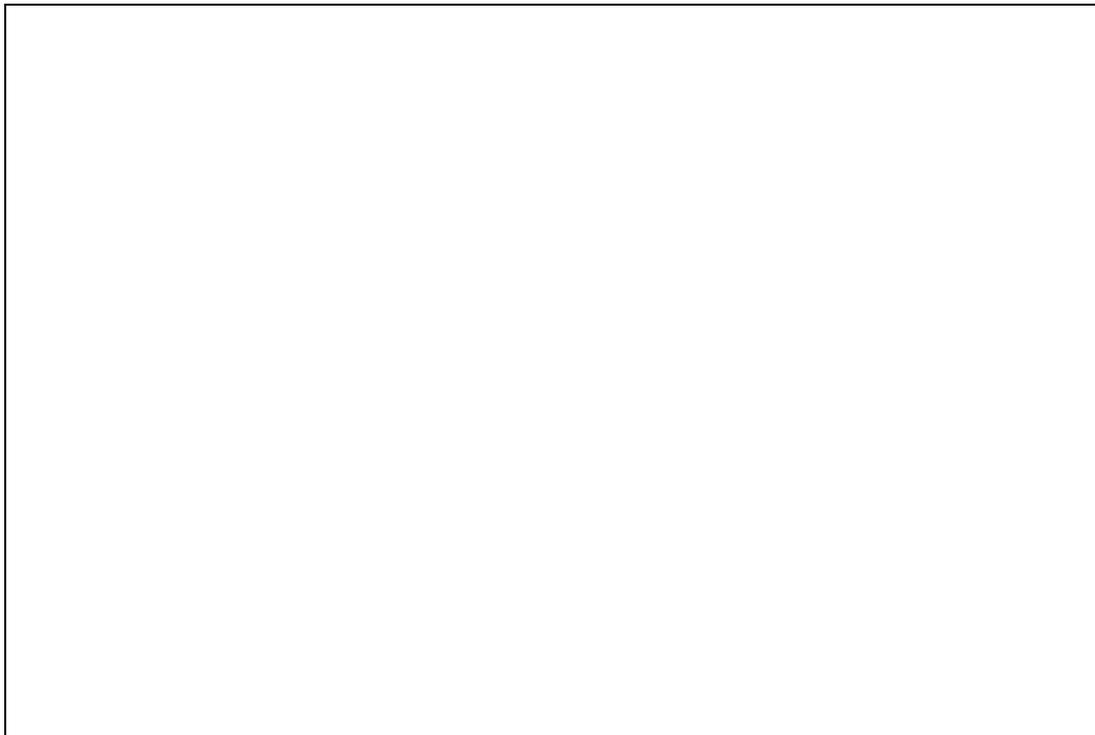
Strategic Environmental Working Group for Defence (SEWing Group). This working group is responsible for the development of the Environmental Implementation Plan for the department and will be dissolved on publication of the EIP. The working group is chaired by the Deputy Director Land, Facilities and Environmental Policy of the Policy and Planning Division. All the corporate divisions are represented on this working group. The Environmental Review Forum will replace this working group after publication of the EIP. The proceedings of this working group have been very successful as it was responsible for the development of a comprehensive and user-friendly First Edition EIP for Defence.

b.

DOD Environmental Services Steering Group. This steering group is responsible for ensuring the overall co-ordination of Environmental Services in the DOD and is chaired by the Senior Staff Officer Environmental Services of the Joint Support Division. Other representatives consist of the members of the Environmental Services section of the DOD Logistic Support Formation, the Animal Health and Environmental Health directorates of the SA Military Health Services and the five RFIM Offices. The forum was established in 1989 and is inactive at present due to the transformation process. This forum meets quarterly or more frequently if required to do so and addresses the following issues:

- i. Overall progress with departmental Environmental Services plans.
- ii. New developments in the field of Environmental Services.
- iii. Specific problem areas regarding Environmental Services.
- iv. Co-ordinate aspects of common concern regarding Environmental Services amongst various role players.

Figure 2
Internal Relationships for the DOD



c.

DOD Environmental Working Groups. Five of these working groups are responsible for co-ordinating Environmental matters between base and regional levels in the five regions and are chaired by the Environmental Management Staff Officers at the respective regions. Other representatives are the GSB Environmental Managers, the Animal Health and Environmental Health officers in the respective regions. These working groups are new internal mechanisms and will be active as soon as the relevant posts have been staffed. These forums will meet monthly or more frequently if required to do so, to address the following issues:

- i. Progress with Environmental Management Programmes.
- ii. Specific problem areas with regard to Environmental Management.
- iii. New requirements with regard to Environmental Management.
- iv. Co-ordinate Environmental Management matters between bases on an operational level.

d.

Environmental Review Forum (ERF). The ERF will be established in 2001 following publication of the First Edition EIP for Defence. This forum will be responsible for designing and developing an Environmental Management System (EMS) for Defence. Once the EMS is established, the forum will assume a more traditional role of reviewing the department's environmental performance. The Senior Staff Officer Environmental Services at Joint Support Division will chair the forum and all the corporate divisions will be represented on the forum.

9. International relationships.—RSA-USA Bi-National Commission. As part of the RSA-USA Bi-National Commission (BNC), a Defence Committee was established in 1997. One of the Working Groups of the Defence Committee was constituted by late 1997 as the Environmental Security Working Group (ESWG). The object of the ESWG is to observe bi-lateral development of Military Integrated Environmental Management projects through the exchange of information and capacity.

10. The ESWG is co-chaired respectively by SA and USA military environmental functionaries whilst project teams for the joint projects undertaken as part of the proceedings of the ESWG are constituted of expertise extracted from both nations. The ESWG convenes annually and otherwise makes use of the electronic media to maintain constant communication. To date the ESWG has prospered in its objectives having completed three prominent bi-lateral projects, *viz* manuals on Integrated Training Area Management (ITAM), Base Conversion and Facilities Website Development. Future bi-lateral projects include *inter alia* a manual on environmental education and training for military commanders and environmental considerations in the operational planning process.

11. Compliance with environmental legislative provisions.—The DOD is subject to governance by civil society represented by an elected legislative. The department in this sense, is subject to all legislation issued by government as well as any national norms and standards fostered by civil society in the spirit of healthy civil-military relations to which the department subscribes in no uncertain terms. Therefore, the DOD will apply all reasonable practicable means to comply with all relevant environmental legislative provisions that have a bearing on it including the legislative provisions as listed in Table 1 and 2.

12. The responsibility for the environmental, health and safety consequences of any DOD policy, plan, programme, project, product, process, service or activity exists throughout its lifecycle.

13. The DOD has established an environmental policy capacity at corporate level (see the section on the structure of the Environmental Services organisation) to ensure compliance through

the development, implementation and monitoring of internal environmental policy based on national and international legislative provisions.

14. In order to remain current with environmental legislative provisions, the department has acquired the services of an external consultant to establish and maintain a corporate database on all international, national and provincial environmental legislation as well as any relevant norms and standards. This database is accessible to all personnel within the department through an internal local area network.

15. Additional special management mechanisms and procedures have been implemented to ensure compliance with national and international environmental legislation. These management systems and procedures for compliance have all been implemented except where indicated otherwise. These include the following:

Table 1: National Environmental Legislative Provisions governing the DOD.

Ser No	National Legislation with Environmental Implications	Management Systems and Procedures for Compliance
	a	b
01	Advertising on Roads and Ribbon Development Act No 21 of 1940 as it relates to the display of advertisements.	<ul style="list-style-type: none"> The South African Manual for Outdoor Advertising Control (SAMOAC) is applied to advertising requests on DOD properties.
02	Animal Health Act No 35 of 1984 as it relates to the promotion of animal health, and the control of animal diseases.	<ul style="list-style-type: none"> A corporate Animal Health Service capacity exists to ensure the implementation of this Act. A policy directive regarding Animal Health Services in the SANDF exists. Regional Animal Health Service capacities exist to ensure the promotion of animal health and the control of animal diseases. These capacities are represented at the Regional Environmental Advisory Forums to provide expert advice regarding game management and to monitor the culling and removal of game on DOD properties.
03	Antarctic Treaties Act No 60 of 1996 as it relates to activities carried out which could have an effect on the Antarctic environment.	<ul style="list-style-type: none"> The Department of Environmental Affairs and Tourism is consulted in this regard.
04	Atmospheric Pollution Prevention Act No 45 of 1965 as it relates to the prevention of the pollution of the atmosphere by smoke and dust.	<ul style="list-style-type: none"> A corporate Pollution Control Service capacity exists to ensure and implement the control of air pollution within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five Regional Facilities Interface Management (RFIM) Offices in order to address and monitor problems regarding the pollution of the atmosphere at unit level. A Handbook on Integrated Training Area Management (ITAM) has been developed to manage the impacts of military training activities on the environment.

		<ul style="list-style-type: none"> • An operational instruction on the phasing out of ozone destructive substances in the DOD exists. • The DOD has applied for the licensing of all portable and fixed incinerators utilised in the DOD from the Department of Environmental Affairs and Tourism. • A naval order on the phasing out of ozone depleting substances exists and has been implemented through adjustments to systems on larger vessels. • An Environmental Management Plan exists to manage industrial activities in the Simon's Town Dockyard.
05	Aviation Act No 74 of 1962 as it relates to noise and nuisance.	<ul style="list-style-type: none"> • A corporate Pollution Control Service capacity exists to ensure and implement the control of amongst others, noise pollution within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor problems regarding noise pollution.
05	Aviation Act No74 of 1962 as it relates to noise and nuisance (continues).	<ul style="list-style-type: none"> • A corporate Zoological Service capacity exists to ensure and implement aviation safety measures within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor aviation safety from an environmental perspective. • Complaints from neighbouring communities are recorded, registered and investigated by dedicated staff officers at the bases and addressed through reasonable means. At regional level a capacity exists to register and address complaints from a health perspective. • A corporate database on bird strikes exists for management information purposes in order to improve aviation safety in the DOD. • A project on airfields has been introduced to improve aviation safety by controlling small game by cheetahs and controlling birds by manipulating their habitat.
06	Conservation of Agricultural Resources Act No 43 of 1983 as it relates to the conservation of soil, water sources and vegetation and the combating of weeds and invader plants.	<ul style="list-style-type: none"> • A corporate Botanical Service capacity exists to ensure and implement the protection and control of flora within the DOD. This is achieved by drafting operational instructions and procedural

		<p>guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor the protection of flora and the combating of weeds and invader plants at bases and units.</p> <ul style="list-style-type: none"> • A corporate Soil Service capacity exists to ensure and implement the protection of soil within the DOD. This is a new field in the DOD and the capacity has not yet been developed. Operational instructions and procedural guidelines however, exist and are applied. • A Handbook on Integrated Training Area Management (ITAM) has been developed to manage the impacts of military training activities on the environment. • Internal policy on nature and environmental management exists. • Procedural guidelines on the prevention and control of erosion exist. • Procedural guidelines on the control of problem plants exist. • Procedural guidelines on the leasing of DOD controlled property to be grazed for veld management purposes exist. • Procedural guidelines on the cost-effective control of alien invader plants exist.
06	<p>Conservation of Agricultural Resources Act No 43 of 1983 as it relates to the conservation of soil, water sources and vegetation and the combating of weeds and invader plants (continues).</p>	<ul style="list-style-type: none"> • Procedural guidelines on the cutting of veldgrass for veld management purposes exist. • Procedural guidelines on incorporating environmental considerations in planning peace support operations (including foreign countries) exist. • Naval ships and military aircraft returning from visits abroad are cleaned and fumigated on arrival to exterminate any mien invasive species.
07	<p>Defence Act No 44 of 1957 as amended as it relates to defence activities.</p>	<ul style="list-style-type: none"> • The Ministry of Defence consisting of 18 corporate divisions has been established to ensure the implementation of this Act. • The numerous defence policy documents exist to regulate actions and activities relating to the priority function of the department. Policy documents in terms of activities that effect the environment are developed at Joint Support Division and are promulgated by Policy and Planning Division. Implementation and

		<p>monitoring of environmental policy is ensured by the DOD Logistic Support Formation.</p>
08	<p>Dumping at Sea Control Act No 73 of 1980 as it relates to the control of dumping of substances at sea.</p>	<ul style="list-style-type: none"> • A corporate Waste Management Service capacity exists to ensure and implement the proper management of waste onboard ships within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the Durban and Cape Town RFIM Offices in order to address and monitor waste management onboard ships. • A naval order on marine conservation by naval units and ships, which addresses the provisions for the dumping of substances at sea, exists. • A policy document on Pollution Control on SA Navy (SAN) surface ships exists and has been implemented through systems changes to larger vessels in order to accommodate the International Maritime Organisation (IMO) regulations. These changes are executed by the respective naval dockyards within the SAN.
09	<p>Environment Conservation Act No 73 of 1989 relating to the effective protection and controlled utilisation of the environment including environmental pollution, noise, littering, waste management and environmental impact assessments (EIA's) (partly repealed by the National Environmental Management Act No 107 of 1998).</p>	<ul style="list-style-type: none"> • A broad strategy for Environmental Services including functional strategies on Environmental Planning, Research, Education & Training, Ecological Management, Base Environmental Management and Cultural Resource Management exists. It was developed in 1992 to direct Environmental Services in the DOD through developing policies in terms of functional strategies and capacities. Actions recommended have led to the development of the different implementing and monitoring mechanisms at corporate level.
09	<p>Environment Conservation Act No 73 of 1989 relating to the effective protection and controlled utilisation of the environment including environmental pollution, noise, littering, waste management and environmental impact assessments (EIA's) (partly repealed by the National Environmental Management Act No 107 of 1998) (continues).</p>	<ul style="list-style-type: none"> • A corporate Pollution Control Service capacity exists to ensure and implement the control of pollution within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor environmental pollution at bases and units. • A corporate Zoological Service capacity exists to ensure and implement the control and protection of game within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to monitor the protection of game and other wild animals. • A corporate Waste Management Service capacity exists to ensure and

		<p>implement the proper management of waste within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor the management of waste at bases and units.</p> <ul style="list-style-type: none"> • A corporate Botanical Service capacity exists to ensure and implement the protection and control of flora within the DOD. This is ensured by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to monitor the protection of flora and the combating of weeds and invader plants at bases and units. • A corporate Environmental Planning Service capacity exists to ensure the planning of environmental services, the implementation and integration of environmental considerations such as EIA's into all military activities within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor the environmental management at bases and units. • A corporate Cultural Resource Service capacity exists to ensure and implement the proper management of heritage resources within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to facilitate and monitor the protection of cultural resources.
09	<p>Environment Conservation Act No 73 of 1989 relating to the effective protection and controlled utilisation of the environment including environmental pollution, noise, littering, waste management and environmental impact assessments (EIA's) (partly repealed by the National Environmental Management Act No 107 of 1998) (continues).</p>	<ul style="list-style-type: none"> • A corporate Environmental Education and Training Service capacity exists to ensure and implement environmental education and training programmes within the DOD. This is achieved by developing curricula and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to ensure that all military personnel is exposed to environmental education and training programmes. • A corporate Soil Service capacity exists to ensure and implement the protection of soil within the DOD. This is a new field in the DOD and the capacity has not yet been developed, however, operational instructions and procedural guidelines exist and are applied. • A Handbook on Integrated Training Area Management (ITAM) has been developed to manage the impacts of military training activities on the

		<p>environment.</p> <ul style="list-style-type: none"> • Internal policy on nature and environmental management exists. • Procedural guidelines for the compilation of military ecological management plans for SA Defence Force facilities exist. • Procedural guidelines on the establishment of a veld herbarium exist. • Procedural guidelines on the control and prevention of erosion exist. • Procedural guidelines on the leasing of DOD controlled property to be grazed for veld management purposes exist. • Procedural guidelines for emergency grazing on DOD controlled properties exists. • Procedural guidelines on the control of problem plants exist. • Procedural guidelines on the cost-effective control of alien invader plants exist. • Procedural guidelines on the cutting of veldgrass for veld management purposes exist. • Procedural guidelines on the disposal of fluorescent light tubes exist. • A draft policy on waste disposal sites and other methods of waste disposal exist. • A corporate database on domestic waste incinerators exists for record keeping and management information purposes. • A corporate database on waste disposal sites within the DOD exists for record keeping and management information purposes.
09	<p>Environment Conservation Act No 73 of 1989 relating to the effective protection and controlled utilisation of the environment including environmental pollution, noise, littering, waste management and environmental impact assessments(EIA's) (partly repealed by the National Environmental Management Act No 107 of 1998) (continues).</p>	<ul style="list-style-type: none"> • A policy document on the handling and disposal of waste materials within and from health care facilities exists. • Procedural guidelines on incorporating environmental considerations in the planning of peace support operations (including foreign countries) exist. • Procedural guidelines on the participation in nature conservancies in the DOD exist.

		<ul style="list-style-type: none"> • Procedural guidelines on the completion and adjudication of the Annual Environmental Management Report and Awards Programme exist. • Interim procedures on the application of the EIA regulations within the DOD exist.
10	Fencing Act No 31 of 1963 as it relates to fences and the fencing of properties.	<ul style="list-style-type: none"> • Internal policy on fencing of DOD controlled property exists.
11	Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act No 36 of 1947 as it relates to use and disposal of chemical and biological substances.	<ul style="list-style-type: none"> • A corporate Waste Management Service capacity exists to ensure and implement the proper management of waste within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to the each of the five RFIM Offices in order to address and monitor the management of waste at bases and units. • Procedural guidelines on the disposal of fluorescent light tubes exist.
12	Forest Act No122 of 1984 as it relates to the prevention and combating of veld, forest and mountain fires (partly repealed by the National Veld and Forest Act No 101 of1998).	<ul style="list-style-type: none"> • A corporate Botanical Service capacity exists to ensure and implement the protection and control of flora within the DOD. This is ensured through the drafting of operational instructions and procedural guidelines as well as frequent staff visits to the each of the five RFIM Offices in order to address and monitor the protection of flora and the combating of weeds and invader plants at bases and units. • Internal policy on fire belts exists. • Procedural guidelines for veldfires as veld management tool have been compiled to guide environmental officers in the management of the veld • Procedural guidelines for the prevention of veldfires exist. • Procedural guidelines for the making of fire breaks by using various methods including the use of weed killers exist.
13	Game Theft Act No 105 of 1991 as it relates to the combating of theft and wrongful and unlawful hunting and taking into possession of game.	<ul style="list-style-type: none"> • A corporate Zoological Service capacity exists to ensure and implement the protection and control of game within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor the protection of game and other wild animals at unit level. • An operational instruction on the handling of poachers in DOD property

		exists. At corporate level, a database on contraventions in respect of poaching of natural resources on DOD controlled property is updated regularly.
14	Hazardous Substances Act No 15 of 1973 as it relates to the control, use, disposal and dumping of substances by reason of their toxic, corrosive, irritant, strongly sensitising and flammable nature.	<ul style="list-style-type: none"> • A corporate Waste Management Service capacity exists to ensure and implement the proper management of waste within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to monitor the management of hazardous waste. • Procedural guidelines for the disposal of fluorescent light tubes exist. • A policy document on the handling and disposal of waste materials within and from health care facilities exists. • Procedural guidelines on incorporating environmental considerations in the planning of peace support operations (including foreign countries) exist.
15	Marine Living Resources Act No 18 of 1998 as it relates to the protection of the marine environment and the long term sustainable utilisation of marine living resources	<ul style="list-style-type: none"> • Procedures exist for the inspection and policing, in co-operation with Sea Fisheries, of the exploitation of marine resources on certain DOD controlled properties.
16	Marine Pollution (Control and Civil Liability) Act No 6 of 1981 as it relates to the protection of the marine environment from pollution by oil and other harmful substances.	<ul style="list-style-type: none"> • A corporate Pollution Control Service capacity exists to ensure and implement the control of pollution within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor pollution control by ships at sea. • A naval order on marine conservation by naval units and ships, which addresses the provisions for the discharging of oil and other substances at sea, exist.
17	Marine Pollution(Intervention) Act No 64 of 1987 as it relates to the intervention on the high seas in cases of oil pollution casualties.	<ul style="list-style-type: none"> • A corporate Pollution Control Service capacity exists to ensure and implement the control of marine pollution within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor environmental pollution at sea.
18	Marine Pollution(Prevention of Pollution from Ships) Act No 2 of 1986 as it relates to the protection of the sea from pollution by oil and other harmful substances discharged from ships.	<ul style="list-style-type: none"> • A corporate Pollution Control Service capacity exists to ensure and implement the control of marine pollution within the DOD. This is achieved by drafting operational

		<p>instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor environmental pollution and the control of waste at sea.</p> <ul style="list-style-type: none"> • A naval order on marine conservation by naval units and ships, which addresses the provisions for the discharging of harmful substances, exists. • A policy document on Pollution Control on SA Navy (SAN) surface ships exists and has been implemented through systems changes to larger vessels in order to accommodate the International Maritime Organisation (IMO) regulations. System changes are executed by the respective naval dockyards within the SAN.
19	Marine Traffic Act No 2 of 1981 as it relates to the sinking of obsolete vessels.	<ul style="list-style-type: none"> • The Department of Environmental Affairs and Tourism is consulted regarding authority and location for the sinking of obsolete vessels. • A naval order on marine conservation by naval units and ships addressing the procedure for the sinking of obsolete naval vessels, exists.
20	Marine Zones Act No 15 of 1994 as it relates to the protection and utilisation of the maritime zones of the Republic.	<ul style="list-style-type: none"> • The Department of Environmental Affairs and Tourism is consulted in this regard. • A corporate maritime capability exists to ensure the implementation of this act.
21	Minerals Act No 50 of 1991 relating to the prospecting for minerals and the rehabilitation of the surface of the land during and after operations.	<ul style="list-style-type: none"> • The Department of Minerals and Energy and the Department of Public Works are consulted in this regard. • Internal policy on the handling of applications for prospecting rights on DOD controlled properties exist. • Procedural guidelines on the control of erosion exist. • Procedural guidelines on the prevention of erosion exist.
22	National Environmental Management Act No. 107 of 1998 relating to environmental management.	<ul style="list-style-type: none"> • Corporate Environmental Policy and Environmental Co-ordination capacities exist to ensure the development of internal policy on environmental management and compliance with national and international environmental legislative obligations within the DOD. This is achieved by utilising the corporate database on all national, international, provincial and local legislation applicable to the

		<p>business of defence.</p> <ul style="list-style-type: none"> • A comprehensive Environmental Implementation Plan (EIP) for Defence was developed by the Strategic Environmental King (SEWing) Group as directed by NEMA. • The Environmental Review Forum (ERF) will be established in 2001 to ensure the implementation of the EIP for Defence and to develop an Environmental Management System (EMS) for the DOD.
23	National Forest Act No 84 of 1995 as it relates to the protection of forests and trees.	<ul style="list-style-type: none"> • A corporate Botanical Service capacity exists to ensure and implement the protection and control of flora within the DOD. This is ensured by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address, implement and monitor the protection of flora.
24	National Heritage Resources Act No 25 of 1999 as it relates to the management and conservation of heritage resources.	<ul style="list-style-type: none"> • A broad strategy for Environmental Services with a functional strategy on Cultural Resources Management exists. • A corporate Cultural Resource Service capacity exists to implement the proper management of heritage resources within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to implement and monitor the protection of cultural resources. • A corporate database on cultural and historical resources is in progress for record keeping and management information purposes. • A draft internal policy on national monuments and other heritage resources exists. • A draft internal policy on civilian graves on DOD controlled property exists. • A corporate database on civilian graves on DOD properties exists for management information purposes.
25	National Veld and Forest Fire Act No 101 of 1998 as it relates to veld and forest fires.	<ul style="list-style-type: none"> • A corporate Botanical Service capacity exists to ensure and implement the protection and control of flora within the DOD. This is ensured by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address, implement and monitor the protection of flora at bases and units.

		<ul style="list-style-type: none"> • Internal policy on fire belts exists. • Procedural guidelines for veldfires as a veld management tool has been compiled to guide environmental officers in the management of the veld. • Procedural guidelines for the prevention of veldfires exist. • Procedural guidelines for the making of fire breaks by using various methods including the use of weed killers exist.
26	National Road Traffic Act No 93 of 1996 as it relates to noise pollution and the transportation of hazardous goods.	<ul style="list-style-type: none"> • A corporate Pollution Control Service capacity exists to ensure and implement the control of noise pollution within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor problems regarding the noise pollution and the handling of hazardous goods.
27	National Water Act No 36 of 1998 as it relates to the use of water and the protection of water resources.	<ul style="list-style-type: none"> • A corporate Pollution Control Service capacity exists to ensure and implement the control of noise pollution within the DOD. This is achieved by drafting operational instructions and procedural guidelines as well as frequent staff visits to each of the five RFIM Offices in order to address and monitor environmental pollution of water resources at bases and units. • Facilities and Environmental guidelines for peace support operations in foreign countries exist.
28	Occupational Health and Safety Act No 85 of 1993 as it relates to the protection and the health and safety of persons at work.	<ul style="list-style-type: none"> • A corporate Environmental Health Service capacity exists to ensure the implementation of this Act. • Regional Environmental Health Service capacities exist to ensure the protection and the health and safety of employees. These capacities are represented on the Regional Environmental Advisory Forums to provide expert advice regarding occupational health and safety matters.

16. Additional regional management mechanisms have been implemented to ensure environmental compliance of provincial environmental legislative provisions, including the following:

Table 2: Provincial Environmental Legislative Provisions governing the DOD

Ser No	National Legislation with Environmental Implications	Management Systems and Procedures for Compliance
	a	b
01	Cape Nature and Environmental	<ul style="list-style-type: none"> •

	<p>Conservation Ordinance No 19 of 1974 as it relates to nature reserves, the protection of wild animals, flora and the control of noise.</p> <p>Problem Animal Control Ordinance No 26 of 1957 as it relates to combating of vermin and other animals doing damage.</p> <p>All provincial acts, regulations as well as local bylaws applicable to the Western Cape, Northern Cape Province and the Eastern Cape Province relating to environmental conservation, environmental pollution and waste management.</p> <p>Cape Land Use Planning Ordinance 15 of 1985 and regulations made in terms of this ordinance as it relates to town planning and land use.</p>	<p>Regional environmental capacities consisting of two environmental management officers exist to implement and monitor the exist to implement and monitor the proper environmental management of DOD controlled properties in the Western Cape, the Northern Cape Province and the Eastern Cape Province. This is achieved by providing expert advice on environmental management and monitoring progress during frequent regional staff visits. These regional offices regularly liase with provincial and local government regarding environmental compliance issues.</p> <ul style="list-style-type: none"> • The DOD is in the process of registering its water-use at military installations in the Western Cape, Northern Cape Province and the Eastern Cape Province. • A town and regional planning capability exists to ensure adherence to provincial planning legislation in the Western Cape, the Northern Cape Province and the Eastern Cape Province.
02	<p>Natal Nature Conservation Ordinance No 15 of 1974 as it relates to nature reserves, the protection of game and indigenous plants.</p> <p>Natal Local Authorities Ordinance No 25 of 1974 as it relates to nuisances and the removal of rubbish and refuse.</p> <p>Natal Prevention of Environmental Pollution Ordinance No 21 of 1981 as it relates to the prevention of littering and pollution.</p> <p>All provincial acts, regulations as well as local bylaws applicable to KwaZulu-Natal relating to nature conservation, environmental pollution and waste management.</p> <p>Natal Planning Ordinance No 27 of 1949 and regulations made in terms of this ordinance as it relates to town planning and land use.</p>	<ul style="list-style-type: none"> • Regional environmental capacities consisting of two environmental management officers exist to implement and monitor the proper environmental management of DOD controlled properties in KwaZulu-Natal. This is achieved by providing expert advice on environmental management and monitoring progress during frequent regional staff visits. This regional office regularly liases with provincial and local government regarding environmental compliance issues. • The DOD is in the process of registering its water-use at military installations in KwaZulu-Natal. • A regional town and regional planning capability exists to ensure adherence to provincial planning legislation in the Kwazulu-Natal Province.
03	<p>Orange Free State Nature Conservation Ordinance No 8 of 1969 as it relates to nature reserves and the protection of wild animals and indigenous.</p> <p>Orange Free State Dumping of Rubbish Ordinance No 8 of 1976 as it relates to the dumping of rubbish.</p> <p>All provincial acts, regulations as well as local bylaws applicable to the Free State relating to environmental conservation, environmental pollution and waste management.</p> <p>Town Planning and Townships Ordinance 15 of 1986 and regulations made in terms of this ordinance as it relates to town planning and land use</p>	<ul style="list-style-type: none"> • Regional environmental capacities consisting of two environmental management officers exist to implement and monitor the proper environmental management of DOD controlled properties in the Free State. This is achieved by providing expert advice on environmental management and monitoring progress during frequent regional staff visits. These regional offices regularly liase with provincial and local government regarding environmental compliance issues. • The DOD is in the process of registering its water-use at military installations in each of the nine regions. • A regional town and regional planning capability exists to ensure adherence to provincial planning legislation in the Free State Province.
04	<p>Mpumalanga Nature Conservation Ordinance No 12 of 1983 as it relates to the conservation of wild</p>	<ul style="list-style-type: none"> • Regional environmental capacities consisting of two environmental management officers exist to

<p>animals, indigenous plants and endangered and rare fauna and flora. Mpumalanga Nature Conservation Act No 10 of 1998 as it relates to nature conservation within the province. Problem Animal Control Ordinance No 26 of 1957 as it relates to combating of vermin and other animals doing damage. All provincial acts, regulations as well as local bylaws applicable to the Northern Province and Mpumalanga relating to environmental conservation, environmental pollution and waste management. Town Planning and Townships Ordinance 15 of 1986 and regulations made in terms of this ordinance as it relates to town planning and land use.</p>	<p>implement and monitor the proper environmental management of DOD controlled properties in Gauteng and the North West Province. This is achieved by providing expert advice on environmental management and monitoring progress during frequent regional staff visits. These regional offices regularly liaise with provincial and local government regarding environmental compliance issues.</p> <ul style="list-style-type: none"> • Regional environmental capacities consisting of two environmental management officers exist to implement the proper environmental management of DOD controlled properties in the Northern Province and Mpumalanga. This is achieved by providing expert advice on environmental management and monitoring progress during frequent regional staff visits. These regional offices regularly liaise with provincial and local government regarding environmental compliance. • The DOD is in the process of registering its water-use at military installations in each of the nine regions. • A regional town and regional planning capability exists to ensure adherence to provincial planning legislation in Gauteng and the Northern Province.
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17. International conventions, treaties, agreements and protocols.—International conventions, treaties, agreements and protocols are complied with through incorporating such provisions in policy and guideline documents and procedures of compliance cited in the previous sections. The following international conventions, treaties, agreements and protocols relating to the core business of the DOD as well as its environmental responsibility apply to the department:

- a. Rio Declaration on Environment and Development and Agenda 21. Principle 24 of this declaration states that “Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and co-operate in its further development, if necessary”. Furthermore, principle 25 states that “Peace, development and environmental protection are interdependent and indivisible”.
- b. World Charter for Nature, 1982. This Charter contains General Principles of which one states that nature is to be respected and protected against warfare or other hostile activities, conservation must be practiced, the reproductive capacity or organisms and ecosystems must be respected and responsibilities in the use of resources and for the discharge of pollutants must be exercised. Therefore “military activities damaging to nature shall be avoided”.
- c. Framework Convention on Climatic Change. This convention provides for the protection of the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with common but differentiated responsibilities and respective capabilities by taking the lead in combating climate change and the adverse effects thereof.
- d. Resolution 1995/14: Human Rights and the Environment – United Nations Commission of Human Rights dated 24 Feb 1995. The natural and man-made environment is essential to the well being of a person and to the enjoyment of his/her basic human rights. Therefore, due to this close relationship between the environment and human rights, some human rights violations are allegedly the causes of or factors in environmental degradation. The opposite also applies where

the deterioration of the environment effects the enjoyment of human rights such as life, health and the right to peace and security. The potential for purposeful or accidental environmental damage is a serious threat to peace and security, whether during war or in peacetime and is considered a crime against humanity by the international law commission. The principle of humanity imposes limits on war. The obligation to protect the environment during armed conflict is derived from the norms of international humanitarian law which lays down restrictions on methods of conducting hostilities by asserting that "the only legitimate object which states should endeavour to accomplish during war is to weaken the military force of the enemy".

- e. International Health regulations (Part IV) – Health measures and procedures. These regulations state that no matter capable of causing any epidemic disease shall be thrown or allowed to fall from an aircraft when it is in flight".
- f. Vienna Convention for the Protection of the Ozone Layer, 1985 and the Montreal Protocol On Substances That Deplete The Ozone Layer, 1987 As Amended In 1989. This convention provides for protection of the ozone layer from harmful modification. The protocol and the amendment contain a list of chlorofluorocarbons (CFC) and provides for the control and limiting the consumption of CFC's.
- g. International Convention for the Safety of Human Life on the Sea, 1974. The second schedule provides for safety from radiation or other nuclear hazards at sea or in port to the crew, passengers or public, or to waterways, food or water resources.
- h. Convention on International Civil Aviation Annex 16 – Aircraft Noise. The annex addresses the noise generated by aircraft.
- i. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989. This convention aims to ensure that the generation of hazardous and other wastes is reduced to a minimum, the availability of adequate disposal facilities, for the environmentally sound management of hazardous and other wastes, that persons involved in the management of hazardous or other wastes take such steps as are necessary to prevent pollution due to hazardous and other wastes, to minimize the consequences of such pollution occurrence on human health and the environment; that the transboundary movement of hazardous and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement.
- j. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. The fifth schedule of this convention (chapter III) provides for basic principles for the protection of the environment by prevention of pollution. It also provides for knowledge of anti-pollution procedures to prevent pollution of the environment by smoke, oil, sewage and other pollutants. It also prescribes the use of pollution prevention equipment such as oily water separators, sludge tank systems and sewage disposal plants.
- k. Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water, 1963. This treaty aims to prohibit or prevent the carrying out of any nuclear weapon test explosion, or any other nuclear explosion, at any place in the atmosphere; including outer space; or under water, including territorial waters or high seas; or in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the state under whose jurisdiction or control such explosion is conducted.

l.

The Antarctic Treaty, 1961 (Washington). Article V deals with nuclear explosions and disposal of radioactive waste material. The following protocol to the Antarctic Treaty also applies:

i.

Protocol to the Antarctic Treaty on Environmental Protection, 1991. Annex II of this protocol deals with the conservation of Antarctic fauna and flora. Article 3 with the taking of or harmful interference with animals or plants and article 4 with introducing foreign animals or plants into Antarctica. Annex III deals with waste disposal and waste management. Articles 2 to 6 with disposal or storage of waste and article 7 with introducing a prohibited product in Antarctica. Annex IV deals with the prevention of marine pollution. Article 3 with the discharge of oil or oily mixture into the sea, Article 4 with the discharge of noxious liquid or chemical substance into the sea, Article 5 with the disposal of garbage into the sea and Article 6 with the discharge of sewage into the sea. Annex V to the protocol deals with area protection and management with special emphasis on the damaging, removing or destroying a historic site or monument in article 8.

m.

Geneva Conventions of 12 August 1949 – Protocol 1 Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, 1977. *Article 35 – means and methods of warfare: basic rules*. One of the basic rules prohibits the employment of methods and means of warfare which are intended or may be expected, to cause widespread, long-term and severe damage to the natural environment. *Article 55 – protection of the natural environment*. In warfare, care shall be taken to protect the natural environment against widespread, long-term and severe damage. This includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. It also prohibits any attacks against the natural environment by way of reprisals. *Article 53 – Cultural objects and places of worship in general*. Historic monuments, works of art and places of worship which constitute the cultural or spiritual heritage of peoples enjoy full protection against acts of hostility, without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict dated 14 May 1954. It prohibits the use of such objects in support of military effort and making such objects the object of reprisals. Their immunity may not be withdrawn, contrary to that of marked cultural objects.

n.

Geneva Conventions of 12 August 1949 – Protocol II Additional To The Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, 1977. This protocol contains no provisions relating to the environment, however, article 14 on the protection of objects indispensable to the survival of the civilian population, has direct impact on warfare and the environment, with its prohibition of attacks on agricultural areas, livestock, irrigation works and drinking water installations.

o.

The Hague Convention for the Protection of Cultural Property in the event of Armed Conflict, 1954. *Article 1 – Marked cultural objects*. Cultural objects under this convention enjoy general or special protection. Cultural objects under general protection means an object of great importance to the cultural heritage of every people such as monuments of architecture, art, history, archaeological sites, museums, large libraries, depositories of archives, shelters of cultural objects and centres containing a large amount of immovable cultural objects. Cultural objects under special protection means an object of exceptional value such as shelters of cultural objects, centres containing immovable cultural objects and other cultural objects of great importance. The distinctive sign of cultural objects consists of a blue and white shield and is used under the responsibility of the belligerent party. The sign must be large and visible. Cultural property personnel and objects under special protection can be marked with one sign. Cultural objects under special

protection and cultural property transports can be marked with three signs in triangular formation with one sign below. Personnel assigned to guard cultural objects under special protection may be armed with light individual weapons.

p.

Regulations for the Execution of the Convention for the Protection of Cultural Property in the event of Armed Conflict, 1954. These regulations make provision for procedures for the special protection, obtaining immunity, transportation of cultural property and a distinctive emblem or sign for cultural property. The sign shall be visible from the ground at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection and at the entrance to other immovable cultural property under special protection.

In the event of armed conflict, the sign shall be placed on vehicles of transport so as to be clearly visible in daylight from the air as well as from the ground.

q.

Convention concerning the Protection of the World Cultural and Natural Heritage, 1972. This convention aims to protect cultural and natural heritage of outstanding universal value by a system of collective protection. Cultural and natural heritage of each party are considered a world heritage. Cultural heritage includes monuments, groups of buildings, inscriptions, cave dwellings, archaeological sites or other sites or a combination of these features which are of outstanding value from a historic, artistic or scientific point of view. Natural heritage includes physical and biological formations which are of outstanding value from an aesthetic or scientific point of view or geological or physiographical formations or natural areas which constitute the habitat of threatened animals or plants of outstanding value from a scientific or conservation point of view.

r.

Convention on the High Seas, 1958 (Geneva). This convention charges the state with a duty to prevent the pollution of the seas from the discharge of oil or the dumping of radioactive waste.

s.

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Brussels). This convention provides for the prevention, mitigation or elimination of grave and imminent danger to the coastline or related interests from pollution or threat of pollution of the sea by oil, following on a maritime casualty that may reasonably be expected to result in major harmful consequences.

t.

International Convention for the Prevention of Pollution from Ships (MARPOL) as modified by the Protocol of 1978 (London). This convention provides for the prevention of pollution of the marine environment by the discharge of harmful substances or effluents. It includes provisions for the prevention of pollution by oil, sewage, garbage, and noxious liquid substances in bulk and harmful substances carried by sea in packaged form. An important requirement is the provision of waste reception facilities at port for oil residues and the listing of special areas where only clean ballast is permitted.

u.

International Convention on Civil Liability For Oil Pollution Damage, 1976 (Brussels). This convention provides for the prevention and combating of pollution of the sea by oil and determining liability in certain respects for loss or damage caused by the discharge of oil from ships.

v.

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London, Mexico, Moscow, Washington). This convention aims at controlling all sources of pollution of the marine environment. The dumping of radioactive wastes, biological and chemical warfare materials, persistent plastics, oils, synthetic materials and other chemical products are prohibited the second and

third category may only be dumped in accordance with a general or special permit. This convention is amended by:

- i. Amendments to the Annexes to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1981
 - ii. Amendments to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter concerning Incineration at Sea, 1979
 - w. United Nations Convention on Law of the Sea, 1982 (Geneva). This convention contains general provisions on dumping by adopting laws to prevent, reduce and control pollution by dumping which shall not be carried out without the permission of the competent authorities. Furthermore, the continental shelf and the exclusive economic zone must be protected against marine pollution resulting from sea-bed activities. This convention also imposes a duty on states to conserve the living marine resources of the exclusive economic zones. Article 303 imposes a duty on states to protect archaeological and historical objects found at the sea.
 - x. Convention on the Conservation of Antarctic Marine Living Resources, 1982 (Canberra). Article II deals with the harvesting of marine living resources in the Antarctic.
 - y. Convention for the Conservation of Antarctic Seals. Article 2 deals with the capturing or killing of seals in the Antarctic.
 - z. Convention on Fishing and Conservation of the Living Resources of the High Seas, 1966. These following two conventions developed international law with regard to fishing and conservation in the marine environment:
 - i. Convention on the Territorial Sea and the Contiguous Zone, 1958 (Geneva)
 - ii. Convention on the Continental Shelf, 1958 (Geneva)
- 18.** The following treaties and conventions are relevant to the environmental mandate:
 - a. International Plant Protection Convention, 1951 (Rome)
 - b. Convention on the Conservation of Migratory Species of Wild Animals, 1991
 - c. Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971 (Ramsar)
 - i. Protocol to amend the Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1986
 - ii. Amendments to Articles 6 and 7 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1994
 - d. Convention relating to the Preservation of Fauna and Flora in their Natural State, 1933 (London)

19. The following treaties and conventions are relevant to the core business:

- a. Convention on the Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980
- b. Convention on the Physical Protection of Nuclear Material, 1981
- c. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1987
- d. Treaty on the Non-Proliferation of Nuclear Weapons, 1968
- e. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof, 1971
- f. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (biological) and Toxin Weapons and on their Destruction, 1972
- g. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction, 1993

20. Mechanisms for monitoring.—The DOD has established the following mechanisms to monitor the implementation of environmental management within the department as well as its environmental performance:

- a. Steering Groups, Working Groups and Advisory Forums. The DOD Environmental Services Steering Group as discussed in [chapter 2](#) is utilised as a tool to corporately implement and monitor the environmental performance of the DOD. The Regional Environmental Advisory Forums is considered a monitoring mechanism within and outside the department as it provides the RFIM personnel as well as those from the provincial authorities with insight and information as to the DOD activities and the management of its natural resources. As soon as the DOD Environmental Working Groups have been established these group will also provide for an effective mechanism to monitor the department’s environmental performance through providing expert advice and thereby ensuring effective implementation.
- b. Annual Environmental Management Report. The Annual Environmental Management Report was introduced in 1997 to assist and empower Commanding Officers to successfully meet the challenge of responsible and accountable environmental management. The report is in the form of a questionnaire and the questions are structured to direct a Commanding Officer in complying with environmental requirements. Therefore, the aim of this report is to:
 - i. devise a system whereby each military installation will be provided with a set of environmental management guidelines in the form of a compulsory annual report, and
 - ii. to utilise these guidelines as an auditing mechanism in order to measure the military installation’s environmental performance, and
- c.

DOD Environmental Awards Programme. The aim of the awards programme is to motivate and reward military installations and individuals for work well done with regard to environmental management by utilising the Annual Environmental Management Report as an official entry to the seven categories of this programme. The following trophies are awarded annually:

i.
"Endangered Wildlife Trust" Floating Trophy for Ecological Management. This competition was instituted in 1983 and the award donated by the Endangered Wildlife Trust. The competition is based on the ecological management of the natural environment. Normally these natural environments are terrains/training areas. The award goes to the unit that demonstrated the most progress with regard to ecological management during a calendar year.

ii.
"Caltex" Floating Trophy for Base Environmental Management. This competition was instituted in 1983 and the award donated by Caltex. The competition is based on the environmental management of the "built up" environment of the unit or terrain. Sometimes this also includes small sections of natural terrain. "Units" also include military hospitals, sickbays and naval ships. Sub-units, being part of a home unit, but located elsewhere and functioning as an entity, may also enter for this competition. The award goes to the unit that demonstrated the most progress with regard to base environmental management during a calendar year.

iii.
"Professor Kristo Pienaar" Floating Trophy for Environmental Education and Training. This competition was originally instituted in 1987 and sponsored by the National Veld Trust. This organisation subsequently disbanded. During 1999, a new trophy was instituted. The competition is based on creating an environmental awareness among military member's thus increasing environmental responsibility, as well as enabling military members to execute military activities in an environmentally responsible manner. The award goes to the unit that demonstrated the most progress with regard to environmental education and training during a calendar year.

iv.
"Aquator" Award for Water Efficiency. This competition was instituted in 1997 and the award was donated by the Environmentally Friendly Goods Trading Co. The competition is based on the efficient use of water on military properties. The award goes to the unit that distinguished itself in the efficient use of water during a calendar year.

v.
"Elektrowise" Award for Energy Efficiency. This competition was instituted in 1997 and the award was donated by ESKOM. The competition is based on the efficient use of energy on military properties. The award goes to the unit that contributed the most to the efficient use of energy during a calendar year.

vi.
"SA National Parks" Floating Trophy for Military Integrated Environmental Management. This competition was instituted in 1997 and the award was donated by the SA National Parks. The competition is based on the integration of environmental considerations in all aspects of the military organisation. The award goes to the unit that achieved the highest level of military integrated environmental management during a calendar year.

vii.
"Conservamus" Floating Trophy for Individual/Team Contribution to Environmental Services. This competition was instituted in 1990 and the award donated by the then Deputy Minister of Defence, Mr Wynand Breytenbach. Any member employed within the DOD – whether permanent force, medium or short term, voluntary term service system, commando or citizen, as well as civilian members may be entered for this competition. The award goes to the individual or team that – by means of a specific project – contributed the most

to Environmental Services in the DOD during a calendar year. The guidelines and entry to this competition is distributed separately from this document.

viii.

Annual Environmental Management Report. This annual report is adjudicated at the RFIM Office during the first round of adjudication and forwarded to Joint Support Division for the second round of adjudication. During this round, three finalists from each of the seven categories are selected as the national finalists. The Adjudication Panel mentioned in [Chapter 2](#) visits the finalists in four of these categories during a national adjudication visit. The other three categories are paper adjudications. These finalists in each category are then selected and are presented with the trophies at a prestige award ceremony in June annually.

d.

Communication and *ad hoc* relations. Communication and *ad hoc* relations with other national and provincial departments are also considered mechanisms to monitor the department's environmental compliance.

e.

Auditing. Three levels of auditing have been identified to monitor both the implementation of measures for environmental management by the DOD as well as monitoring of environmental performance and compliance.

i.

Environmental Management System (EMS) Audit. As a constituent of the EMS, environmental audits will be carried out throughout the DOD by qualified DOD Environmental Services personnel. The process of establishing a capacity within the DOD for EMS audit was initiated in 1996. This precedes the establishment of a formal EMS for Defence due to commence in 2001. This capacity will be further secured and expanded to audit environmental performance and compliance.

ii.

Internal Audit. Capacity to undertake internal audit in the DOD is seated with the Defence Inspectorate. As part of the EIP for Defence a project is underway to develop instruments of measurement to audit the implementation of environmental management in the DOD.

iii.

External Audit. The DOD has been involved since 1997 in a joint undertaking with the Office of the Auditor-General (OAG) aimed at establishing mechanisms for the auditing of environmental management implementation in the public sector as it pertains to the financial statements on the organisation.

21. Responsibilities and capacity for implementation.—The responsibility for the co-operative governance mechanisms relating to specifically environmental management identified in this Chapter is allocated to Joint Support Division and the DOD Logistic Support Formation by virtue of its status as the seat of the environmental management capacity of the DOD. These structures have the available capacity to implement and maintain the identified mechanisms.

22. The responsibility for the co-operative governance mechanisms relating to priority functions identified in this Chapter is allocated to the various corporate divisions and associated support structures, by virtue of their status as the seat of the capacity for the management and execution of the department's priority functions. These structures have the available capacity to implement and maintain these mechanisms.

23. The Strategic Direction (SD) Process of the DOD provides for procedure by which national legislative provisions are assimilated into departmental policy. The SD Process provides for mechanisms of planning, policy development, execution, monitoring and control. The corporate divisions associated with specific spheres of policy for instance Joint Support Division, SA Navy or the SA Military Health Service etc would therefore, assume responsibility for all aspects of strategic direction pertinent to such specific policy. The management systems and procedures for compliance are integrated into the SD Process of the DOD.

24. For purposes of the monitoring of environmental management in the DOD, the three levels of auditing identified in the previous section with associated capacities will be instituted to gain management information for the implementation of corrective actions as well as monitoring progress in the deployment of the EIP for Defence.

25. Capacity gaps and limitations.—The following issues have been identified as capacity gaps and limitations with regard to environmental management in the department:

- a. Costs associated with environmental management in the DOD have not been sufficiently internalised and are integrated with expenditure associated with other functions. This pre-empts a true reflection of environmental expenditure by the DOD.
- b. Environmental Education and Training (EE&T) is not a formalised practice within the DOD. Instructional design for EE&T programmes in the DOD is pre-empted by constraints on the accreditation of *curricula* due to the absence of appropriate NQF unit standards.
- c. Limited capacity for environmental litigation exists in the DOD.
- d. Existing departmental environmental policy is fragmented, some of which has become outdated and obsolete with new requirements for such policy arising continuously. The integrity of DOD environmental policy has a direct influence on the ability of the department to comply with environmental regulatory obligations.
- e. Agenda 21, An Agenda for Sustainable Development in the 21st Century has not been formally implemented in the DOD.
- f. Enforcement and measurement of environmental compliance in accordance with regulatory obligations and measures for environmental performance within the DOD is inadequate.
- g. Environmental regulatory obligations are not included in the performance agreements of respective Divisional Chiefs, General Officers Commanding and Commanding Officers.
- h. The DOD is not represented on the CEC in order to ensure inter-departmental co-ordination and harmonisation of policies, legislation and actions relating to the environment. The DOD relies on *ad hoc* and isolated instances of formal liaison with other departments and organs of state to satisfy requirements for co-operative governance.
- i. Internal relationships as instituted in the DOD Regional Environmental Advisory Forums, the DOD Environmental Steering Group and the DOD Environmental Working Group are not completely operational as a result of the process of transformation that is as yet incomplete.

CHAPTER 3: POLICIES. PLANS AND PROGRAMMES

1. Introduction.—This chapter addresses and briefly describes the important policies, plans and programmes associated with the priority functions of the DOD. These are then evaluated according to the [Section 2](#) principles of NEMA. An indication is also provided about the potential environmental impacts associated with key policies, plans and programmes, as well as resources, responsibilities and timeframe for implementing these policies, plans and programmes.

2. Key policies, plans and programmes.—Policy 1: Provide forces by integrating and converting force components into combat ready forces. Defence is conducted jointly, with each Combat Service providing specialised capabilities to Landward, Air and Maritime Defence. The process of providing forces by integrating and converting force components into combat ready forces includes several associated processes, activities and equipment as described in the extended policy. It should be understood that the environmental impacts associated with providing forces are mostly incurred within very clearly defined geographical boundaries that manifest as military training areas on land, in the airspace as well as at sea. The extent of environmental impacts associated with providing forces however, is amplified by the fact that these activities are repetitive by nature and are confined to the geographical boundaries that constitute military training areas within the Republic. The environmental impacts associated with providing forces are derived from very specific activities.

a.

Provide a land defence capability. Landward defence is conceptualised in terms of Conventional Defence (mobile operations) and Area Defence. Within the primary defensive posture of the SANDF, a high premium is placed on firepower, night fighting ability, manoeuvring, quick reaction, surprise and tactical mobility. The basis for conventional defence is the Rapid Deployment Force, which comprises of a mechanised infantry brigade, a parachute brigade and a special forces brigade. Mobile conventional forces provide the first and main line of defence against external military threats. Area defence comprises border safeguarding (border protection and border control) and area protection.

i.

Maintain main equipment associated with land defence. Equipment associated with land defence such as battle tanks, armoured cars, anti-armoured missile systems, artillery systems, infantry combat and mine protected vehicles and vehicle mounted anti-aircraft guns are maintained and operated in providing combat ready forces.

ii.

Prepare forces for land defence. The SANDF must be able to prepare its forces continuously for land defence. Force preparation concentrates on two categories namely formal training of personnel at all ranks for conventional operations as well as training and exercising force structure elements.

iii.

Potential Environmental Impacts. The following impacts can be associated with providing a land defence capability:

(1)

Terrestrial movement of combat vehicles on military training areas fosters the potential for disturbances in the physical environment. Evidence of such disturbance is observed as soil compaction and destruction of natural vegetation.

(2)

Terrestrial movement and presence of personnel on military training areas creates potential for disturbances in the physical environment. Evidence of such disturbance is observed as generation of solid waste, disturbance of soil and natural vegetation. In the absence of healthy track discipline, the presence of personnel can introduce an element of disturbance to sensitive ecosystems located on military training areas.

(3)

The erection of temporary deployment structures on military training areas during land defence exercises fosters the potential for disturbances in the physical environment. These disturbances manifest as accumulation of solid waste, other sources of pollution of the soil, water and atmosphere, localised disturbance of soil and natural vegetation.

(4)

The deployment of main equipment for land defence during training exercises on military training areas entails inherently environmentally destructive activities. The primary source of disturbance is encountered in

the use of the various calibres of firepower. The contamination of surface and sub-surface substrates by armament debris and unexploded ordnance is the major focus in impact management of these activities. In addition, noise generated through the use of firepower as well as certain implications of safety associated with the operational envelope of weapons are of constant concern to adjacent landowners and communities.

- (5) Contamination of surface substrate and subterranean water resources with fuel is a potential impact at fuel storage and re-bunkering sites. Large quantities of fuel tend to accumulate beneath hard stands over prolonged periods of time if processes of monitoring are not maintained.

b.

Provide an air defence capability. The use of the air for surveillance, mobility and firepower is a basic tenet of modern conventional warfare. Air superiority is the ability to make unhindered use of the air, while denying an enemy that capability. Air defence is the protection of assets against all forms of enemy air interference and involves both defensive and offensive measures. Flexible air defence is provided through a combination of airspace control radars (static and mobile), point defence missile systems and aircraft. The provision of an air capability is vital in land defence, defending land forces against air attack and providing surveillance, mobility (air transportation) and firepower in support of landward operations. Air participation in maritime defence provides enhanced surveillance capabilities, firepower and plays a significant role in layered defence.

i.
Maintain main equipment associated with air defence. Equipment associated with air defence such as combat support helicopters, fighter aircraft, light reconnaissance aircraft, electronic warfare aircraft, remotely piloted aircraft, fixed wing aircraft, light and medium helicopters, multi-role fighter aircraft, maritime patrol aircraft, air defence missile systems, aircraft for in-flight refuelling and shipborne helicopters are maintained and operated in providing combat ready forces.

ii.
Prepare forces for air defence. The SANDF must be able to prepare its forces continuously for air defence. Force preparation concentrates on two categories namely formal training of personnel at all ranks for air defence operations as well as training and exercising force structure elements.

iii.
Potential Environmental Impacts. The following impacts can be associated with providing an air defence capability:

- (1) The deployment of military aircraft in the airspace and on airfields during force preparation results in the generation of high levels of noise. Acoustic pollution impacts on both military personnel as well as adjacent landowners and communities.
- (2) The deployment of military aircraft in the airspace and on airfields during force preparation results in the generation of varying levels of atmospheric pollution mainly from aviation engine emissions.
- (3) The extensive mobility of military aircraft affords possibilities for movement between distant geographical locations throughout the interior as well as abroad. This capability renders it possible also for various forms of terrestrial alien invasive species to make use of military aircraft as agents of dispersal.
- (4)

It is however, not always a matter of the impact of military activities on the environment but the environment may foster some constraints on military activities. Birds in the airspace and on airfields as well as quadruped game pose a significant threat to the movement of military aircraft. Collisions between aircraft and birds or small game result in the loss or damage of expensive military equipment and can be potentially fatal both for man and animal. Strategies are devised to focus on the management of habitats in order to anticipate populations and their behaviour on military land and in the airspace.

- (5) The deployment of main equipment for air defence during training exercises on military training areas entails inherently environmentally destructive activities. The primary source of disturbance is encountered in the use of firepower. The contamination of surface and sub-surface substrates by armament dews and unexploded ordnance is the major focus of impact management of these activities. In addition, noise generated through the use of firepower as well as certain implications of safety associated with the operational envelope of weapons are of constant concern to adjacent landowners and communities.
- (6) The erection of temporary deployment structures on military training areas during air defence exercises fosters the potential for disturbances in the physical environment. These disturbances manifest as accumulation of solid waste, other sources of pollution of the soil, water and atmosphere, localised disturbance of soil and natural vegetation.
- (7) Contamination of surface substrate and subterranean water resources with aviation fuel is a potential impact at fuel storage and re-bunkering sites. Large quantities of fuel tend to accumulate beneath hard stands and apron areas over prolonged periods of time if processes of monitoring are not maintained.

c.

Provide a maritime defence capability. The maritime defence is defence by means of a layered approach where vessels with different capabilities are used in concentric layers extending outward from harbours. Maritime warfare is multi-dimensional and effective maritime defence requires balanced air, surface and subsurface capabilities.

The maritime defence capability can provide fire support to landward defence operations in coastal areas and can transport forces, equipment and supplies to harbours serving an area of operations. Maritime defence can support air defence by providing self-defence of maritime assets and harbour defence by ships in port.

i.
Maintain main equipment associated with maritime defence. Equipment associated with maritime defence such as patrol corvettes, submarines, inshore patrol vessels, harbour patrol vessels, strike craft, mine hunters, mine sweepers and combat support ships are maintained and operated in defence and providing combat ready forces.

ii.
Prepare forces for maritime defence. The SANDF must be able to prepare its forces continuously for maritime defence. Force preparation concentrates on two categories namely formal training of personnel at all ranks for maritime operations as well as training and exercising force structure elements.

iii.
Potential Environmental Impacts. The following impacts can be associated with providing a maritime defence capability:

- (1)

Solid wastes, sewage, fossil fuels, oils, ozone depleting substances and toxins derived from paint associated with naval vessels at sea and alongside, are the most important polluting agents that are managed from a maritime perspective. Technological solutions and system adjustments are employed to reduce if not eliminate these polluting agents from contaminating the marine environment both in territorial waters and abroad.

- (2) The decommissioning of obsolete naval vessels may include salvaging of all onboard systems in preparation of sinking of the hull. Regulatory guidelines regarding the preparation of the hull prior to sinking and a suitable location for sinking as issued by the Department of Environmental Affairs & Tourism (DEA&T) are followed in order to prevent adverse environmental impact.
- (3) The SA Navy is occasionally requested to support DEA&T in expeditions to the Antarctic. The sensitivity of this environment demands that the precautions issued in the Antarctic Treaty, 1961 are meticulously followed to prevent any contamination or disturbance to the Antarctic environment by naval vessels or crew.
- (4) The extensive mobility of naval vessels affords possibilities for movement between distant geographical locations throughout the world. This capability renders it possible also for various forms of marine and terrestrial alien invasive species to make use of naval vessels as agents of dispersal.
- (5) The deployment of main equipment for maritime defence during training exercises at sea entails inherent environmentally destructive activities. The primary source of disturbance is encountered in the use of firepower. The acoustic properties of water as well as certain implications of safety associated with the operational envelope of weapon systems are a potential threat to marine life and are of concern to marine interest groups.
- (6) Industrial activities in naval dockyards foster potential impacts on the marine and adjacent urban environments. The main impacts that are managed in this regard are sources of noise pollution, atmospheric pollution and accumulation of heavy metals on bottom sediments of harbour basins. The potential exists for contamination of water surface by fossil fuels and oil during the process of re-bunkering of vessels.

d.

Provide a military health capability. Military health support entails operational health services during deployments of the three Combat Services including search and rescue missions and providing evacuation during missions. Direct support is supplied to landward rapid deployment through the provision of a full-time force medical battalion group. Early warning of chemical and biological agents against own forces and decontamination of personnel and equipment are also provided.

(i)
Prepare forces for military health capabilities. The SANDF must be able to prepare its forces continuously for military health capabilities. Force preparation concentrates on two categories namely formal training of personnel at all ranks for military health operations as well as training and exercising force structure elements.

(ii)
Potential Environmental Impacts. The following impacts can be associated with providing a military health capability:

(1)

The erection of temporary medical deployment structures on military training areas during training exercises fosters the potential for disturbances in the physical environment. These disturbances manifest mainly in accumulation of medical waste.

(2)

Domestic activities associated with military health care facilities present a broad spectrum of potential environmental impacts. These impacts may be ascribed to various sources of contamination that arise from processes of incineration and disposal of medical waste and solid waste accumulation.

3. Policy 2: Support forces by procuring armament as well as providing matériel and equipment to the combat forces so that these can be used operationally. The DOD must maintain effective support capabilities in support of the Combat Services by ensuring the acquisition and procurement of modern armament and the availability of matériel and logistic services as well as the movement of matériel and personnel in support of military operations. Military operations in a broader sense also include actions in support of non-military national objectives according to the Constitution.

a.

Provide an optimal integrated logistic service to all elements of the DOD. The integrated logistic service provides for the effective management of each of the phases of the life cycle of logistic services. Logistic services are rendered in respect of the well being of personnel, to satisfy the military community needs and includes the following:

i.

Personnel Logistic Service includes barber, catering, shopping, tailoring, laundry and footwear repair, funds and institutions.

ii.

General Logistic Service includes mapping, printing, photography, codification, cataloguing, postal, computerisation, fire-fighting services and military cemeteries.

iii.

Transport includes the movement of personnel and materiel from rear areas to operational areas and back. All modes of transportation and terminal operations such as bus terminals, harbours, airfields, railway stations and bridgeheads apply. It excludes tactical movement as a logistic function other than a design requirement for category 1 matériel and recovery of personnel and matériel.

iv.

Potential Environmental Impacts. The following impacts can be associated with providing an optimal integrated logistic service:

(1)

Hazardous wastes such as photographic chemical or fire arresting agents generated by general logistic services foster inherent dangers to the environment as contaminants when such substances are not handled and disposed of in an environmentally responsible manner. The impact on the environment in this regard is amplified by the fact that contamination of military facilities by these agents also restricts use of such facilities by personnel.

(2)

The transportation, storage and handling of petroleum, oils and lubricants foster the potential for contamination of surface and sub-surface substrates as well as water resources in the event of spillage. In the absence of sound contingency planning for the isolation and cleansing of incidents of contamination, the environmental impacts could assume catastrophic proportions, the influence of which may extend far beyond the boundaries of military controlled properties.

b.

Provide an optimal integrated matériel service to all elements of the DOD. The integrated matériel service provides for the effective management of each of the phases of the life cycle of matériel that includes the procurement, receipt, storage, transferral, issue and disposal of matériel. Materiel includes equipment, maintenance, execution and support of all military activities whether for administration or use in combat. This service applies to materiel designed for military use or which conforms to military specifications (category 1) as well as matériel designed and developed primarily for the commercial orientated market needs without adaptation in the military operational environment (category 2) but does not apply to personnel and facilities.

i.

Potential Environmental Impacts. The following impacts can be associated with providing an optimal integrated matériel service:

(1)

Inherent environmental impacts are posed mainly in the storage and disposal phases of both category 1 and category 2 hazardous matériel such as flammable, toxic and corrosive substances. The practice of disposing of obsolete clothing by means of incineration is a source of atmospheric pollution if regulatory requirements are not followed.

(2)

The disposal of category 1 material specifically obsolete ordnance, is particularly complex as this is regulated by the London Convention, 1972 that prohibits dumping of waste at sea. Obsolete ordnance therefore, must be disposed by alternative and responsible means that would render it inert in terms of any further effect on the environment. Such disposal is considered ideal when integrated waste management principles of re-use and reduce are applied.

c.

Provide for the acquisition and procurement of modern armament and equipment in order to maintain a combat ready capacity. For the SANDF to carry out its primary role, the availability of armaments is essential. Optimal modern armaments for the SANDF are obtained through a process of armament acquisition. It entails the management of the total spectrum of activities to be carried out by the participating organisations within the defence family to meet the armament requirements that will ensure that the SANDF has the necessary user systems for maintaining a combat ready capability. The process of acquisition and procurement includes:

i.

Direction and co-ordination of all acquisition and procurement activities by processing and satisfying the stated functional requirements for armaments from the Combat Services against the procurement plan.

ii.

Appointment of a project team to translate functional needs into technical design and manufacturing parameters.

iii.

Involvement of organised defence industry, all other stake holders and interest groups in the acquisition process.

iv.

Consideration of environmental issues in the form of a comprehensive environmental management plan are taken before any military industrial facilities for the manufacturing, demolition, test and evaluation or armaments are established, operated or closed down.

v.

Execution of defence industry studies to indicate development, purchase or partnership options.

vi.

Submission of project milestone documents to the three levels of approval committees and boards for acquisition programmes.

vii.

Potential Environmental Impacts. The following impacts can be associated with providing for the acquisition and procurement of modern armament and equipment:

- (1) The acquisition of outdated technology presents increased potential for environmental resource inefficiency as well as sources of noise and emissions pollution.
- (2) In the acquisition of contemporary technology that does not comply with environmental specifications, inherent impacts are encountered during the phase of operation, maintenance and disposal of equipment. Such impacts may manifest in the incidence of ozone depleting or other hazardous substances, excessive emissions or noise levels, environmental resource inefficiency and impracticable recycling or re-use of components on disposal.
- (3) In testing new weapons systems to determine the dimensions of the operational envelope, environmental impacts may be encountered where the "precautionary principle" is not applied.

d.

Provide an integrated facilities management service to all elements of the DOD. For the SANDF to carry out its primary function, land, buildings, infrastructure and associated services are required in order to provide and prepare forces. Facilities Management consists of Fixed Asset Management and Environmental Services.

The integrated facilities management service provides for the collective management of buildings, land and the natural environment in an integrated manner so as to promote the success of the core activities of the department. Furthermore, it provides for the management of the impact of the DOD's activities on the environment in which these are carried out.

i.

Potential Environmental Impacts. The following impacts can be associated with providing an integrated facilities management service:

- (1) The erection of permanent structures and infrastructure on military training areas results in varying degrees of transformation of land. Natural systems are displaced or permanently transfigured in the proximity of permanent structures and infrastructure on military training areas during construction, operation, maintenance and closure. The true extent of environmental impact linked to the erection of permanent structures and infrastructures on military training areas vary considerably for each property and can only be determined by means of an Environmental Impact Assessment (EIA).
- (2) Modifications or renovations to military facilities foster inherent environmental impacts on land and infrastructure of cultural historic significance. The cultural historic significance of such military facilities is distorted if the necessary sensitivity is not observed.
- (3) Environmental resource inefficient military facilities foster adverse impacts on consumption of water and energy.
- (4) The cultivation of alien invasive plant species in domestic areas of a military installation increases the potential for introduction of such species

to local ecosystems and habitats. Certain species cultivated in domestic areas of military installations are resource demanding in terms of water requirements and labour.

4. Policy 3: Employ forces by deploying forces in an operational capacity. Combat ready forces provided by the different Combat Services are integrated and converted into combat-ready joint task forces and are used to accomplish specific territorial or regional operations, missions and military exercises.

a.

Potential Environmental Impacts. The following impacts can be associated with employing forces:

i.
Environmental impacts in terms of wastes, damage to cultural historic assets and natural resources may be sustained during deployment of forces if the appropriate environmental intelligence is not considered during the operational planning process.

ii.
The erection of temporary deployment structures during mobilisation fosters the potential for disturbances in the physical environment. These disturbances manifest as accumulation of solid waste, other sources of pollution of the soil, water and atmosphere, localised disturbance of soil and natural vegetation.

iii.
Damage to or disturbance of the environment as a result of the deployment of forces may result in deterioration of affected environmental resources and restrict the use of such resources by communities both locally and regionally in the absence of sound measures of rehabilitation.

EVALUATION OF POLICIES, PLANS AND PROGRAMMES

Ser No	Section 2 Principles of NEMA	Policies, Plans and Programmes
	a	b
01	(4) (a) (i) <i>"That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied."</i>	In preparing and employing combat ready forces, potential impacts that effect the environment are inherent. The potential adverse impact of potential adverse impact of military activities and exercises as a threat to biodiversity can be anticipated during the processes of training of personnel, maintenance, support and deploying military personnel. Guidelines on Facilities and Environmental Management for Operational Planning and Execution are in an advanced process of development for implementation in territorial as well as regional military operations. The military training areas used for force preparation are managed as multiple use conservation areas, some of which have been granted additional forms of statutory or non-statutory conservation status. Management plans exist to account for ecological resources associated with these properties and to harmonise military activities with sensitive ecosystems.
02	(4) (a) (ii) <i>"That pollution and degradation of the environment are avoided, or, where these cannot be altogether avoided, are minimised and remedied."</i>	In preparing and employing combat ready forces, potential impacts that effect the environment are inherent. The potential adverse impact of military activities and exercises as a source of pollution and environmental degradation can be anticipated during the processes of training of personnel, maintenance, support and deploying military personnel. The system of Integrated Training Area Management (ITAM) integrates military training activities with constraints posed by the natural environment. ITAM presents guidelines for managing the environmental impacts of military activities on the environment in compliance with regulatory obligations. It also provides guidelines for retaining the required military characteristics of military training areas through measures of management. ITAM is a recently developed management tool, the principles of which are yet to be established for purposes of implementation. Guidelines on Facilities and Environmental Management for Operational Planning and Execution are in an advanced process of development for implementation in territorial as well as

		regional military operations.
		The potential of projects, products, processes, services or activities, on the other hand as elements of support, as a source of pollution can be anticipated and managed during the processes of acquisition, utilisation or operation, maintenance or support until and beyond decommissioning or disposal.
03	(4) (a) (iii) <i>"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."</i>	In preparing and employing combat ready forces, potential impacts that affect landscapes and cultural heritage sites are inherent. Landscapes and sites of cultural significance are located on various Defence controlled properties. This provides a powerful imperative to acknowledge these resources in the national interest. Various sites, located on Defence controlled properties, have been awarded statutory and non-statutory conservation status such as national monuments, cultural conservation areas and SA Natural Heritage Sites. Measures for management and protection of these sites are implemented by Defence inclusive of the associated process of policy development. The DOD is bound by international legislative provisions regarding the protection of national and world heritage. Furthermore, the Facilities and Environmental Management Guidelines for Operational Planning and Execution which are in an advanced process of development for implementation in territorial as well as regional military operations, will apply to the acknowledgement of cultural resource prior or during the employment of forces.
04	(4) (a) (iv) <i>"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."</i>	In providing and employing combat ready forces, potential impacts that effect the environment are inherent. The potential adverse impacts of military activities and exercises as a source of waste generation can be anticipated during the processes of training of personnel, maintenance, support and deploying military personnel. The potential of projects, products, processes, services or activities as a source of waste can be anticipated during the processes of acquisition, utilisation or operation, maintenance or support until and beyond decommissioning or disposal. Up to 1991, concession was granted to the DOD for the disposal of obsolete ammunition at sea. At present, the disposal of any solid waste at sea is prohibited by the London Convention (1972), to which South Africa is a signatory.
		Policy development by the DOD explores alternative options for disposal of obsolete ordnance in compliance with the guidelines of the International Maritime Organisation (IMO). The development of contemporary Defence policy on integrated waste management is conducted consistent with national objectives set by the Department of Water Affairs and Forestry and in consultation with private enterprise. The most profound account of solid waste issues associated with providing forces is that of the accumulation of unexploded ordnance as well as the remains of discharged ammunition on military training areas. Policy development for clean-up of training areas is conducted in consultation with the responsible authorities in defence, South African Police Service expertise, environmental NGO's and neighbouring communities. Procedures for integrated waste management on deployment are in development for consideration during pre-mobilisation for implementation during intervention, stabilisation and demobilisation phases of operations.
05	(4) (a) (v) <i>"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."</i>	Prepare forces represents the most prominent element of defence during peacetime and exercises a heavy burden on the non-renewable resources at the disposal of the department. The use of these resources such as land, water, fossil fuels and other energy sources however, is subject to provisions of policy developed by support forces and issued by the department. The prevailing budgetary climate provides an indisputable imperative for the conservation of non-renewable resources such as fossil fuel and land. Restrictions imposed by budgetary constraints drive the interests of conservation of such non-renewable resources and drastic measures are consistently demanded of the DOD to observe sustainable utilisation. The use of the non-renewable resources of water and energy sources must be advocated along the lines of an imperative of conservation as the DOD is not always directly liable for costs associated with the utilisation of these resources. An imperative for more sustainable use of water and energy sources is gradually being established by means of incentive and promotional programmes for energy and water efficiency by Combat Services in collaboration with state and private enterprise.

		Employ forces exercises a heavy burden on the non-renewable resources during deployments. Procedures for use of non-renewable resources on deployment are in development for consideration during pre-mobilisation for implementation during intervention, stabilisation and demobilisation phases of operations.
06	(4) (a) (vi) <i>"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."</i>	Prepare forces represents the most prominent element of defence during peacetime and exercises a heavy burden on the renewable resources at the disposal of the department. The use and management of resources such as plant and animal populations is subject to provisions of policy developed by support forces and issued by the department. Renewable resources associated with Defence controlled properties are of dichotomous nature. Such resources are of importance either as national assets such as Red Data Species or of more localised interest to defence. The populations of life forms that occur on these properties or that have been introduced are utilised as management tools to facilitate sustainable utilisation of military training areas i.e. by maintaining biodiversity and increasing the resilience of Defence controlled properties toward prevailing disturbance regimes. Policy direction in terms of biodiversity emphasises this perspective. Employ forces exercises a heavy burden on the renewable resources during deployments. Procedures for use of renewable resources on deployment are in development for consideration during pre-mobilisation for implementation during intervention, stabilization and demobilisation phases of operations.

Ser No	Section 2 Principles of NEMA	Policies, Plans and Programmes
	a	b
07	(4) (a) (vii) <i>"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."</i>	Adverse environmental influences may arise from provide and employ forces associated with the aforementioned plans where insufficient consideration is applied to environmental risks that have not been appreciated according to the most contemporary available knowledge. It is ultimately endeavoured through the process of ITAM to empower decision-makers in provide and employ forces to observe the environmental consequences of military activities during the processes of planning that precede these activities. The DOD is held accountable for the management of the environmental impacts of military activities irrespective of where these are sustained.
		It is ultimately endeavoured through the Facilities and Environmental Management Guidelines for Operational Planning and Execution and associated procedures which are in development, to follow a risk-averse and cautious approach in the planning of operations.
08	(4) (a) (viii) <i>"That negative impact on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied."</i>	Landowners and communities adjacent to Defence controlled properties are subject to disturbance in terms of environmental rights. Prepare and employ forces are subject to provisions of policy developed by support forces and issued by the department. Policy development focuses on measures to minimise noise generated by military activities as well as potential sources of pollution of water, land and air, which may arise from these activities to affect neighbouring landowners and communities. Employ forces is subject to provisions of policy developed by support forces and issued by the department. International Law on Armed Conflict (LOAC) and resolutions of the United Nations Commission on Human Rights stipulate provisions on environmental rights of people during times of armed conflict. The DOD subscribes to LOAC.
09	(4) (b) <i>"Environmental management is integrated acknowledging that all elements of the environment are linked and interrelated, and it takes 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."</i>	An approach of MIEM is followed by the DOD. MIEM will be further enforced through the establishment of the management tool represented by the process of ITAM. Environmental elements are integrated and taken into consideration during all phases of provide, support and employ forces in accordance with the most recent policy developments.

10	(4) (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."	In the spirit of healthy civil-military relations, the DOD is compelled to acknowledge the view of all sectors of the society, which is served during the process of planning military activities. In pursuit of sound regional co-operation, LOAC and resolutions of, the United Nations Commission on Human Rights, the DOD is compelled to acknowledge the environmental rights of all peoples during times of armed conflict.
11	(4) (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."	Precedence is granted to prepare forces in a peacetime force to make optimal use of Defence controlled properties. Patterns of land use alternative to military purposes is considered of subordinate priority. Equitable access to environmental resources is subject to provisions of policy developed by support forces and issued by the department. Natural resources associated with Defence controlled properties are managed as national assets in trust of the DOD. It is acknowledged that these national assets are regarded of significance to society as a whole, sectors of society or minorities. Measures are in place to provide access to such resources by non-military entities or interests groups through application of the principle of multiple use. Procedures have been implemented, for instance, to provide communities with access to traditional burial grounds and graves located on Defence controlled properties. Multiple use of Defence controlled properties allows for public access to certain properties for purposes of tourist activities such as nature trails and wildlife viewing. These activities however, are subject to precedence of military activities. Distinct economic imperatives are associated with consumptive access to such environmental resources as wild grass occurring on Defence controlled properties which is harvested for fodder or thatching as well as wood for fuel. Treasury instructions are adhered to by the DOD in granting equitable access to such resources by private enterprises by means of State Tender procedure. As part of the control of alien invasive vegetation certain military training areas are accessible to teams contracted as part of the Working for Water Programme of the Department of Water Affairs and Forestry. No clear policy development as yet, has been established concerning this principle. The stage of stabilisation following military intervention would be the most appropriate moment during times of armed conflict to secure equitable access to environmental resources to meet basic human needs.

Ser No	Section 2 Principles of NEMA	Policies, Plans and Programmes
	a	b
12	(4) (e) "Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle."	Environmental health as well as occupational health and safety considerations are entrenched in defence policies that govern provide, support and employ forces.
		A DOD Environmental Health Service capacity which presides over issues concerning Occupational Health with the mandate to register and to refer all Occupational Health and Safety issues to the appropriate Occupational Health and Safety capacity and a DOD Environmental Service capacity which addresses MIEM have evolved into distinct functions within the department. These two functions despite their defined distinction, have supplemented and complemented each other in the recent past. Policy development toward environmental health and safety consequences in the life cycle of systems has commenced and requires further endeavour to ensure implementation in the DOD. Furthermore, a pilot initiative has commenced to develop standard operating procedures for the safety,

		health and environmental consequences associated with military exercises on training areas.
13	(4) (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."	In the spirit of healthy civil-military relations and the constitutional order, the DOD is compelled to promote the participation of all sectors of the society, which is served during the process of planning military activities. For regional operations beyond national borders, a Status of Forces Agreement (SOFA) or multi-national agreements are forged according to which military intervention will be conducted. The concept policy on Facilities and Environmental Management Guidelines for Operational Planning and Execution acknowledges liaison with environment related interested and affected parties as part of environmental support during operations.
14	(4) (g) "Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes all forms of knowledge, including traditional and ordinary knowledge."	In the spirit of healthy civil-military relations and the constitutional order, the DOD is compelled to take into account the interests, needs, norms and values of interested and affected parties in all sectors of the society during the process of decision-making. This principle of NEMA is consistent with the philosophy of the DOD concerning civil-military relations in which the military is subject to the standards, norms and values dictated by civil society.
		Frequent environmental reporting by the DOD will provide public access to relevant information concerning the environmental performance of the department. For regional operations beyond national borders, Status of Forces Agreements (SOFA's) or multinational agreements are signed to which military intervention will be conducted. The concept policy on Facilities and Environmental Management Guidelines for Operational Planning and Execution acknowledges liaison with environment related interested and affected parties as part of environmental support during operations.
15	(4) (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."	Provide and employ forces is not mandated to promote as the primary functions of these systems, community well-being and empowerment. The medium for these of initiatives are however, created through intervention of support forces. The focus of empowerment through environmental education is primarily directed toward the military communities associated with Defence controlled properties utilised for provide forces. Interventions directed toward civilian or non-military communities are of an incidental nature.
16	(4) (i) "The social, economic and environmental impacts of activities, including costs and benefits are considered, assessed and evaluated, and decisions are appropriate in the light of such consideration and assessment."	Certain costs that are not visible when decisions are ruled in the execution of routine procedures associated with provide, support and employ forces may only become evident either during or following implementation. Such hidden following implementation. Such hidden costs may be overlooked during routine decisions when all environmental influences and impacts have not been sufficiently internalised by the organisation. During the process of operational planning in the pre-mobilisation phase, the concept policy toward Facilities and Environmental Management for Operational Planning and Execution provides guidelines for consideration of social, economic and environmental impacts of operations.
17	(4) (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."	In the light of provisions of the Defence Act, this principles raises some debate on the obligations associated with soldiering. Evaluation in terms of this principle is suspended pending further exploration and investigation.
18	(4) (k) "Decisions are taken in an open and transparent manner, and access is provided to information in accordance with the law."	This principle is consistent with the philosophy of the DOD concerning civil-military relations in which the military is subject to the standards, norms and values dictated by civil society. Frequent environmental reporting by the DOD will provide public access to

		relevant information concerning the environmental performance of the department. It will be most relevant in the process of de-mobilisation of armed forces at the conclusion of a military operation.
19	(4) (l) "There is intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment."	The representation of the DOD on the CEC served extensively as the primary mechanism to ensure inter-departmental co-ordination and harmonisation of policies, legislation and actions relating to the environment. This advantage was however, revoked by the provisions of NEMA in which the DOD is not scheduled as a representative on the CEC. Presently, the DOD must rely on <i>ad hoc</i> and isolated instances of formal liaison with other departments and organs of state to satisfy requirements for co-operative governance for the environment. The SAAF observes specific formalised liaisons with civil aviation of the Department of Transport in environmental issues such as the management of hazards posed to aviation safety by wildlife on airfields and in the airspace. Similar relationships exist for other environmental aspects and the mechanisms for co-operative governance are expected to expand even further. An aspect that features prominently in situations of armed conflict either territorial or regional, is local and international legal compliance. When circumstances allow, this aspect is contained in a SOFA.

Ser No	<u>Section 2</u> Principles of NEMA	Policies, Plans and Programmes
	a	b
20	(4) (m) "Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures."	In the process of providing forces, conflict of interest encountered will not be resolved at the hand of this capacity. A mandate in this regard is delegated to support forces. In supporting forces, there is a high potential for conflicting interests between the strategic objectives for Defence and those fostered by the lead agents in government. At present no conflict resolution procedures are in place. Conflict is averted, however through informal liaison. The application of this principle as it applies to the employment of forces in situations of armed conflict has not been sufficiently explored to define the implications that are fostered.
21	(a) (4) (n) "Global and international responsibilities relating to the environment must be discharged in the national interest."	In the process of providing forces, this principle will not be resolved at the hand of this capacity by virtue of the mandate in this regard being delegated to support forces. This principle is implicitly observed by the DOD in its position of acceding to global and international responsibilities relating to the environment that are pursued the pertinent lead agents in this regard such issues as transboundary national parks and Ramsar sites. Accession to these initiatives by the DOD however, is subject to conditions that will not significantly interfere with military objectives mandated to the DOD. Global and international responsibilities are taken into consideration during the operational planning process.
22	(4) (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 people's common heritage."	This principle is thoroughly entrenched in environmental policy, philosophy and doctrine of the DOD. Provide, support and employ forces activities are executed in such a manner as to observe the provisions of departmental policy in this regard.
23	(4) (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 are paid for by those responsible for harming the environment" .	The DOD acknowledges its responsibilities in this regard. The risks of pollution, environmental degradation and consequent adverse health effects associated with provide and employ forces are potentially high. The principles of MIEM as observed by support forces is augmented by ITAM to secure closer co-operation and commitment of the provide and employ forces toward preventing, controlling or minimising further pollution, environmental damage or adverse health effects. The primary motive for such decisive pro-active

		measures are seated in the knowledge that the DOD would be liable for costs incurred as a result of harm to the environment should such measures fail. Through the establishment of an environmental management function within the DOD in 1978 and the subsequent adoption of MIEM in 1992, it is endeavoured to establish pro-active means of preventing such costs being reflected against financial statements of the department.
24	(4) (q) <i>"The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted."</i>	The DOD subscribes to the national objectives for equal opportunities by means of active implementation of mechanisms to achieve the targets dictated by government in this regard. As some women are trained for combat by provide forces and are ultimately deployed, others are utilised by support forces in the management of the environment. Several portfolios reserved for environmental management in the DOD are occupied by women, the percentage of which is rapidly nearing the predetermined target in accordance with government policy.
25	(4) (r) <i>"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."</i>	In the process of provide forces, training of personnel is carried out on military training areas which have been selected and designated by virtue of specific physical characteristics. Military activities therefore, are executed with sufficient sensitivity toward sustaining the physical characteristics of properties. It is endeavoured through the pursuit of this perspective to convey to combat forces, an ethic that could be applied under operational conditions by employ forces. Multiple use of these Defence controlled properties fosters a high potential for transformation of these physical characteristics as a result of military activities and associated impacts of environmental degradation. It is acknowledged that such transformation could distort the physical characteristics of such properties, which in turn, would defeat the motives for original designation as a military training area In the most extreme instances the potential exists that such transformation would render properties obsolete for purposes of military utilisation. Environmental management is directed toward thwarting this risk. The motives of the DOD for implementing measure to protect sensitive, vulnerable, highly dynamic or stressed ecosystems are however, not primarily utilitarian. The department recognises these environmental features as national assets entrusted to the custodianship of the DOD. Measures of protection are instituted therefore, for reasons pertaining to the public interest as well as compliance to regulation.

5. Allocated resources, responsibilities and timeframes for implementing policies, plans and programmes.—The DOD requires a systematic approach to mainstream and sustain the polices, plans and programmes in the EIP for Defence in accordance with legal requirements as well as the appropriate parameters of environmental performance demanded of the department. An Environmental Management System (EMS) must be integrated in the defence sector as comprehensively as is possible into existing management systems, rather than dealing with the environment as a separate issue.

6. This averts the perception that environmental management is an obstacle that must be accommodated at the expense of operational priorities. A top-down approach of implementing broad strategies that promote a reduction in environmental impacts is more cost-effective and manageable than a bottom-up approach involving several small, localised or specific environmental plans. The DOD should consult with the respective internal process owners in order that environmental issues may be incorporated at the earliest stages of all policies, plans or programmes in such processes as for instance logistics, acquisition etc.

7. The responsibility for establishing and maintaining an EMS for Defence will reside with the task team to be known as the ERF for Defence. The composition and representation of the ERF for Defence will secure inter-divisional participation under the Chairmanship of Joint Support Division. The ERF will come into force immediately after publication of the EIP for Defence in the

Government Gazette in early 2001. The ERF has a dual phased assignment of first developing the framework of an EMS by 2003 followed by the implementation of associated procedures for establishment and maintenance of the system.

*CHAPTER 4:
RECOMMENDED ACTIONS FOR ENVIRONMENTAL MANAGEMENT*

1. Introduction.—This chapter identifies and addresses appropriate mechanisms to ensure the implementation of effective integrated environmental management tools for the execution of military activities. These mechanisms focus on priority functional areas and take account of existing mechanisms and procedures for co-operative governance, key policies, plans and programmes and possible capacity limitations discussed in previous chapters.

2. Mechanisms to ensure implementation of effective management tools.—The following actions are recommended to ensure the implementation of effective integrated environmental management tools for the activities under the jurisdiction of the DOD:

- a. Develop mechanisms and instruments within the DOD to isolate and measure the total costs, inclusive of internalised expenditure on the impacts that arise from military activities on the environment. This may be accomplished in co-operation with the Office of the Auditor-General of the Department of Finance.
- b. Structure Environmental Education and Training (EE&T) in the DOD in formally approved *curricula* either as specific EE&T programmes aimed at force preparation, force support and force employment or as EE&T programmes integrated with existing military and civilian developmental courses at all levels of the organisation. Accredit specific EE&T programmes according to appropriate Unit Standards set by the National Qualifications Framework (NQF) of the South African Qualifications Association (SAQA). This may be accomplished in co-operation with the Department of Education.
- c. Establish mechanisms through case law and common law provisions as well as judicial review and *locus standi* for environmental dispute and conflict resolution.
- d. Structure environmental policy and procedures for the DOD consistent with the relevant functional strategies contained in the 1992 Broad Strategy and Functional Strategies for Environmental Services in the SANDF, namely
 - i. Ecological Management
 - ii. Base Environmental Management
 - iii. Environmental Education and Training
 - iv. Environmental Planning
 - v. Environmental Research
 - vi. Cultural Resource Management
- e. Explore the programmes, objectives and activities of Agenda 21, An Agenda for Sustainable Development in the 21st Century and associated national strategies for Agenda 21, for purposes of integration into existing policies, plans and programmes

of the department. Establish measures for reporting on progress of such implementation to the Commission for Sustainable Development by contributing to the State of the Environment Report following instructions received from Department of Environmental Affairs and Tourism (DEA&T).

- f. Develop an internal departmental plan to audit the capacity to implement measures for environmental compliance and performance within the context of Defence. This plan is exclusive of environmental management audit that evaluates the integrity of the EMS.
- g. Instate mechanisms of formalised intra-departmental liaison to forge an improved relationship between the DOD Environmental Health Service, which presides over issues concerning Occupational Health and the DOD Environmental Services which addresses MIEM. This may be accomplished through the inclusion of Environmental Health representation at the DOD Environmental Services Steering Group at corporate level, DOD Regional Environment Advisory Forums as well as on the DOD Environmental Awards Programme National Adjudication Panel.
- h. Investigate, develop and establish an Environmental Economics capacity within the DOD in order to appreciate the cost-benefit analysis for the inclusion of appropriate environmental and safety considerations in each of the planning, design, manufacture, acquisition and procurement, operation, maintenance, support, decommissioning and disposal of armament, equipment and related services following approaches of best practicable means and risk-aversion. This may be accomplished with the co-operation of the Acquisition and Procurement Division and the State Armament Procurement Agency, ARMSCOR.
- i. Strengthen the role of major groups in the environmental performance of the DOD by investigating appropriate and practicable means of achieving this feat. This may be accomplished by formulating predetermined actions in strengthening the role of major groups in the environmental performance of the department in the successive issues of reviewed DOD Environmental Communication Plan.
- j. Establish the means to control and improve environmental management performance of the organisation by developing an intra-departmental mechanism to ensure that the necessary controls are in place to understand the performance that is required, measure current performances, identify improvement potential, implement the improvement plan, and control and track critical activities. This can be accomplished through formal adoption of the ISO 14000-series International Standard for Environmental Management Systems by the DOD, based on the guidelines of the NATO-CCMS Pilot Study on Environmental Management Systems in the Military Sector (2000).
- k. Formally adopt and implement Integrated Training Area Management (ITAM) in departmental policy as an environmental management tool in the process of providing forces. This is to be facilitated by measures to develop capacity and empowerment of all departmental personnel in concern.
- l. In providing forces, the maritime capability of the DOD renders maritime surveillance and enforcement support to the relevant authorities for the protection marine resources, control of marine pollution and maritime law enforcement. Although this is not consistent with the primary function associated with this capability, the DOD supports relevant authorities in this regard as an incidental service where operational readiness is in no way jeopardised. Explore formal mechanisms of inter-departmental liaison to reach agreement on the terms of reference for continuation of a co-ordinated service by the DOD in this regard. This action is to be viewed in the light of provisions of the Nairobi and Abijan Conventions on the conservation of marine resources.

This is to be pursued in co-operation with DEA&T, the Departments of Foreign Affairs and Transport as well as the SAPS.

- m. In the process of restructuring the department, various bases, combat and support units are established, maintained or closed. The DOD has adopted the concept of Base Conversion as is practiced worldwide. This concept includes environmental considerations during the process of closing down military installations for purposes of alternative use. Identify these environmental considerations contextually over its entire spectrum and clearly define for purposes of implementation during base conversion. Sustain formulated partnerships between the DOD, other departments and external organisations during the process of base conversion as well as international co-operation for further development of capacity in this regard.
- n. In the process of providing forces for air defence, military aircraft movements are consistently under threat of hazards posed by wildlife occurring in the vicinity of runways as well as birds in particular, in the airspace used for military air operations. Focus on developing and establishing programmes for managing all aspects concerning the management of wildlife as a potential hazard to movement of military aircraft as part of departmental aviation safety policy. This is to be accomplished in co-operation with the Department of Transport, relevant academic institutions, national environmental NGO's and the local and international aviation community.
- o. Include environmental regulatory obligations in the performance agreements of respective Divisional Chiefs, General Officers Commanding and Commanding Officers.
- p. The absence of the DOD as a scheduled representative on the CEC impedes measures sought by the department to excel in co-operative governance in terms of the harmonisation of policies, legislation and actions relating to the environment. Address the rescheduling of the DOD as a representative on the CEC at ministerial level to secure an amendment to NEMA and consequent re-admittance of the DOD to the CEC.
- q. Expand and develop guidelines and operational instructions on Facilities and Environmental Management for Operational Planning and Execution to incorporate the relevant principles of NEMA into the deployment of forces during internal, territorial operations as well as external operations.
- r. Subject the [Section 2](#) Principle (4) (j) of NEMA concerning the right of workers to refuse work that is harmful to human health and the environment to further investigation within the DOD for the formulation of policy and procedure in this regard.

3. The implementation of these recommended actions will take place during the period of the next four years and will be completed by 2004 with the onset of the next edition EIP for Defence.

ADDENDUM 1: INDICATORS

1. Introduction.—This addendum lists relevant sustainable development indicators that the department already does or can routinely collect. These indicators are derived from Agenda 21, an Agenda toward Sustainable Development into the 21st Century. Agenda 21 is an action plan and blue print for sustainable development, one of five documents adopted by more than 178 governments at the United Nations (UN) Conference on Environment And Development (UNCED) in Rio de Janeiro in 1992.

2. South Africa as one of the global partners to sustainable development, reaffirmed at the UN General Assembly through as statement by the then Deputy President, Thabo Mbeki, that Agenda 21 remains the fundamental programme of action for achieving sustainable development and that the achievement of this requires the integration of economic, social and environmental components. South Africa has since been committed to the development of a national strategy for sustainable development by the year 2002. The EIP for Defence is directed toward securing capacity required by the DOD to contribute to the development of a national strategy for sustainable development through its line function of defence.

3. List of sustainable development indicators.—Sustainable development indicators relevant to the DOD environmental sphere are as follows:

- a. International co-operation to accelerate sustainable development in developing countries and related domestic policies.
- b. Changing consumption patterns.
- c. Protecting and promoting human health.
- d. Promoting sustainable human settlement development.
- e. Integrating environment and development in decision-making.
- f. Protection of the atmosphere.
- g. Integrated approach to the planning and management of land resources.
- h. Conservation of biological diversity.
- i. Protection of the oceans, all kind of seas, including enclosed or semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources.
- j. Protection of the quality and supply of freshwater resources: Application of integrated approaches to the development, management and use of water resources.
- k. Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products.
- l. Environmentally sound management of hazardous wastes, including prevention of illegal traffic in hazardous wastes.
- m. Environmentally sound management of solid wastes and sewage-related issues.
- n. Safe and environmentally sound management of radioactive wastes.
- o. Global action for women towards sustainable and equitable development.
- p. Recognising and strengthening the role of indigenous people and their communities.

- q. Strengthening the role of non-governmental organisations: Partners for sustainable development.
- r. Local authorities' initiatives in support of Agenda 21.
- s. Strengthening the role of workers and their trade unions.
- t. Strengthening the role of business and industry.
- u. Scientific and technological community.

ADDENDUM 2: KEY PERFORMANCE INDICATORS

1. Introduction.—This addendum discusses the proposed basis of reporting and monitoring the implementation of the EIP for Defence, relating to the functioning mechanisms and procedures to ensure co-operative governance in the exercising of priority functions, as well as the resources and timeframes for implementing the policies, plans and programmes.

2. Key performance indicators for implementation of EIP.—The nature of the proposed actions recommended in [Chapter 4](#) of this first edition EIP can only be measured according to whether the action has been implemented or not. The actions are designed to mandate specific programmes in support of the specific areas requiring improved environmental performance. These programmes are yet to be qualified and developed at the onset of the implementation phase of the EIP, when baseline or contemporary performance parameters for implementation or decisive measures for implementation would be determined in terms of each qualified environmental aspect.

3. Furthermore, these proposed actions make provision for the development of an EMS for Defence. This system will provide a structured mechanism for the implementation and management (policy, planning, monitoring and execution) of activities aimed at improving or sustaining the environmental performance of the department. The envisaged EMS for Defence will yield parameters according to which environmental management programmes implemented, to improve performance, may be measured in the Second Edition EIP for Defence.

4. Benchmarking for environmental performance in the DOD is derived from international and national regulatory requirements as well as national norms and standards as contained in the Constitution. These are supplemented, where applicable, by SA Bureau of Standards (SABS) standards for environmental compliance. The EMS in addition, has been approved by Defence as an internationally accepted benchmark i.e. that of the ISO 14000-series International Standard for environmental management. This decision is further advised by the guidelines issued in the NATO-CCMS Environmental Management Systems in the Military Sector, Final Report of the Pilot Study Group (March 2000) as well as an appreciation on the implementation of such a system in the DOD.

GN 435 of 23 February 2001: Publication of Environmental Management Plan under section 15(2) (b) of the National Environmental Management Act, 1998 (Act [No. 107 of 1998](#))

DEPARTMENT OF MINERALS AND ENERGY

I, Sandile Nogxina hereby publish in terms of section 15(2) (b) of the National Environmental Management Act, 1998 (Act [No. 107 of 1998](#)), the First Edition Environmental Management Plan of the Department: Minerals and Energy for adoption with effect from this date of publication.

S. NOGXINA
Director-General, Department: Minerals and Energy

Department: Minerals and Energy

First Edition

Environmental Management Plan

**Compiled in terms of section 11(2) of the National Environmental Management Act, 1998
(Act No. 107 of 1998)**

REPUBLIC OF SOUTH AFRICA

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ACRONYMS AND GLOSSARY

CEC	Committee for Environmental Co-ordination in terms of NEMA
Constitution	Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)
UN CSD	United Nations Commission for Sustainable Development
D: EAT	Department: Environmental Affairs and Tourism
Director-General	Director-General of the Department: Minerals and Energy
D: ME	Department: Minerals and Energy
D: WAF	Department: Water Affairs and Forestry
EIP/EMP (NEMA)	Environmental Implementation and Management Plans as required in terms of NEMA, 1998
EMP	

EMPRs	Environmental Management Programme as required in terms of section 39 of the Minerals Act, 1991
EMEM Awards	Environmental Management Programme Reports
IEM	Excellence in Mining Environmental Management Award System
MEM	Integrated Environmental Management as prescribed in terms of NEMA, 1998 and guidelines as published by the D: EAT from time to time.
NEMA	Series Mining Environmental Management Series of Guidelines
NER	National Environmental Management Act, 1998 (Act No 107 of 1998)
NECSA	National Electricity Regulator
NCCC	South African Nuclear Energy Corporation
NNR	National Committee on Climate Change
UNFCCC	National Nuclear Regulator
	United Nations Framework Convention on Climate Change

CHAPTER 1
PURPOSE AND OBJECTIVES OF THE ENVIRONMENTAL MANAGEMENT PLAN (EMP)